

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 840 OF 2015

1. SMT. KAMINI V. NAIK, wife of
late Shri Vishwanath K. Naik,
of major age, Indian National,
Owner of Fair Price Shop No. 33,
Azorda, Borim, Ponda-Goa.

... Petitioner

V e r s u s

1. STATE OF GOA, through its
Chief Secretary, having
Office at Secretariat,
Porvorim, Bardez-Goa.
2. THE DIRECTOR OF CIVIL
SUPPLIES AND CONSUMER
AFFAIRS, Government of Goa,
having Office at Panaji-Goa.
3. THE MAMLATDAR OF PONDA
TALUKA, Government of Goa,
having Office at Supplies Wing,
Ponda-Goa.

... Respondents

Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. V. Sardessai, Additional Government Advocate for the Respondents.

Coram :- F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Reserved for Judgment on : 11th August, 2016
Judgment to be pronounced on : 25th November, 2016

JUDGMENT (Per F. M. Reis, J.)

Heard Mr. C. Padgaonkar, learned Counsel appearing for the

Petitioner and Mr. Sardessai, learned Addl. Government Advocate appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Addl. Government Advocate appearing for the Respondents waives service on behalf of the Respondents.

3. The above Petition, inter alia, seeks for a direction to the Respondent no. 2 to forthwith grant the Petitioner's application for Transfer dated 27.03.2003 for the transfer of Authorization/licence pertaining to the Fair Price Shop no. 33, Azorda, Borim, Ponda, Goa, from the name of her deceased husband to her name and restore to the Petitioner the relevant quota of all the essential commodities for disbursement/sale thereof to the Card Holders which were attached to the Fair Price Shop on 27.03.2003. The Petitioner also seeks for a direction to quash and set aside the Order passed by the Director of Civil Supplies and Consumer Affairs on 20.11.2015.

4. Briefly, it is the case of the Petitioner that her late husband Shri Vishwanath K. Naik, was authorised to run a Fair Price Shop no. 33 at Azorda, Borim, Ponda. Upon the death of said Vishwanath, an application was filed by the Petitioner for Transfer of the Authorization of the Fair Price Shop no. 33 on 27.03.2003 to the Director of Civil Supplies and Consumer Affairs in the name of the Petitioner herein. Subsequently, in the year 2012,

a FIR was lodged against Mr. Sachin Naik, son of the Petitioner and two others by the Mamlatdar for alleged illegalities of storing and transporting rice. It was further pointed out that the local police had forcefully taken the keys from the Petitioner in connection with the Fair Price Shop. A notice was issued by the Mamlatdar on 06.12.2012 calling upon the Petitioner to be present in his office. The Petitioner thereafter appeared before the Office of the third Respondent and submitted the written statements stating that the Fair Price Shop no. 33 had remained closed for months and there was no supply of various commodities from the Civil Supplies Department. It is further pointed out by the Petitioner that in the first week of January 2013, the Petitioner was served with the show cause notice issued by the second Respondent in which it was alleged that the Mamlatdar of Ponda Taluka had represented to him that Books, Sales Registers and Ration Cards which were attached by the SDPO, Ponda, stand in the name of her late husband, had been inspected and checked and had found irregularities which were mentioned at serial nos. 1 to 12 of the said show cause notice. The Petitioner thereafter submitted a detailed reply on 25.03.2013 to the show cause and, inter alia, disputed all the allegations made therein. The Petitioner further states that though no decision was taken on the Transfer of the Fair Price Shop in favour of the Petitioner or on the show cause notice, nevertheless, surprisingly in or about the last week of October, 2013, the Petitioner was served with another show cause notice dated 23.10.2013 calling upon the Petitioner to show cause as to why authorization issued to

such shop in the name of the deceased husband of Petitioner should not be cancelled. The Petitioner thereafter wrote a letter to the second Respondent bringing to the notice of the second Respondent that no specific time limit had been fixed in the show cause notice for filing a reply. Subsequently, a detailed reply was filed on 04.12.2013 to the Respondent no. 2 on the second show cause notice disputing all the allegations made therein and stating the falsity of the claims made therein. But, however, on 11.12.2013, the second Respondent proceeded to pass an Order by which the full security deposit of Rs.2,500/- made by the deceased husband of the Petitioner was forfeited to the Government and also ordered cancellation of the Authorization to run the Fair Price Shop. The application for Transfer of the Fair Price Shop in the name of the Petitioner herein on 27.03.2014 also came to be rejected. Aggrieved by the said Order dated 11.12.2013, the Petitioner preferred a Writ Petition before this Court being Writ Petition no. 260 of 2014, inter alia, on the ground that such Order was passed in breach of the principles of natural justice. This Court by Order dated 20.08.2014, quashed and set aside the Order dated 11.12.2013 and thereby directed to re-examine the application for Transfer dated 27.03.2003. It is pointed out that even after one year from the date of the Judgment of this Court, the documents have not been submitted by the Respondent no. 2 nor has he taken any action in furtherance to the said show cause notice nor has he dealt with the application for Transfer of Authorization made by the Petitioner on 27.03.2003. Being aggrieved by the said inaction on the part of the

concerned Respondents, the Petitioner filed the above Petition seeking the aforesaid reliefs.

5. During the pendency of the above Petition, an amendment was carried out to incorporate subsequent events to the effect that the second Respondent who was virtually in contempt of having failed to comply with the Oral Judgment dated 20.08.2014 for more than one year, had issued a notice dated 12.11.2015 to the Petitioner calling upon her to produce the documents, inter alia, the birth certificate and proof of Education Qualifications. The said notice also pointed out that the said Respondent desired to meet the Petitioner personally at the hearing fixed on 28.10.2015 so as to assess the fitness of the Petitioner. The Petitioner thereafter sought time to comply with the said directions. It is further pointed out that when the son of the Petitioner appeared before the Respondent no. 2, he was informed by the second Respondent that he had already passed an Order and that the Order would be communicated. The Petitioner further states that a bare perusal of the Order dated 02.11.2015 would indicate that the Respondent no. 2 has willfully and mischievously violated the Orders of this Court whilst passing such Order. It is further pointed out that though the documents were not furnished as mentioned in such Order, the Respondent no. 2 took a view that the documents were not relevant. Consequently, such Order passed during the pendency of the Petition was also sought to be quashed and set aside.

6. Shri Padgaonkar, learned Counsel appearing for the Petitioner, has pointed out that inspite of the specific directions issued by this Court, the Respondent no. 2 has refused to handover the documents and give a proper hearing to the Petitioner before passing the impugned Order. The learned Counsel further pointed out that for more than one year, neither the application for Transfer nor show cause notice was taken up for consideration and only after the filing of the above Petition, the Respondent no. 2 with undue haste proceeded to pass the impugned Order. Learned Counsel further pointed out that the impugned Order is contrary to the directions issued by this Court and, as such, deserves to be quashed and set aside.

7. On the other hand, the learned Addl. Government Advocate appearing for the Respondents, submitted that the Petitioner is not physically fit to carry out the duties of Fair Price Shop and, as such, the question of Transfer in the name of the Petitioner would not arise.

8. We have duly considered the submissions of the learned Counsel and we have also gone through the records. On perusal of the impugned Order, we find that the Respondent no. 2 has taken note of the said Oral Judgment passed by this Court. In the reply filed by the Respondents, it was clearly pointed out that the documents had not been

furnished to enable the Petitioner to file an appropriate reply due to non-availability of the books, registers, which are in custody of the Ponda Police. Subsequently, the copies of the books were called for from the sub-division Police Officer at Ponda. But, however, it was pointed out that all the books and documents were submitted to the Court along with the chargesheet. The Respondent no. 2 further pointed out that such documents were not relevant for deciding the matter. An application for Transfer was essentially rejected as it was found that the Petitioner was of old age and she was not basically qualified to continue to maintain the Fair Price Shop. This eligibility criteria was made applicable much after the application for Transfer of the Fair Price Shop was pending before the concerned authorities. The impugned Order discloses that despite of directions of this Court to furnish the documents, the Respondent no. 2 failed to comply with such directions. The inordinate delay in taking a decision despite of directions issued by this Court is not at all justified.

9. In such circumstances, we find that the Petitioner was not given an adequate opportunity to meet the allegations in the show cause notice. The directions issued by this Court while disposing Off earlier Writ Petition no. 260 of 2014 by Judgment dated 20.08.2014, have not been complied with. On this ground alone, the impugned Order stands vitiated.

10. All contentions of the parties on merits would have to be re-examined by the Respondents after giving a proper hearing to the petitioner

or her representative. It is made clear that the Petitioner shall not unduly delay the hearing of the application for Transfer and shall ensure that appropriate reply, if any, is filed within a time fixed by the Respondent no. 2.

11. In view of the above, the impugned Order dated 20.11.2015 is quashed and set aside. The Respondent no. 2 shall proceed to decide the said application for Transfer and the show cause notice afresh after hearing the Petitioner or her representative in the light of the observations made herein above.

12. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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