

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3687 OF 2016**

Mr. Vinod Ramji Gala	)	
Adult Indian Inhabitant aged 56 years	)	
Residing at 72/73, 2 nd floor Shroff	)	
Building, Sane Guruji Marg, Lalbaug,	)	
Mumbai 400 012	)	
(A.R.S. No.31 E-122)	)	..Petitioner

Vs.

1 The State of Maharashtra	)	
2 The Dy. Controller of Rationing	)	
“E” region Chanchal Smruti Building	)	
1 st floor, G. D. Ambedkar Marg, Wadala	)	
Mumbai 400 031	)	
3 The Hon'ble Minister	)	
Food and Civil Supply, Maharashtra	)	
Mantralaya, Mumbai 400 032	)	..Respondents

Mr. M. V. Aiya for the Petitioner
Mrs. S. S. Bhende AGP for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 5th APRIL, 2016

ORAL JUDGMENT

1 Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 23-2-2016 passed by the Hon'ble Minister Food and Civil Supplies and

Consumer Protection, Government of Maharashtra. By the said order, the Revision Application filed by the Petitioner came to be allowed, resultantly the order dated 9-10-2013 passed by the Deputy Controller of Rationing "E" Region, Wadala, came to be set aside and the directions as contained in clause (4) of the impugned order came to be issued. The Petitioner is aggrieved by the directions issued vide clause (4) of the impugned order in the matter of directing the Deputy Controller to recover the security deposit, the amount of Rs.38160/- towards the misappropriated wheat, and Rs.25,000/- as penalty.

3 The Petitioner herein is running a rationing shop being No.31-E-122 in the name and style of M/s. Ramji Shivji & Co. situated at 909, Shop No.6 Katrak Road, Wadala (West) Mumbai 400 031. A show cause notice came to be issued to the Petitioner on the ground that there was a misappropriation of 2120 kgs of wheat which misappropriation found on a sight visit to the Petitioner's shop by the officials from the office of the Deputy Controller of Rationing. The value of the misappropriated wheat was to the extent of Rs.38160/- at Rs.18 per kg. The said show cause notice was also founded on the door visit i.e. the visit to the residences of the card holders by the officials from the office of the Deputy Controller of Rationing wherein the card holders had signed in acknowledgement of the fact that no wheat has been received by them under the ration cards held by them. The Petitioner replied to the said show cause notice and in the hearing which took place pursuant thereto the

Petitioner had requested the Respondent No.2 to provide the record of the alleged door visit as also the other details in respect of the said door visit. It seems that no such document was produced by the officials from the office of the Respondent No.2 nor furnished to the Petitioner. The Respondent No.2 by his order dated 9-10-2013 suspended the licence of the Petitioner and directed the payment of misappropriated value of the wheat i.e. Rs.38160/- as also forfeiture of Rs.5000/- which was the security deposit. The said order of the Respondent No.2 is dated 9-10-2013.

4 The Petitioner aggrieved by the said order dated 9-10-2013 filed a Revision Application before the State Government i.e. the Hon'ble Minister for Food and Supplies and Consumer Protection Government of Maharashtra. The Revisionary Authority i.e. the Hon'ble Minister as indicated above has by the impugned order dated 23-2-2016 has set aside the order dated 9-10-2013 passed by the Respondent No.2 and directed the Respondent No.2 to restore the Petitioner's fair price shop but on the condition that the security deposit, the amount for the misappropriated wheat and Rs.25,000/- as penalty is recovered from the Petitioner. However, it is required to be noted that the restoration of the Petitioner's shop is granted on the ground that the Deputy Controller did not find any irregularities in the conduct of the shop by the Petitioner. The Revisionary Authority has therefore directed that till a re-inquiry is conducted, the Petitioner should be allowed to conduct his shop. As

indicated above the Petitioner is aggrieved by clause (4) of the order of the Revisionary Authority which directions are to the Deputy Controller i.e. the Respondent No.2 to make recovery of the amounts from the Petitioner.

5 On behalf of the Petitioner a contention is sought to be raised that the order passed by the Respondent No.2 of suspending the Petitioner's licence and forfeiting the security deposit, has been passed without giving an opportunity to the Petitioner as the material on which reliance is placed i.e. the record of the door visit has not been furnished to the Petitioner. It was therefore the submission of the Learned Counsel for the Petitioner that the order passed by the Respondent No.2 has been passed in breach of the principles of natural justice.

6 The Learned AGP Mrs. Bhende seek to support the impugned order however on the aspect of the alleged adverse material not been furnished to the Petitioner, the Learned AGP was not able to justify the same with any deal of conviction. However, it was the submission of the Learned AGP that the Maharashtra Food Grain Rationing 2nd order, 1966 envisages the modality of a door visit to find out whether there is a proper distribution of the food grains under the Public Distribution System.

7 Having heard the Learned Counsel for the parties, I have

considered the rival contentions. As indicated above, the Revisionary Authority has deemed it fit to restore the shop of the Petitioner by setting aside the order dated 9-10-2013 passed by the Respondent No.2. This was on the basis that the Respondent No.2 has not found any irregularities in the conduct of the shop by the Petitioner. However, the Revisionary Authority in paragraph (6) of the impugned order has observed that there is a misappropriation of 2120 kgs of wheat whose value is to the extent of Rs.38,160/-. The Revisionary Authority has acceded to the request made by the Petitioner to be permitted to reopen the shop. However, the Revisionary Authority has observed that the same would be subject to a re-inquiry conducted. Since the re-enquiry would have serious consequences for the Petitioner. The least that is expected of the authorities is that the Petitioner is furnished with the adverse material if any which is against the Petitioner. However, a reading of the order passed by the Respondent No.2 does not indicate that any such material was furnished to the Petitioner which the Petitioner could have dealt with. The authority seems to have acted only on the basis of the statement which have been recorded during the door visits of the residences of the card holders.

8 In my view therefore, the forfeiting of security deposit as also levying penalty on the Petitioner of Rs.25,000/- is uncalled for in view of the fact that the re-inquiry has been ordered in respect of the show cause notice which has been issued to the Petitioner. In my view, therefore, the impugned

order in so far as it directs the Respondent No.2 to recover an amount of Rs.5000/- as also Rs.25,000/- as penalty would have to be quashed and set aside and is accordingly quashed and set aside. Hence the following directions:

(i) The order passed by the Revisionary Authority having regard to the directions contained in clause (4) to the extent of directing the Respondent No.2 to recover the amount of Rs.5000/- as security deposit and Rs.25,000/- as penalty is quashed and set aside. However, the Petitioner would be liable to deposit the amount of Rs.38,160/- with the Respondent No.2.

(ii) The liability of the Petitioner for the payment of Rs.38160/- as also the forfeiture of the security deposit as also the penalty would be contingent upon the result of the re-inquiry.

(iii) The Respondent No.2 to conduct re-inquiry by following the principles of natural justice by providing the Petitioner material that is against him as also hearing to the Petitioner. The re-inquiry to be completed expeditiously by the Respondent No.2.

(iv) In the event, the order is passed against the Petitioner in the re-inquiry, the same not to be given effect to for a period of two weeks of the communication of the order to the Petitioner.

(v) It is made clear that the inquiry would be restricted to the misappropriation of 2120 kgs wheat.

9 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]