

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

WRIT PETITION NO. 2655 OF 2015

1. Naseem Bano Akbarkhan,
Age: 49 years, occu. Business,
R/o: Ration Shop No. 9,
Near Satara Bridge, Bhusawal,
District Jalgaon.

2. Amjad Khan Shikandarkhan,
Age: 45 yeas, Occu. Business,
R/o: Fair Price Shop No. 36,
Shanimandir Ward, Bhusawal,
District Jalgaon.

...PETITIONERS

versus

1. The State of Maharashtra
Through Secretary,
Department of Food & Civil Supplies,
Mantralaya, Mumbai – 32.

2. The Commissioner Nasik Division,
(Food & Civil Supplies Branch),
Nasik.

3. The Tahsildar Bhusawal,
District Jalgaon.

...RESPONDENTS

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Mr. R.R. Mantri, Advocate holding for
Mr. R.R. Sancheti, Advocate for petitioners
Mrs. A.V. Gondhalekar, AGP for respondents No. 1 to 3

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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 11th AUGUST, 2016.

Order :-

1. We have heard Mr. Mantri, learned counsel for petitioners and the learned Assistant Government Pleader for respondents.

2. The petitioners assail Government Resolution dated 3rd November, 2007 and communications pursuant thereto, so also seek directions against respondents to attach card holders of the suspended/ cancelled fair

price shop to the nearest fair price shop.

3. Mr. Mantri, learned counsel for petitioners had advanced submissions on earlier date and the matter was kept today only to enable the learned Assistant Government Pleader to take instructions with regard to any policy of attaching card holders of the suspended/ cancelled fair price shop to the nearest fair price shop.

4. The learned counsel for petitioners submitted that Government Resolution dated 3rd November, 2007 is illegal and beyond authority of the respondents. The petitioners are holding fair price shop licences. The policy of the Government was to permit sale of kerosene through fair price shop though no separate licence was issued for sale of kerosene. The impugned Government resolution dated 3rd November, 2007 encroaches upon the rights of the petitioners to sell the kerosene. According to learned counsel, same is violative of article 14 of the Constitution of India. The policy as promulgated under Government Resolution dated 3rd November, 2007, is arbitrary and encroaches upon fundamental rights of the petitioners. Learned counsel further submits that the impugned Government Resolution is not in consonance with Government Resolution dated 16th August, 2001. Mr. Mantri, learned counsel submits that if any new policy is to be adopted by State Government in this regard, the same has to be in consultation with Central Government and it should be in concurrence with Central Government. According to learned counsel, kerosene being essential commodity, is governed by provisions of Essential Commodities Act and the State Government does not have jurisdiction to promulgate any scheme, same would be beyond jurisdiction of the State Government.

5. Learned counsel further submits that even there is no policy to attach card holders of suspended/cancelled fair price shop to nearest fair price shop. Learned counsel submits that there is no guideline/ policy in that regard. The same is required to be streamlined.

6. Mrs. Gondhalekar, learned Assistant Government Pleader submits that granting licence of kerosene is pursuant to the Maharashtra Kerosene Dealers Licensing Order, 1966. The State Government is authorized to lay down policy in this regard. Grant of licence for sale of kerosene is in consonance with Maharashtra Kerosene Dealers Licensing Order, 1966. The State Government has absolute powers to deal with cases of allotment of licence to particular class of person. Even said policy has been upheld by this Court and subsequently by the Apex Court. Learned Assistant Government Pleader further submits that Government Resolution dated 21st April, 1992 is followed, whenever licence of one of the fair price shop is cancelled, then authority is given to the Collector to issue a fresh proclamation within eight days so as to allot temporary fair price shop for distribution of food grains to particular class of person. In case, licences are suspended, though there is no policy but the card holders of suspended/ cancelled fair price shop are attached to the nearest fair price shop unless there is complaint in respect of nearest fair price shop owner or he expresses his difficulty and inability for the same.

7. We have considered the submissions canvassed by learned counsel for respective parties. The Government Resolution dated 3rd November, 2007 was subject-matter of consideration before this court in writ petition No. 3001 of 2009. This Court has upheld the Government Resolution. The judgment of this Court was assailed before the Apex Court and the Apex

Court has upheld judgment of this court *inter-alia* said Government Resolution. It would be presumed that the Apex Court has considered all aspects of the matter.

8. Be that as it may, even challenge to the Government Resolution on the ground that the State Government does not have power and authority may not stand to any reason. Granting of kerosene dealership licence is governed by the Maharashtra Kerosene Dealers Licensing Order, 1966. The State Government has to consider grant of licence to particular person and the area. The Maharashtra Kerosene Dealers Licensing Order, 1966 is promulgated by the State Government under its powers by virtue of clauses (c) (d), (i), (ii) and (j) of the sub-section 2 of section 3 of the Essential Commodities Act, 1955 which enables the Government of Maharashtra to make order in respect of grant of permission to sell kerosene. Pursuant to the said powers, the Maharashtra Kerosene Dealers Licensing Order, 1966 is promulgated. In light of the above, it cannot be said that State Government does not have any powers to lay down policy with regard to grant of kerosene licence nor the concurrence of the Central Government is necessary. In light of the above, the challenge to the same does not survive.

9. So far as grievance of the petitioners that normally card holders of the suspended/cancelled fair price shop are not attached to the nearest fair price shop is concerned, the card holders of particular village are required to be attached to other fair price shop, if licence of fair price shop situated in their village is cancelled/suspended. If there are two or more fair price shops in the village, the card holders of the fair price shop whose licence is suspended can be attached to other fair price shop of the

same village. In case, there is only fair price shop, and if licence of said fair price shop whose license is suspended is cancelled, the respondents are required to make endeavour to attach the card holders of suspended/ cancelled fair price shop to nearest fair price shop, so that it would be convenient for those card holders to get food grains. Exception can be made when there are complaints against nearest fair price shop owner or there is any genuine difficulty expressed by nearest fair price shop owner. As far as possible endeavour has to be made to attach the card holders of suspended fair price shop to nearest fair price shop. If licence of the fair price shop is cancelled, then Government Resolution dated 21st April, 1992 lays down the policy that within eight days the Collector can issue proclamation allotting fair price shop on temporary basis so that food grains can be supplied to the card holders of fair price shop and if the same is not issued the respondents – authorities would be required to follow the same process in case of card holders of the suspended/ cancelled fair price shop, as discussed above.

10. In light of the above, writ petition stands dismissed. No costs.

Sd/-
[K. K. SONAWANE, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

MTK