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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10403 OF 2014

Mr. Trimbak Chimaji Mumbaikar

...Petitioner

v/s.

Mrs. Anjali Rajendra Patil & Ors.

...Respondents

....

Mr. Kanishk Jayant for the Petitioner.

Mrs. Aparna Vathkar - AGP for the Respondent Nos. 2 to 4.

CORAM : M.S.SONAK, J

DATE : 14th June 2016

P.C :

1] Rule.

2] By consent rule made returnable forthwith.

3] Heard Mr. Jayant for petitioner and Mrs. Vhatkar learned AGP for respondent Nos. 2, 3 and 4.

4] On 23rd December 2015, this court had issued a notice to respondents making it clear that an endeavor would be made to dispose of the matter finally at the stage of admission itself.

5] Mr. Jayant learned counsel for the petitioner states that the service is complete and necessary affidavit of service is also filed in the matter. Despite such service respondent No. 1 is neither present nor represented. As indicated this matter is being disposed of finally at the stage of admission itself, in view of the order passed on 23rd December 2015.

6] The petitioner in pursuance of the license granted in his favour, is operating a fair price shop at Village Veshvi Tq. Uran District Raigadh. the petitioner claims that he was operating the said fair price shop for the last over two decades.

7] By an order dated 2nd August 2012, the District Supply Officer, Raigadh (respondent No. 2 herein) canceled the license and forfeited the deposit of Rs. 1000/-, inter alia on the ground of certain breaches attributable to the petitioner. There is no dispute that there was sufficient compliance with the principles of natural justice before the said order was passed.

8] The petitioner appealed against the said order dated 2nd August 2012 to the Deputy Commissioner (supplies) Konkan Division i.e. respondent No. 3. By an order dated 20th September 2012 the respondent No. 3 partly allowed the appeal, set aside the cancellation of license but upheld the forfeiture of the deposit amount. The petitioner has accepted the order dated 20th September 2012 made by the respondent No. 3.

9] Respondent No. 1 in her capacity as Chairman, Kuldaivata Mahila Mandal and Savitribai Phule Bachat Gat, instituted review petition before the respondent No. 3 seeking review of the order dated 20th September 2012. However, the review petition was withdrawn by respondent No. 1 with liberty to thereafter institute a revision petition before the State Government i.e. respondent No. 4.

10] In the revision petition filed before the State Government the respondent No. 1 impleaded following parties :-

- (i) District Supply Officer
- (ii) Deputy Commissioner (Civil Supplies) Konkan Division
- (iii) Ashok Gajanan Mumbaikar and
- (iv) Trimbak Chimaji Mumbaikar

11] Shri Ashok Gajanan Mumbaikar is petitioners uncle. Respondent No.1 impleaded him as the respondent No. 3 in revision application before respondent No. 4, possibly on account of the allegation that the petitioner had unauthorizedly permitted the said Ashok Gajanan Mumbaikar to operate the fair price shop. At this stage we are really not concerned with this allegation, particularly, in the light of the order which is proposed to be made in the present petition.

12] The respondent No. 4 by order dated 30th August 2014 has allowed the Revision Application instituted by respondent No. 1 and in pursuance thereof set aside the order dated 20th September 2012 made by the respondent No.3 and restored the order dated 2nd August 2012 passed by respondent No. 2.

13] Mr. Jayant learned counsel for petitioner has submitted that neither was any show cause notice served upon the petitioner nor was

the petitioner heard before respondent No. 4, who has made the impugned order dated 30th August 2014. Mr. Jayant therefore submits that the impugned order dated 30th August 2014 is in breach of principles of natural justice and fair play. Since the order dated 20th September 2012 which was in favour of the petitioner has been set aside by the respondent No. 4, it was necessary that the petitioner was served with appropriate notice and heard before such an order could be made.

14] There is no record with regard to appropriate service upon the petitioner. The impugned order dated 30th August 2014 merely records that the respondent Nos. 1, 2 and 3 to the revision petition were duly heard. These respondent as noted above, include petitioner's uncle, Ashok Gajanan Mumbaikar - respondent No. 3. However, there is no record that petitioner was actually heard before the impugned order dated 30th August 2014 came to be made.

15] In the aforesaid circumstances, it will be appropriate if the impugned order dated 30th August 2014 is set aside only on the ground of failure to comply with principles of natural justice. At this stage there is no necessity to go into the other contentions on behalf of either the petitioner or the respondent No. 1. Such contentions are, therefore, kept open to be decided by respondent No. 4 in pursuance of the remand which is now directed.

16] Accordingly, the impugned order dated 30th August 2014 is hereby set aside. The revision petition instituted by respondent No. 1 is

restored to the file of respondent No. 4. The respondent No. 4 is directed to hear the revision petition on its own merits and in accordance of law and dispose of the same as expeditiously as possible and in any case within the period of four months from the date of production of the authenticated copy of this order.

17] The parties i.e. the petitioner and respondent No. 1 are directed to appear before respondent No. 4 on 28th June 2016 at 3.00 p.m. and file the authenticated copy of this order. The petitioner to give notice of the present order and direction therein to respondent No. 1 afresh and file necessary affidavit before respondent No. 4 with regard to furnishing of such information. In case respondent No. 1 does not appear before respondent No. 4 on 28th June 2016, the office of respondent No. 4 may issue notice to the respondent No. 1 informing her about the date scheduled in the matter.

18] It is made clear that all contentions of all parties are left open for decision by respondent no. 4.

19] Rule is made absolute to the aforesaid extent. There shall be no order as to costs. All concerned to act on an authenticated copy of this order.

(M.S.SONAK, J.)