

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10035 OF 2015

Bhagwat Baburao Nemane
Age 52 years, Occ. Agri and Business
R/o. Chapadgaon, Tq. Shevgaon
District Ahmednagar

...Petitioner

versus

1. The State of Maharashtra
Through the Secretary for
Food Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai
 2. The Collector, Ahmednagar
district Ahmednagar
 3. The District Supply officer
Ahmednagar, Dist. Ahmednagar
 4. The Tahsildar, Shevgaon
Tq. Shevgaon, District Ahmednagar
- ...Respondents

...
Advocate for Petitioner : Mr. Umakant U. Wagh
AGP for Respondents: Mr. P.N. Kutti
.....

CORAM : V. K. JADHAV, J.
DATED : 1st MARCH, 2016

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent, heard finally at admission stage.
2. The petitioner is holding the licence of business of semi wholesale dealer in kerosene and the licence is renewed till

31.12.2017. Even though petitioner's licence was renewed up to 31.12.2017, he was denied the quota of kerosene on the ground that he was not having "J" licence, which is required to store the kerosene as per Rules. The District Supply Officer, by impugned order dated 7.2.2011, has communicated about the same to the petitioner and asked the petitioner to make required compliance within one month from the date of said order. Thereafter, the petitioner had preferred an application on 7.3.2011 to the Collector for obtaining "J" licence, which is required for storage of kerosene. However, the said application is still pending. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner, being semi wholesale dealer in kerosene, is not supposed to store the kerosene in godown but he is required to supply the same to the retailers in the area, which the petitioner is directed by the authorities from time to time. Learned counsel submits that the petitioner was required to file no objection certificate from various authorities and lastly in the year 2013, the petitioner has received no objection certificate from concerned Superintendent of Police. Learned counsel submits that though the order is passed by the District Supply Officer in the year 2011, there is no delay as such in filing the writ petition. Learned counsel submits that as per the policy decision of the Government the semi wholesale dealer like the petitioner is not

supposed to store the kerosene but distribute the same to the retailers. Learned counsel submits that this court in writ petition No. 282 of 2013, by order dated 28.2.2013 and in writ petition No. 5760 of 2014, by order dated 28.4.2015, directed the District Supply Officer to decide the application of the petitioner afresh.

4. Learned A.G.P. for the respondents submits that there is inordinate delay in filing writ petition in this Court and the writ petition therefore, suffers from delay and laches. Learned A.G.P. further submits that there is alternate remedy available to the petitioner and revision against the order passed by the District Supply Officer is tenable before the Divisional Commissioner.

5. It appears that the impugned order is passed ignoring the policy decision taken by the State Government, which requires that the wholesalers like the petitioner should not store kerosene in their godown and should directly supply the same to the retailers. It appears that the petitioner was not knowing the same and accordingly in the year 2013 the petitioner had obtained no objection from the concerned Superintendent of Police. This Court in writ petition Nos. 282 of 2013 and 8737 of 2012 by order dated 28.02.2013 has dealt with the similar issue and held that the availability of alternate remedy is a rule of self imposed limitation,

and it does not preclude this Court from exercising its jurisdiction if the facts of the case so warrant. This court in writ petition No. 5760 of 2014 by order dated 28.04.2015 in identical case directed the District Supply Officer to decide the application of the petitioner therein afresh. In the light of above, by adopting the same course, this writ petition can be disposed by passing following order.

O R D E R

- I. Writ petition is hereby partly allowed.
- II. The order dated 7.2.2011, passed by the District Supply Officer, Ahmednagar is hereby quashed and set aside.
- III. The petitioner shall submit an application before the District Supply Officer, Ahmednagar within two weeks from today and the District Supply Officer, after hearing the petitioner, shall consider and decide the said application afresh, in the light of the submissions made therein, within three weeks thereafter.
- IV. Rule is made absolute in the above terms. Writ petition is disposed of accordingly. No costs.

(V. K. JADHAV, J.)