

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2626 OF 2015

Shaikh Rafiq Sk. Farooq ... **Petitioner**
Age 49 years, Occu: Kerosene
Hawker, R/o Yawal, Tq. Yawal
District Jalgaon

VERSUS

1. The State of Maharashtra
Through its Secretary,
Food and Civil Supplies
Department, Mantralaya, Mumbai.
 2. The Deputy Commissioner (Supply)
Nasik C/o Commissionerate, Nasik.
 3. The District Supply Officer,
Jalgaon
 4. The Tahsildar, Yawal
District Jalgaon
- ... Respondents**

Advocate for Petitioner : Mr. Agrawal Bhoomit A.
AGP for Respondents 1 to 4: Mrs. Vaishali H. Patil

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 5th January, 2017

JUDGMENT (Per S. V. Gangapurwala, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.
3. The petitioner initially assailed the communication

issued by the Tahsildar, dated 19.01.2015 seeking initiation of enquiry against the petitioner and directing stoppage of supply of kerosene. After the affidavit in reply is filed by the State, the petitioner, by way of amendment, has assailed the order of the Hon'ble Minister to the extent of part of the operative order which states that enquiry be made in respect of the licence issued to the petitioner and if it is found that the same is not properly issued, to cancel the said licence and to issue fresh proclamation.

4. Mr. Agrawal the learned counsel for the petitioner submits that the petitioner was issued Hawkers Kerosene Licence in the year 1989 and since then, is doing his business and same is the only source of his livelihood. There was no complaint from any of the Card Holders or any other persons. Wife of the deceased brother of the petitioner had approached the Minister, stating that licence initially stood in the name of her deceased husband and the same is to be renewed in her name. The said request was rejected by the Hon'ble Minister, however, passed further order directing inquiry to be made in respect of the licence of the petitioner. The said order is passed without

hearing the petitioner and without notice to the petitioner. The same is illegal.

5. Learned AGP submits that pursuant to the complaint filed by the wife of deceased brother of the petitioner, the Hon'ble Minister has passed the said order after getting report from the Office of the District Supply Officer and hearing the complainant. No illegality has been committed by the Hon'ble Minister while passing the said order. Part of the order now cannot be complied as the officers against whom the enquiries are directed are no longer in service, however, enquiry in respect of the licence of the petitioner is being completed and could not be proceeded further because of the stay granted by this Court.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. The Hon'ble Minister, it appears, has relied upon the report of the District Supply Officer stating that new licence was granted in favour of the petitioner and license standing in the name of the deceased brother of the petitioner was not given to the petitioner. For a long slumber of 26 years, no complaint appears to have been received by the

respondents. It is also not a case of the respondents that licence which was held by the deceased brother of the petitioner has been given to the petitioner by way of inheritance. However, it appears to be the case of the respondents that the said licence is fresh licence granted to the petitioner. The Ho'ble Minister, while passing the order impugned, has not followed the principles of natural justice. Even notice was not issued to the petitioner at any point of time while passing the order adverse to the interest of the petitioner. Such an order cannot be sustained.

8. In the light of above, Rule is made absolute in terms of prayer Clauses (B) and (B-1). No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC