

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.127 OF 2015

PRAVINLAL HEMRAJ GUGALE AND ANOTHER PETITIONERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS RESPONDENTS

Mr.Girish S.Rane, Advocate for the petitioners.
Mr.R.R.Karpe, Advocate for respondent Nos.5A and 5B.
Mr.K.M.Suryawanshi, AGP for respondent Nos.1 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/03/2015

PER COURT :

1. On 09/01/2015, while issuing notice, the impugned judgment dated 11/09/2014 passed by the Hon'ble Minister, was stayed.
2. I have heard the learned Advocates Mr.Rane, Mr.Karpe and the learned AGP on behalf of the State.
3. It is not in dispute that the petitioners were not party to the proceedings before the Hon'ble Minister. As such, the impugned order dated 11/09/2014 has been passed purportedly impinging the legal rights of the petitioner. The learned AGP submits that until the petitioners move an application for intervention, the Hon'ble Minister could not have heard them.

4. Mr.Karpe, learned Advocate submits that the petitioners cannot be arrayed as respondents while remanding the proceedings to the Hon'ble Minister. The petitioners will have to move an application for intervention and in the event the same is allowed, then only the Hon'ble Minister could hear them.

5. This Court (Coram : R.K.Deshpande, J.) has considered a somewhat similar situation in WP No.8310/2009 in the matter of Dipak Shankar Pawar Vs. State of Maharashtra and others and has delivered its judgment on 27/07/2010. Paragraph Nos. 3, 4 and 5 of the said judgment are as under :-

"3. The Minister has granted renewal of kerosene license, which had expired on 31/12/1996 in terms of the Government Resolution dated 29/09/2004. He has further passed an order transferring the kerosene license from the respondent No.4 to respondent No.5-the partnership firm. The provisions of Government Resolution dated 29/09/2004 which is placed on record contemplate that the proposal for renewal of license beyond the period of 120 days should be considered in exceptional cases, after obtaining the report from the concerned Collector. Upon receipt of the report from the Collector, the proposals are required to be considered on its own merits at the level of the State Government. It has not been pointed out that

such requirement has been complied with. What was the exceptional case and whether the report of Collector was obtained, has not been stated or pointed out. Similarly, the provision regarding transfer of license from individual partnership firm has also not been brought to my notice. The contention of the petitioner is that his quota will be reduced, if the license in the name of respondent No.4 is renewed, is substantiated from the reply filed by the respondent No.3. Paragraph No.5 of the said reply is reproduced below :

"5] I say and submit that since the respondent No.4 has not renewed his license after 1996 due to ill health, the kerosene quota was distributed amongst 2 Semi Wholesale Dealers i.e. the present petitioner and Pradip Thakkar. The present quota of kerosene of Taloda Taluka is 144 K.L. the said kerosene quota is equally distributed in two Semi Wholesale Dealers i.e. the present petitioner and Pradip Thakkar. I further say and submit that the Kerosene quota of 2 Semi Wholesalers is not fixed, however, it is calculated as per the demand and availability of kerosene from the Government."

4. In view of the aforesaid reply, it cannot be said that the petitioner is not a person aggrieved or affected by renewal of license in favour of the respondent No.4. It is undisputed position that the petitioner was not granted hearing before passing the order by the Minister. For all these reasons, the impugned order dated 31/08/2009 cannot be sustained and the same needs to be set aside, by remanding it to the Minister, for

consideration of it afresh.

5. In the result, the instant Writ Petition is allowed. The order dated 31/08/2009 passed by the Minister, Food, Civil Supplies and Consumer Protection, is hereby quashed and set aside. The matter is remitted back to the Minister for Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai for decision afresh in accordance with Law. However, the petitioner shall be given notice of the matter and he shall be heard before passing of an order. Rule is made absolute. No order as to costs. All objections taken by all parties shall be considered by the Minister, in accordance with law. The learned counsels for the petitioner and the respondent Nos. 4 and 5 submit that they would like to file affidavit, rejoinder, written argument and case laws before the Minister. Permission is granted. The Minister shall also take into consideration the same and pass an order."

6. In the light of the above, rather than this Court entering into the exercise of considering whether the petitioners are interested persons or affected persons, I find it appropriate to remand the matter to the Hon'ble Minister by setting aside his judgment dated 11/09/2014 and permit the petitioners to file an intervention application.

7. As such, this petition is partly allowed. The impugned order of

the Hon'ble Minister dated 11/09/2014 is quashed and set aside. The proceeding bearing No.wai.a.na 1414/ pra.kra.190/na.pu.23 is relegated to the Hon'ble Minister, Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai, for fresh adjudication on the following conditions :-

- (a) The litigating parties shall appear before the Hon'ble Minister on 20/03/2015, at 3.00 p.m.
- (b) The petitioners, if so desire, may move an application for intervention to be filed on 20/03/2015.
- (c) The Hon'ble Minister shall hear the litigating sides on the intervention application and pass necessary orders.
- (d) In the event, the intervention application is allowed, the main proceedings shall be decided by the Hon'ble Minister after hearing the newly added respondents within a period of 16 (sixteen) weeks thereafter.
- (e) The litigating sides shall refrain from seeking adjournments on frivolous or unreasonable grounds.

(RAVINDRA V. GHUGE, J.)