

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2153 OF 2014

Rajkumar s/o Jankiram Rajure
Age : 45 years, Occu. Agriculture,
R/o. Dapshed, Taluka Loha,
District : Nanded.

... Petitioner

Versus

1. The State of Maharashtra
 2. The Minister,
Food Civil Supply and Consumer
Protection Department, Mantralaya,
Mumbai – 32.
 3. Deputy Commissioner (Supply),
Aurangabad.
 4. District Supply Officer,
Nanded.
 5. Dadarao s/o Hariram Tonge,
Age : 43 years, Occu. Agriculture,
R/o. Dapshed, Taluka Loha,
District Nanded.
- ... Respondents

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Advocate for the petitioner : Mr. A. M. Kulkarni
AGP for respondent Nos. 1 to 4 : Mr. G. O. Wattamwar
Advocate for respondent No. 5 : Mr. R. I. Wakade
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CORAM : V. K. JADHAV, J.

DATED : 16th FEBRUARY, 2016

ORAL JUDGMENT :-

1. Rule. Rule returnable forthwith. By consent of learned counsel for the parties, heard finally.

2. By way of this writ petition, the petitioner has challenged the order dated 12.02.2014 passed by respondent No.2-Hon'ble Minister in case No.VAM-1113/P.K.189/N.P.21, thereby cancelling the license of fair price shop of the petitioner permanently.

3. Brief facts giving rise to the present writ petition are as follows:

a. The petitioner is a license holder of fair price shop at village Dapshed, Taluka Loha, District Nanded. On 15.02.2011, respondent No.4-District Supply Officer, Nanded issued show cause notice to the present petitioner on the basis of report submitted by Tahsildar, Loha dated 03.01.2011, received by District Supply Officer on 04.02.2011, levelling charges against the petitioner. In response to the said show cause notice, petitioner submitted his reply on 11.03.2011. Thereafter, the District Supply Officer, Nanded, by order dated 18.04.2011, suspended the authorization of petitioner's fair price shop at village Dapshed and further directed re-enquiry into the matter by Tahsildar, Loha. Even the alternate arrangement for distribution of food grains was also directed by order dated 18.04.2011.

b. Being aggrieved by the same, the petitioner filed revision application before the Deputy Commissioner (Supply). Deputy

Commissioner (Supply), Aurangabad, by order dated 05.07.2011, partly allowed the said revision application and thereby quashed and set aside the order passed by District Supply Officer dated 18.04.2011 and further directed that in re-enquiry, opportunity of being heard shall be given to the revision applicant and the concerned persons. Deputy Commissioner (Supply) has also directed in the said order to distribute the quota as per previous arrangement to the petitioner's shop.

c. Being aggrieved by the same, respondent No.5 herein preferred revision before the Hon'ble Minister. The Minister, by order dated 05.05.2012, allowed the said revision and thereby quashed and set aside the order passed by Deputy Commissioner (Supply) dated 05.07.2011 and confirmed the order passed by District Supply Officer dated 18.04.2011 and as the suspension order passed by District Supply Officer was by way of an interim arrangement, it was directed to the District Supply Officer to undertake further proceeding for cancelling the licence of fair price shop permanently.

d. Aggrieved by the same, the petitioner had approached this Court by filing writ petition No. 4573 of 2012. This Court, by order dated 05.03.2013, quashed and set aside the order passed by Hon'ble Minister dated 05.05.2012 and restored the revision to its

original file and further directed the Minister to give an opportunity of hearing to the present petitioner before disposing of the revision.

e. Thereafter, the Hon'ble Minister, by order dated 12.02.2014, again allowed the said revision and quashed and set aside the order passed by the Deputy Commissioner (Supply) dated 05.07.2011 and cancelled the license of fair price shop of the petitioner permanently. Hence this writ petition.

4. Learned counsel for the petitioner submits that the District Supply Officer, by order dated 18.04.2011, merely suspended the license with direction of re-enquiry into the matter by Tahsildar, Loha. Thereafter, the Deputy Commissioner (Supply) has quashed and set aside the order passed by District Supply Officer and directed re-enquiry into the matter as per order passed by District Supply Officer by giving an opportunity of hearing to the petitioner and the concerned persons. Learned counsel submits that as per order passed by this Court in writ petition No. 4573 of 2012, the matter was remanded to the Hon'ble Minister and the Hon'ble Minister, by order dated 12.02.2014, without there being any re-enquiry into the matter as directed by the authorities below, permanently cancelled the shop license of the petitioner.

5. Learned AGP for respondent Nos. 1 to 4 submits that on

27.06.2012, as per order passed by the Hon'ble Minister dated 05.05.2012, the Tahsildar, Loha submitted a report and accordingly, the order came to be passed about cancellation of the shop license.

6. Learned counsel for respondent No.5 has pointed out the report submitted by the Tahsildar, Loha dated 03.01.2011 and further submitted that this is the enquiry conducted by Tahsildar, Loha.

7. It appears that on the basis of report submitted by Tahsildar, Loha dated 03.01.2011, District Supply Officer has passed the order dated 18.04.2011 for suspension of shop license with further direction to Tahsildar, Loha to re-enquire into the matter and submit a report. So far as the order passed by District Supply Officer dated 18.04.2011 is concerned, that order came to be challenged initially before Deputy Commissioner (Supply) and thereafter before the Hon'ble Minister. However, it appears from the record that as per the directions given by District Supply Officer about re-enquiry into the matter by Tahsildar, Loha and so far as those directions confirmed by the Deputy Commissioner (Supply) by order dated 05.07.2011 are concerned, no re-enquiry was conducted by the Tahsildar. Learned counsel for the petitioner has rightly pointed out that the order of suspension of shop license was an interim arrangement till the re-enquiry is completed and the report is submitted before District Supply Officer. Even the Deputy Commissioner (Supply) has also

taken care by directing that an opportunity of hearing should be given to the petitioner while conducting re-enquiry into the matter. In view of these facts, the order passed by the Hon'ble Minister dated 12.02.2014 was unwarranted and uncalled for. At the most, the Minister could have upheld the order passed by District Supply Officer or could have set aside the order of suspension of shop license passed by the authorities below. Instead, the Hon'ble Minister, by impugned order dated 12.02.2014, permanently cancelled the shop license of the petitioner. Thus, the order dated 12.02.2014 passed by the Minister is liable to be quashed and set aside. However, so far as the directions given by Deputy Commissioner (Supply), Aurangabad in order dated 05.07.2011, confirming the directions given by District Supply Officer about the re-enquiry into the matter by Tahsildar, Loha are concerned, the same requires to be upheld. Hence the following order:

O R D E R

- I. The writ petition is hereby partly allowed.
- II. The order dated 12.02.2014 passed by the Hon'ble Minister in revision No.VAM-1113/P.K.189/N.P.21 is hereby quashed and set aside.
- III. The order dated 05.07.2011 passed by the Deputy Commissioner (Supply), Aurangabad is hereby restored.

- IV. In the circumstances, Tahsildar, Loha is hereby directed to complete the enquiry as directed by Deputy Commissioner (supply), Aurangabad by order dated 05.07.2011, within a period of three (03) months from the date of receipt of this order. The District Supply Officer may thereafter take appropriate decision into the matter on the basis of the said enquiry report. Needless to state that Tahsildar, Loha shall afford an opportunity of hearing to the petitioner as well as respondent No.5 herein and the concerned persons.
- V. Rule is made absolute in the above terms. The writ petition is disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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