

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3700 OF 2015

KALYAN PUNDLIK SULE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Narayan B. Narwade
AGP for Respondent Nos. 1 to 4 : Mr. N. B. Patil
Advocate for Respondent No. 5 : Mr. R. R. Karpe
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CORAM : V. K. JADHAV, J.

DATED : 04th FEBRUARY, 2016

PER COURT :-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. By way of present writ petition, petitioner is challenging the order passed by the Hon'ble Minister-respondent No. 2, whereby the review application of respondent No.5 came to be allowed.
3. Brief facts giving rise to the present writ petition are as follows :

By order dated 18.08.2009, respondent No.4 - District Supply Officer, Beed pleased to cancel the license of kerosene dealer as well as authorization of Fair Price Shop granted in favour of respondent No.5. Being aggrieved by the same, respondent No.5 preferred a revision before respondent No.3-Deputy Commissioner (Supply),

Aurangabad Division, Aurangabad. Learned Deputy Commissioner (Supply), by order dated 09.04.2010, partly allowed the said revision and remanded the matter to the District Supply Officer for taking decision afresh. Learned Deputy Commissioner (Supply) has also made certain observations and in the light of those observations, has given certain directions to the District Supply Officer. Thereafter, by order dated 26.05.2010, District Supply Officer has cancelled the license of kerosene dealer as well as authorization of Fair Price Shop of respondent No.5. Aggrieved by the same, present respondent No.5 again preferred a revision before the Deputy Commissioner (Supply). Learned Deputy Commissioner (Supply), by order dated 23.09.2010, confirmed the order dated 26.05.2010 passed by District Supply Officer and dismissed the revision. Thereafter, respondent No.5 preferred revision application before the Hon'ble Minister, Food, Civil Supply and Consumer Protection Department. The Hon'ble Minister, by order dated 05.03.2013, confirmed the orders passed by the District Supply Officer and the Deputy Commissioner (Supply) and accordingly, dismissed the revision application. Afterwards, respondent No.5 preferred review application before the Hon'ble Minister. The Hon'ble Minister, by order dated 03.03.2015, partly allowed the said review application and directed respondent No.5 to pay a penalty of Rs.5,000/- and to pay the deposit again. The Hon'ble Minister set aside the order dated 05.03.2013 passed by the Government for cancellation of license of respondent No.5. Being

aggrieved by the same, the petitioner, who is the original complainant, filed the present writ petition.

4. Learned counsel for the petitioner submits that the Hon'ble Minister has not applied his mind while deciding the review application. Learned counsel submits that the Hon'ble Minister, while deciding the review application, has not taken into consideration the inquiry conducted by Tahasildar, Patoda and the findings recorded in the report of the said inquiry against respondent No.5. Learned counsel further submits that respondent No.5 had filed writ petition No.4954 of 2013 when the then Hon'ble Minister dismissed his revision application and the said writ petition was withdrawn by him before approaching the Hon'ble Minister again by filing review application. Learned counsel submits that respondent No.5 has suppressed this fact. Learned counsel also submits that the Minister has no power to review its own order.

5. Learned counsel for the petitioner, in order to substantiate his submissions, places reliance on the decision in the case of ***Ramprasad Ramchandra Chavan vs. State of Maharashtra and others***, reported in ***2010(6) Bom.C.R. 633***.

6. Learned counsel for respondent No.5 submits that learned Deputy Commissioner (Supply) has remanded the matter by order

dated 09.04.2010 with certain observations and directions pursuant thereto. However, the District Supply Officer has passed the order dated 26.05.2010 without following the said directions and even without giving any reasons. Learned District Supply Officer has only stated in the said order that the explanation submitted by respondent No.5 is not acceptable and accordingly, cancelled the license. Learned counsel submits that, thereafter, the Deputy Commissioner (Supply) and the then Hon'ble Minister had not considered the same. Learned counsel submits that there is no question of suppression of material facts. Respondent No.5 has withdrawn the writ petition and filed review application before the Hon'ble Minister. The said writ petition was withdrawn with liberty to take appropriate steps as available in law. This Court has granted liberty to respondent No.5 and accordingly, he has filed review application before the Hon'ble Minister. Learned counsel submits that there is no substance in the writ petition and the same is liable to be dismissed.

7. I have also heard learned AGP for respondent Nos. 1 to 4.

8. It appears from the order dated 09.04.2010 that the learned Deputy Commissioner (Supply) has observed that there is no sufficient evidence in the file to substantiate the charges levelled against respondent No.5. It is also observed that the complaint filed against respondent No.5 bears signature of only 10 villagers and it is

also not clear whether the said villagers are the beneficiaries or not. Learned Deputy Commissioner (Supply) has further gone to the extent to observe that it is necessary to verify whether the said complaint is filed out of personal or political enmity. It is also observed that the District Supply Officer has simply stated in the order that the explanation given by respondent No.5 is not satisfactory, however failed to assign any reasons for that. Thus, the learned Deputy Commissioner (Supply) has come to the conclusion that the order passed by District Supply Officer is not sustainable and accordingly, remanded the matter to the District Supply Officer.

9. It further appears from the order passed by District supply Officer dated 26.05.2010 that the learned District Supply Officer, without assigning any reasons, simply stated that the explanation tendered by respondent No.5 is not acceptable and accordingly, cancelled the license. It appears from the orders passed by the authorities below that in the light of order dated 09.04.2010 passed by the Deputy Commissioner (Supply), the investigating officer has again inspected the record. The said report is in favour of respondent No.5 and no adverse remarks are made against respondent No.5 in the said report. It is also required to be considered that no criminal case is filed against respondent No.5 at any point of time, about selling of goods under license in black market. However, it also appears that during the course of re-inquiry made by the Tahasildar, Patoda,

certain statements of beneficiaries came to be recorded and the said statements are against respondent No.5. Learned Deputy Commissioner (Supply), in the order dated 23.09.2010, has observed the same and without considering the inspection report and the said re-inquiry conducted by Tahasildar, Patoda comparatively, confirmed the order passed by District Supply Officer. It is to be observed here that the then Deputy Commissioner (Supply), in the order dated 09.04.2010, had not directed any re-inquiry into the matter. However, it is not clear as to under whose directions the said re-inquiry was ordered and the reasons thereof. Thus, it is clear that the observation made in the first order passed by learned Deputy Commissioner (Supply) are not considered by the District Supply Officer, nor taken into account by the learned Deputy Commissioner (Supply) while confirming the order of District Supply Officer. The order passed by the then Hon'ble Minister dated 05.03.2013 is also on the same line. It is simply observed by the then Hon'ble Minister that the explanation tendered by respondent No.5 is not satisfactory and since there are complaints against respondent No.5, the order passed by the authorities below, about cancellation of license, calls for no interference.

10. In light of the above, I find that the Hon'ble Minister, in the impugned order dated 03.03.2015, has considered that the complaints filed against respondent No.5 are the outcome of political enmity and

out of the said beneficiaries, some beneficiaries have also filed affidavits contending therein that they have no complaints against respondent No.5. The Hon'ble Minister has considered the explanation tendered by respondent No.5 sympathetically, and with a view to grant one more opportunity to respondent No.5, imposed penalty and further directed to pay the deposit again. The Hon'ble Minister, with these directions, restored the license granted in favour of respondent No.5. The Hon'ble Minister has further directed to issue warning in writing to respondent no.5 that he should take care that in future there should not be any complaints from the beneficiaries/card holders. I find no fault in the order dated 03.03.2015 passed by the Hon'ble Minister in the review application.

11. Learned counsel for the petitioner has placed his reliance on the decision in the case of **Ramprasad** (*supra*), wherein it is accepted that Minister could review his order under Clause 24(2) of the Maharashtra Scheduled Commodities (Regulation and Distribution) Order, 1975. However, it is observed that though Minister has wide powers to review, the same cannot be used to condone an uncondonable illegality. In the case in hand, Hon'ble Minister has observed that the complaints are filed out of personal and political enmity and in order to give a fair opportunity to respondent No.5, set aside the earlier orders passed by the authorities below.

12. In view of the above discussion, I do not find any substance in the writ petition and the same is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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