

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1902 OF 2014

Vikas Karyakari Seva Society, Pokharapur	..	Petitioner
VS.		
The Deputy Commissioner (Supply) Pune Division, Pune & Ors.	..	Respondents

Mr. Amit Borkar for Petitioner.
Mr. A. R. Metkari – AGP for Respondent Nos. 1 to 3.

CORAM : M. S. SONAK, J.
DATE : 22 FEBRUARY 2016

P.C :

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the orders dated 2 April 2013 and 20 August 2011, which in effect, have cancelled the fair price shop allotted to the petitioner.

3] Mr. Borkar, the learned counsel for the petitioner submits that the cancellation was on the sole basis of a report of the Tahsildar Mohol dated 22 August 2009. He submits that based on the said report, at least 5 licences of fair price shops had been cancelled. In writ petition no. 4919 of 2013 and connected matters instituted by

the allottees of such fair price shops, orders of cancellation were set aside. Mr. Borkar submits that the facts in the present case, are in no manner different. Therefore, for the reasons set out in the judgment and order dated 19 August 2013 in writ petition no. 4919 of 2013 and connected matters, the orders impugned in this petition, may also be set aside. Mr. Borkar also placed reliance upon the judgment and order dated 22 October 2013 in writ petition no. 9358 of 2013, where again, on the basis of the judgment and order dated 19 August 2013 in writ petition no. 4919 of 2013, same cancellation orders came to be set aside.

4] Mr. Metkari, the learned counsel for the respondents, after relying the affidavit in reply on behalf of the respondent nos. 1 to 3 has pointed out that FIR has already been lodged against the FIR on 1 March 2011, the investigating officer has submitted final report to the Sessions Court, wherein, the petitioner is arrayed as accused no. 12. The matter is pending and till date, the petitioner has not secured any acquittal. In these circumstances, Mr. Metkari submitted that the petitioner may not be granted any relief in this petition.

5] Having heard the learned counsel for the parties and perused the record, it does appear that in somewhat identical

circumstances, relief was granted to the petitioners in writ petition no. 4919 of 2013 and connected matters, where their licences to operate fair price shops came to be cancelled solely on the basis of report of Tahsildar, Mohol dated 22 August 2009. The entire affidavit, upon which, reliance has been placed by Mr. Metkari, there is no attempt to establish that the case of the petitioner is not similar to the case of the petitioners in writ petition no. 4919 of 2013 and connected matters. Therefore, on the basis of reasonings adopted in the judgment and order dated 19 August 2013 in writ petition no. 4919 of 2013 and connected matters, it is only appropriate that this petition is allowed. The impugned orders are set aside and Rule is made absolute to the aforesaid extent.

6] However, it needs to be clarified that nothing in this order is intended to even remotely affect the pending prosecution against the petitioner. Accordingly, it is clarified that nothing in this petition or the orders made therein shall be taken into consideration for the purposes of the criminal prosecution, which is stated to be pending. Further, in case, the petitioner is indeed convicted, the respondents shall be at liberty to take action as permissible under the law against the petitioner.

7] Subject to the observations aforesaid, Rule is made absolute in terms of prayer clause (a) of the petition. There shall be no order as to costs.

8] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka