

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

WRIT PETITION NO. 6074 OF 2005

- 1] Ram S/o Ambrushi Shete,
Age 43 years, Occ-Business,
R/o At & Po : Deolali, Tq. Bhoom,
Dist. Osmanabad.

... PETITIONER

VERSUS

- 1] The State of Maharashtra,
(Through its Secretary, Food
Civil Supplies and Consumer Protection
Department, Mantralaya, Mumbai – 32.)
- 2] The Honourable Minister for
Food Civil Supplies & Consumer Protection
Department, Mantralaya, Mumbai – 32.
- 3] The Collector, Osmanabad.
- 4] The Deputy Commissioner (Supply)
Aurangabad.
- 5] The District Supply Officer,
Osmanabad.
- 6] The Tahsildar,
Bhoom.
- 7] Shri Sunil Navnath Thorat,
Age 35 years, Occ- Business,
R/o At & Po : Deolali,
Tq. Bhoom, Dist. Osmanabad.

.. RESPONDENTS

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Mr. A. B. Chalak, Advocate h/f Mr. S. B. Talekar, Adv. for Petitioner.
Mr. A. G. Magre, AGP for Respondent Nos.1 to 6

Mr. S. S. Jadhavar, Advocate for Respondent No.7.

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**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA,JJ.**

DATED : 29TH MARCH,2016

ORAL JUDGMENT : (PER V.L.ACHLIYA,J.) :-

The Writ Petition challenges order dated 20th July, 2005 passed by Hon'ble Minister, Food and Civil Supplies, State of Maharashtra, in Second Revision Application No. WAM-1605/906/1261/NP.21.

In brief, the facts leading to filing of the Petition are summarised as under :

The petitioner is an Ex-serviceman. The petitioner had participated in "Operation Vijay" (Kargil). He worked in Armed Forces as Hawildar during the period between 8th April, 1981 and 30th April, 2003. The petitioner met with an accident during "Operation Vijay" (Kargil) and as such he had developed some kind of disability. The petitioner came to be retired on 30th April, 2003. The Collector office, Osmanabad published notification inviting applications for allotment of ration shops for various villages, including village Deolali on 5th January 2004. The petitioner had submitted an application for allotment of ration shop. The Collector, Osmanabad decided to grant fair price shop in favour of the petitioner, vide his order dated 1st December 2004. The respondent no.7 preferred a Revision

against the order of the Collector, Osmanabad granting fair price shop in favour of the petitioner before Deputy Commissioner (Supply). The Deputy Commissioner (Supply) dismissed the Revision and upheld the order passed by the Collector, Osmanabad holding that the allotment of fair price shop by the Collector was strictly as per the priority and there was no illegality whatsoever in the allotment of fair price shop by the Collector, Osmanabad, on 22nd March, 2005. The respondent no.7 preferred second Revision to Government. The respondent no.2 allowed the second revision holding that the respondent no.7 was more qualified and Gram Sabha had recommended his name and he was neither in service nor doing business, vide his judgment and order dated 20th July, 2005. Being aggrieved by the order dated 20th July, 2005, passed by the respondent no.2, the present petition is filed, seeking interim stay.

2] We have heard learned counsel for the petitioner, the learned AGP for the State and Mr.S.S.Jadhavar, learned counsel appearing for respondent no.7 and perused the impugned order.

3] So far as the factual matrix of the matter is concerned, there is no dispute that pursuant to Government Resolution bearing No.SAVIVYA-1001/Pra.Kra.848/Napu-28 dated 6th March, 2002, issued by Ministry of Food and Civil Supplies and Consumer Protection, State of Maharashtra has taken policy decision in respect of allotment of fair price shop and laid down criteria for the allotment of fair price shop in non tribal area. As per the said Government Resolution, first preference for allotment of such shop is given to widow or next to kin of defence personnel who died in military action, ex-military personnel, disabled person and project affected person. The priority of allotment of fair price shop to person from the category

of educated unemployed person has been kept at Sr.No.2. Thus, the allotment of fair price shop made in favour of the petitioner being an ex-military personnel, cannot be said to be illegal or contrary to policy decision of the Government. On the contrary, the allotment of shop to petitioner was made strictly in accordance with guidelines laid down by State Government. The District Collector of Osmanabad has rightly allotted the shop in favour of petitioner.

4] The order of allotment of shop was challenged in revision filed by respondent no.7 before the Deputy Commissioner (Supply). The revisional authority has maintained the order of the Collector and dismissed the revision petition holding that the Collector has acted strictly in accordance with priority laid down by State Government. There was absolutely no case for exercising revisional jurisdiction by the Hon'ble Minister for Food and Civil Supplies. In fact Hon'ble Minister should not have entertained and interfered with the order passed by respondents no.3 and 4. The reasons assigned by the Hon'ble Minister are unsustainable in law and beyond the scope of powers of revisional authority. So also the order is contrary to policy decisions of Government. The allotment was strictly made in accordance with priority fixed by the State Government. There was no scope for interference in exercise of revisional jurisdiction by Hon'ble Minister for Food and Civil Supplies to interfere with the order passed by the Collector. We are therefore, inclined to allow the petition.

5] Accordingly, we hold that the order passed by Hon'ble Minister is erroneous and against the priority prescribed in Government Resolution dated 6th March, 2002. The petition should therefore succeed. Impugned order of Hon'ble Minister dated 20th July, 2005 is set aside. Earlier order allotting the shop to the petitioner is

maintained. Petition is allowed in terms of prayer clause "A". Rule is made absolute in above terms.

(V.L.ACHLIYA,J.)

(A.V.NIRGUDE,J.)

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