

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4144 OF 2014

Dharma L. Jadhav and ors. .. Petitioners
vs.
State of Maharashtra and ors. .. Respondents

Mr. G.C. Jhaveri h/f. Mr. J.D. Khairnar for the Petitioners.
Ms M.S. Bane, B-Panel counsel for Respondent Nos.1 and 3.
Mr. N.P. Shimpi for Respondent No.4.

CORAM : M. S. SONAK, J.
DATE : 27 NOVEMBER 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] Respondent No.4 has applied for production, as the interim relief granted on 21 April 2014, occasions serious prejudice to Respondent No.4. At his request, the matter is taken up for final disposal, at this stage. Even otherwise, by order dated 21 April 2014, the parties were put to notice that this petition will be disposed of finally, at the stage of admission. Hence, Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The authorisation for running the Fair Price Shop granted to Respondent No.4 was cancelled by the District Supply Officer (DSO) vide order dated 1 April 2011, *inter alia*, on the ground of several

breaches committed by Respondent No.4. The first revision application against the order dated 1 April 2011 was dismissed by the Deputy Commissioner (Supply) vide order dated 29 August 2011. The second second revision application was dismissed by the Minister (Food, Civil Supplies and Consumer Protection) vide 12 September 2012. The writ petition instituted by Respondent No.4 was dismissed by this Court on 21 February 2013, by observing that no perversity is noticed in the concurrent orders made by the authorities in the matter of cancellation of authorisation granted to Respondent No.4. Respondent No.4, thereupon, instituted review petition before this Court, but the same was unconditionally withdrawn on 18 December 2013.

4] It is the case of Respondent No.4 that Respondent No.4 had instituted a review petition before the Minister (Food, Civil Supplies and Consumer Protection) in the matter of order dated 12 September 2012. Such review petition, according to Respondent No.4 had been instituted on 1 October 2012. From this, it transpires that despite pendency of such review petition, Respondent No.4 chose to institute writ petition challenging the order dated 12 September 2012. The learned counsel for the parties were not clear as to whether the factum of pendency of such review petition was at

all disclosed to this Court, when the writ petition was taken up for hearing. In all probabilities, there was no disclosure made. The writ petition was dismissed on 21 February 2013.

5] Thereafter, Respondent No.4 chose to institute a review in the matter of order dated 21 February 2013. The same was, however, unconditionally withdrawn on 18 December 2013. The learned counsel for Respondent No.4 faintly submitted that the review before this Court was withdrawn on 18 December 2013 on the ground of pendency of review petition before the the Minister (Food, Civil Supplies and Consumer Protection). At least, the order dated 18 December 2013, by which review was permitted to be withdrawn unconditionally, does not state this to be the reason.

6] Admittedly, no special leave petition was filed by Respondent No.4 against the writ petition dismissal order dated 21 February 2013. Therefore, the said order had attained the finality, more particularly, after the review against the same was withdrawn by Respondent No.4, unconditionally on 18 December 2013.

7] After all this, the Minister (Food, Civil Supplies and Consumer Protection) has made the impugned order dated 4 March 2014 in purported exercise of review jurisdiction. The effect of impugned order is that the the Minister (Food, Civil Supplies and Consumer Protection) has set aside earlier orders dated 1 April 2011, 29 August 2011 and 12 September 2012, which incidentally had already been confirmed by this Court in the writ petition instituted by Respondent No.4 Hence, present petition.

8] The learned counsel for the Petitioners has submitted that power of review is never inherent and the the Minister (Food, Civil Supplies and Consumer Protection) lacked any powers of review. In any case, the learned counsel for the Petitioners submitted that the there was no question of exercise of review jurisdiction by the the Minister (Food, Civil Supplies and Consumer Protection) after the order sought to be reviewed had already been confirmed by this Court vide writ petition dismissal order dated 21 February 2013. On this ground, the learned counsel for the Petitioners urged that the impugned order, being in excess of jurisdiction, was required to be set aside.

9] The learned counsel for Respondent Nos.1,3 and 4, however, placed reliance upon an order made under Essential Commodities Act dated 4 July 2007, by which clause 30(2) came to be inserted in the Maharashtra Schedule Foodgrain Rationing (Second) Order, 1966. The said clause confers power of review upon the State Government under certain circumstances. The learned counsel for Respondent No.4 pointed out that the the Minister (Food, Civil Supplies and Consumer Protection) though possessed of review jurisdiction had not really exercised powers of review. Rather, the the Minister (Food, Civil Supplies and Consumer Protection) had upheld the earlier orders of cancellation, but subject to payment of fine by Respondent No.4 had directed granted of fresh authorisation in favour of Respondent No.4. For all these reasons, learned counsel for Respondents urged for dismissal of this petition and vacation of interim relief.

10] Having heard the learned counsel for the parties and perused the record, in my judgment, the impugned order dated 4 March 2014 is required to be set aside. Although, in terms of clause 30(2) of the Maharashtra Schedule Foodgrain Rationing (Second) Order, 1966, some powers of review shall have to be conceded to the Minister (Food, Civil Supplies and Consumer Protection), existence

of power is one thing, but the exercise thereof, quite another. In this case, the Minister (Food, Civil Supplies and Consumer Protection) clearly lacked jurisdiction to review an order, which had already been upheld by this Court. If at all, Respondent No.4, had any grievance in the matter of writ petition dismissal order dated 21 February 2013, it was for the Respondent No.4 to institute a review petition before this Court or seek special leave to appeal before the Hon'ble Apex Court. The records indicate that Respondent No.4, being aware of this position, did institute a review petition before this Court, but thereafter chose to withdraw the same unconditionally on 18 December 2013. After all this, the Minister (Food, Civil Supplies and Consumer Protection) clearly lacked jurisdiction to take up for consideration the review petition instituted by Respondent No. 4 and make impugned order dated 4 March 2014, thereby upsetting its earlier order dated 12 September 2012. The Minister (Food, Civil Supplies and Consumer Protection), in making the impugned order, has virtually attempted to exercise review jurisdiction in the matters of orders made by this Court in the exercise of writ jurisdiction. This is clearly impermissible.

11] The contention that the Minister (Food, Civil Supplies and Consumer Protection) has not exercised review jurisdiction, is quite

untenable. Perusal of the impugned order would indicate that the Minister (Food, Civil Supplies and Consumer Protection) has, in terms, set aside not only his earlier order 12 September 2012, but also the orders dated 1 April 2011 and 29 August 2011, by which the Authorities had cancelled the authorisation in favour of Respondent No.4. Incidentally, the Minister (Food, Civil Supplies and Consumer Protection) had earlier upheld these very orders of cancellation of authorisation. Clearly, therefore, the Minister (Food, Civil Supplies and Consumer Protection) has exercised review jurisdiction, though quite in excess of powers conferred upon him. The learned counsel for the Petitioners has in fact submitted that the exercise of review jurisdiction by the Minister (Food, Civil Supplies and Consumer Protection), in matter of an order which had already attained finality, even before this Court, amounts to subversion of judicial discipline. Now that the impugned order is being set aside, there is no reason to decide upon this submission.

12] In the result, the impugned order dated 4 March 2014 is hereby set aside. Rule is made absolute in terms of prayer clause (b). In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)