

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.11603 OF 2014

Nisar Ahmed Khan s/o Hussain Khan,
Age 82 years, Occu. Business,
R/o H.No.1/3/98, Dabirpura Galli,
Ward No.2, Udgir, Taluka Udgir,
District Latur

..Petitioner

Versus

1. The State of Maharashtra,
through its Minister
(Food, Civil Supply and Consumer
Protection), Mantralaya,
Extension Building, Mumbai 32
2. The Deputy Commissioner
(Supply), Divisional Commissioner
Office, Aurangabad, District
Aurangabad
3. The District Supply Officer,
Collector Office, Latur,
District Latur
4. The Tahsildar,
Tahsil Office, Udgir,
District Latur

..Respondents

Mr M.S. Chaudhari, Advocate for petitioner
Mr A.P. Basarkar, A.G.P. for respondents

CORAM : N.W. SAMBRE, J.

DATE : 14th December 2015

PER COURT

Heard.

2. The petitioner is an allottee of fair price shop. Pursuant to inquiry conducted by the revenue authority, a report was submitted by Tahsildar, Udgir to District Supply Office, Latur pointing out that amongst thirty shops, which were inspected, twenty eight shop owners have committed illegalities and serious irregularities and recommended cancellation of their fair price shop licences. The petitioner, as such was served with a show-cause notice by the District Supply Officer, Latur, calling upon the petitioner as to why his licence should not be cancelled, pursuant to the report of Tahsildar, Udgir dated 31st January 2011. The show-cause notice specifically refers to fifty two bogus ration cards operated by the petitioner.

3. The District Supply Officer, after having considered the explanation of the petitioner, ordered cancellation of the licence on 10th February 2011, which was further confirmed in the proceedings filed under Section 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975 and Maharashtra Kerosene Dealers Licensing Order, 1966. The revision preferred before the State Government suffered the fate of dismissal, as such present petition.

4. Mr Chaudhari, learned Counsel for the petitioner – licence holder would urge that the show-cause notice issued to the petitioner refers to only 52 bogus ration cards, however, as to how the petitioner is

responsible for said bogus ration cards is not attributed or no findings are recorded by the authorities below. Mr Chaudhari has invited attention of this Court to the order dated 15th February 2010 passed by the Division Bench at Bombay in Writ Petition no.2575 of 2009 in which, according to him, the statement of learned Assistant Government Pleader was recorded that pursuant to Government Resolution dated 11th September 2009 and the Circular issued by Controller of Rationing on 18th September 2009, the responsibility on the fair shop owners to verify the credential of the ration card holders or particulars furnished by them is not the job of fair price shop owners and based on the same, licence of the licence holders will not be cancelled, if the ration card holders furnished false information.

5. According to Mr Chaudhari, all the three authorities below failed to apply their mind to comply factual matrix of the matter in accordance with the legal provisions and have not ordered as to how petitioner is responsible for the bogus ration cards.

6. Learned A.G.P. would urge that the charges as against the petitioner under the Regulation are serious one. The petitioner has mismanaged the ration shop by passing on the benefit of 52 ration card holders by selling the commodities in open market. He would then urge that there is criminal prosecution pending against the petitioner, as such prayed for dismissal of the petition.

7. Having bestowed my anxious thoughts over the submissions made, it is noticed that the report of Tahsildar, Udgir dated 31st January 2011 was formed to be basis for issuance of show-cause notice. Show-cause notice speaks of total 52 unauthorised ration cards, but show-cause notice does not specify whether the ration cards were bogus or unauthorised.

8. From the submissions made by learned A.G.P., it could be noticed that ration card holders to the extent of 52 appear to be unauthorised and not bogus, as he submitted that against the said ration cards, stock was lifted as is apparent from the record. It is to be noted here that it is not on record, as to whether the said stock was lifted by the petitioner or the benefit was taken out by said unauthorised ration card holders. Same was not formed to be basis for issuance of show-cause notice.

9. Apart from above, if the stock is lifted by the petitioner based on 52 unauthorised card holders, the material based on which such conclusion is drawn and the consideration thereof is also conspicuously absent in all the three orders. Apart from above, what is noticed is, the authorities passed the orders mechanically, considering the report of the Tahsildar. Report of the Tahsildar, after its perusal depicts only the issue of 52 unauthorised ration card holders, however, the role of the petitioner in operating such 52 unauthorised ration cards and benefit, if any, drawn by the petitioner

out of such unauthorised ration cards is also necessary to be dealt with. It appears that all the orders impugned are passed without application of mind.

10. In view of above, in my opinion, it will be appropriate to partly allow the present petition.

11. As such, the order impugned dated 10th February 2011, passed by the District Supply Officer, Latur, order dated 9th November, 2012 passed by the Deputy Commissioner (Supply), Aurangabad Division, Aurangabad and order dated 25th August 2014 passed by Hon'ble Minister (Food, Civil Supply and Consumer Protection), Mantralaya, Mumbai are hereby quashed and set aside.

12. Learned District Supply Officer, Latur will be at liberty to issue fresh show-cause notice to the petitioner within a period of eight weeks in the light of the observations made herein above to which the petitioner undertakes to file reply within four weeks thereafter. The District Supply Officer, Latur shall also furnish the true copies of the documents, which he intends to consider against the present petitioner.

13. The District Supply Officer, Latur shall then proceed to pass the order after hearing the petitioner within a period of four weeks thereafter.

14. It is made clear that if the District Supply Officer fails to initiate the proceedings, as referred to above, he shall be then duty bound to permit the petitioner to start operation of the fair price shop after the expiry of period of sixteen weeks, as observed herein above and in any case shall positively comply with the order by permitting the petitioner to operate fair price shop within eighteen weeks from the date of issuance of show-cause notice.

15. Writ Petition stands partly allowed in above terms.

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(N.W. SAMBRE, J.)

(vvr/