

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2701 OF 2015

Rajendra Devidas Kate,
Age-43 years, Occu-Agriculturist,
R/o Sant Namdeo Nagar, Beed,
Tq. and Dist. Beed

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Food, Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai

2. The Hon'ble Minister,
Food, Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai

3. The Deputy Commissioner (Supply),
Aurangabad,

4. The District Supply Officer,
Beed, Dist. Beed

5. Savitrabai Phule Mahila Bachat Gat
Narsoba Nagar, Beed
Tq. and Dist. Beed,
Through its Chairman
Chandrakala Babasaheb Lavhale

-- RESPONDENTS

Mr.P.S.Dighe, Advocate for the petitioner.
Mr.D.G.Kamble, Advocate for the respondent No.5.
Mr.S.K.Tambe, AGP for the respondent/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/08/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has challenged the order dated 04/03/2015 passed by the Hon'ble Minister, Food, Civil Supplies and Consumer Protection, State of Maharashtra allowing Case No.1115/Pra.Kra-8/NA.PU. 21 filed by respondent No.5 herein. The petitioner is the original complainant against respondent No.5 as regards the irregularities committed by it in operating the fair price shop. He has been respondent No.3 in the proceedings before the Hon'ble Minister.

3. I have considered the submissions of the learned Advocates for the respective sides and with their assistance, I have gone through the petition paper book and the record available with their assistance. The learned AGP has strenuously defended the impugned order and prayed for the dismissal of this writ petition.

4. It appears from the record that respondent No.5 is a Bachat Gat which was established comprising of 10 women. The record does not reveal that the said Bachat Gat was operating any fair price shop

in between 1998 to 2010. On 04/10/2010, respondent No.5 was allotted a license to operate a fair price shop.

5. The record reveals that the license of respondent No.5 was suspended from 03/01/2012 till Sept. 2013 due to several irregularities. During this period, the appropriate authorities had made an alternate arrangement in order to ensure that the supply of food grains is not interrupted and the card holders do not suffer on account of any interruption.

6. In March 2013, respondent No.5 is said to have lifted a quota of the food grains though the license was suspended. The concerned Tahsildar registered an offence on 08/08/2013 under Section 3 and 7 of the Essential Commodities Act and the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975. A show cause notice was issued to respondent No.5 on 16/11/2013 by the District Supply Officer. Respondent No.5 tendered her reply to the D.S.O. Dated 18/11/2013 under her signature and admitted that she has lifted the quota of food grains. Considering the same, the D.S.O. passed an order on 19/11/2013 cancelling the license of respondent No.5.

7. It cannot be ignored that the Tahsildar had submitted a detailed report on 30/10/2013 to the District Supply Officer vide which the above aspects were brought to the notice of the D.S.O.

8. Respondent No.5 preferred an Appeal No.236/2013 before the Deputy Commissioner (supply), Aurangabad, respondent No.3 herein. After causing a hearing in the matter, respondent No.3 dismissed the appeal by order dated 04/09/2014 after recording that the order of the D.S.O. is justified and the cancellation of the license is sustainable. The petitioner preferred a revision before the Hon'ble Minister and which has been allowed by the impugned order dated 04/03/2015.

9. The petitioner has put forth prayer clause B and BB which read as under :-

“B. Issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus directing the Respondent Nos. 1 and 2 to give date of hearing in the revision filed by the respondent No.5 and decide the same after giving opportunity of hearing to the petitioner and for that purpose issue necessary orders.

BB. Hold and declare that, the impugned order dated 04.03.2015 passed by the Respondent No.2 – Hon'ble Minister in the Revision filed by the Respondent No.5 is illegal, arbitrary

and violative of Article 14 of the Constitution of India and without following the principles of natural justice and therefore, the same is liable to be quashed and set aside and for that purpose issue necessary orders.”

10. The learned AGP has strenuously defended the order of the Hon'ble Minister. Despite his strenuous contentions, he was unable to point out a single justifiable reason from the impugned order by which it would appear that the Hon'ble Minister has applied his mind to the case. The learned AGP points out that since respondent No.5 is a Bachat Gat comprising of women, the Hon'ble Minister felt that they should be given an opportunity of conducting business.

11. Learned Advocate for respondent No.5 has made an attempt to indicate that the reply dated 18/11/2013 said to have been filed by respondent No.5 does not bear the actual signature of the chair person namely Chandrakala Babasaheb Lavhale. He further submits that she had not lifted any quota of food grains in March 2013.

12. I have perused the signature of respondent No.5 on her reply dated 18/11/2013. I have also perused her signature on the register of Permits in MFA Form H, which is maintained by the Godown from where the quota of food grains is lifted. The date is 18/03/2013 and

the stock No. and 28.84 and 32.96 quintals of food grains taken by respondent No.5, is evident. Her signature on her affidavit in reply dated 31/03/2015 on all the 5 pages also tallies with the signature on her reply dated 18/03/2013.

13. Even if it is assumed that she has not put her signature on her reply, it cannot be ignored that respondent No.5 has proceeded on the footing of her reply dated 18/11/2013 before the Deputy Commissioner, Civil Supplies and the Hon'ble Minister. There is no contention that she had never tendered any reply or that the reply dated 18/11/2013 has not been authored by her. It appears that respondent No.5 is resorting to falsehood for self serving purposes squarely bringing her case within the ambit of the ratio laid down by the Hon'ble Apex Court in the matter of Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398 and in the matter of Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others [AIR 2013 SC 523] wherein the Hon'ble Apex Court has held that the litigant resorting to falsehood, should not be granted any relief.

14. In the Kishore Samrite judgment (supra), the Hon'ble Supreme Court, while considering cases of abuse of process of law and allied

matters has observed in paragraph No.32 as under :-

“32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(32.1) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(32.2) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(32.3) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(32.4) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of

falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(32.5) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(32.6) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(32.7) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(32.8) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it. [Refer : [Dalip Singh v. State of U.P. & Ors.](#) (2010) 2 SCC 114; [Amar Singh v. Union of India & Ors.](#) (2011) 7 SCC 69 and [State of Uttaranchal v Balwant Singh Chaufal & Ors.](#) (2010) 3 SCC 402].”

15. I have considered the impugned order passed by the Hon'ble Minister. The first 6 paragraphs contain the facts of the case and the contentions of the parties. The enquiry conducted by the Tahsildar, the record relied upon by the D.S.O., the order passed by the D.S.O. dated 19/11/2013 and the order passed by the Deputy Commissioner, Civil Supply dated 04/09/2014 are all referred to in the said paragraphs.

16. The Hon'ble Minister has specifically noted in the 4th sub paragraph below paragraph No.6 that respondent No.5 chair person had submitted her reply on 18/11/2013. While adverting to the said contention of the petitioner, there is no counter argument or affidavit filed by respondent No.5 to state that she had either never filed the reply or she had never signed on the reply. This makes it even further apparent that the contention before this Court that she had not signed the reply, is apparently a dishonest contention.

17. In the conclusions of the Hon'ble Minister, it has been noted that the license of respondent No.5 was suspended from 03/01/2012 till 19/11/2013 when it was cancelled. The said fair price shop was attached to an alternate fair price shop allotted to one Smt.Jogdand. The Hon'ble Minister has further noted from the records that the

chair person Smt.Lavhale had prepared a bogus identity card projecting herself to be Smt.Jogdand and had lifted the stock of 28.84 and 32.96 quintals of different food grains. A feeble attempt was made by respondent No.5 before the Hon'ble Minister that she had not used the identity card of Mrs.Jogdand and had not lifted the food grains. Nevertheless, it is undisputed that the criminal case pertaining to the same is subjudiced before the competent court.

18. The Hon'ble Minister has noted the submissions of the representative of the D.S.O. And the Deputy Commissioner (Supplies) in the impugned order. It is recorded that the Sr.Clerk (Awwal Karkoon) has noticed that respondent No.5 Smt.Lavhale has prepared a bogus identity card of Smt.Jogdand and lifted the stock of grains. The permit of Smt.Jogdand issued by the Tahsil Office was used by respondent No.5 and hybrid jawar was lifted from the godown and this aspect is apparent from the record of the godown.

19. The Deputy Commissioner (Supplies), Aurangabad has also observed that the record maintained by the statutory authorities and the report of the Tahsildar indicates that respondent No.5 has used a bogus identity card of Smt.Jogdand and has lifted the stock of hybrid jawar by using her permit. These documents were shown to

Mr.Jadhavar who is an employee of the Agricultural Produce Market Committee, who was empowered to distribute hybrid jawar. 10 bags, each weighing 50 kg of grains were lifted. Since the Government was defrauded by respondent No.5, a criminal offence was registered against her u/s 3 and 7 of the Essential Commodities Act and u/s 420, 409 r/w 34(a) of the IPC. These aspects therefore led to the dismissal of the appeal filed by respondent No.5.

20. This Court, in the matter of Shashikant Chandrabhan Ghadge Vs. State of Maharashtra and others [2013(4) Mh.L.J. 460] had considered a similar case and had set aside the order of the Hon'ble Minister restoring the license of the fair price shop. The relevant observations of this Court in Shashikant case (supra) in paragraph Nos. 9, 10 and 11 read as under :-

“9. Upon careful perusal of the impugned judgment and order of the Minister from paras 1 to 5, the Minister has only narrated the facts and contentions raised by the parties. In para 6, it is stated that when the Naib Tahsildar visited the shop of respondent No.5, at that time shop of respondent No.5 was in damaged condition. Respondent No.2 has adverted to the arguments of advocate appearing for respondent No.5 that complainant i.e. petitioner herein is giving unnecessary trouble to respondent No.5, and the respondent No.5 has not indulged in any unequal distribution of essential commodities or

misappropriation etc. as stated by the complainant. It further appears that the Minister has observed that respondent No.5 has already given representation to the District Supply Officer. The complaint is registered against respondent No.5 with the police station. Therefore, it is not clear that whether there is any misappropriation or not. Since the offence is registered under the provisions of Essential Commodities Act and the said matter is pending before the competent Court, therefore, the said Court will scrutinize the material and will render appropriate decision. However, from the material placed on record, the Minister thought it fit to restore the licence to run fair price shop of respondent No.5. Therefore, the Minister set aside the order dated 12-8-2010 of the District Supply Officer and the order of the Additional Commissioner (Supply), Aurangabad Region, Aurangabad dated 5-4-2011.

10. Upon careful perusal of the reasons recorded by the Minister, in my opinion, the Minister has not properly considered the complaints of the villagers, outcome of the Gram Sabha, enquiry report of the Tahsildar, decision of the District Supply Officer to cancel the licence and judgment and order of the Additional Commissioner (Supply), Aurangabad Region, Aurangabad which was after assigning proper reasons and considering entire material placed on record. However, the Minister has merely mentioned that, the offence is registered against respondent No.5 and the same is subjudiced before the Court and therefore, only on scrutiny of material by the Court, truth will come out, has allowed the revision filed by respondent No.5. The observations of respondent No.2 that, the complaint filed by respondent No.5

against the complainant is pending with the police station are contrary to the record. In fact, the decision of the Minister is dated 23-2-2011, and as contended by the counsel for the petitioner, the complaint filed by respondent No.5 against the petitioner is disposed of on 31-1-2011. The report of the investigation officer as contended by the counsel for the petitioner shows that, there was no damage to the shop or record of fair price shop of respondent No.5. The investigating officer has submitted "B" summary report.

11. Therefore, in my opinion, the order passed by the Minister suffers from non-application of mind and ignorance the interest of the card holders and also the beneficiaries of various schemes introduced by the Central as well as State Government and the fact that respondent No.5 has repeatedly indulged himself in unequal distribution of essential commodities, not maintaining record of the fair price shop, selling the goods at higher price, not obeying the directions of Supreme Court in displaying certain informations and all other irregularities and deficiencies mentioned in the order of District Supply Officer cancelling the licence of respondent No.5. The Minister should have paid attention to the reasons and object of Essential Commodities Act and should have addressed himself in the light of said reasons and objects while deciding the revision. However, unfortunately, the Minister has shown unnecessary indulgence and favouritism and allowed the revision of respondent No.5, in spite of overwhelming material available on record against respondent No.5. It is a matter of regret that, the Minister of Food, Civil Supply, Consumer Protection, Maharashtra State, Mumbai,

contrary to the reasons and objects of the Essential Commodities Act, ignoring the interest of the card holders and beneficiaries, favours the 'licence holders' i.e. various shop keepers, in spite of irregularities, illegalities, misappropriation, unequal distribution of essential commodities and sale of food grains by them in black market." (Emphasis supplied)

21. I find from the impugned order that the Hon'ble Minister has assigned only one reason for restoring the license of respondent No.5 and that is, till the offence is proved against respondent No.5, it deserves an opportunity to conduct business and hence the license needs to be restored. This conclusion is squarely in opposition to the observations of this Court in paragraph No.11 of the judgment in the Shashikant case (supra). Today, in yet another case in the matter of Digambar Karbhari Huse Vs. The State and others, WP No.10343/2017, I have observed that the same Hon'ble Minister has passed a shocking order on 10/08/2017 which is against the law laid down by this Court in Savitri Chandrakesh Pal Vs. State of Maharashtra and others [(2009) 4 Mh.L.J.406].

22. It cannot be debated that unless an offence is proved, a person cannot be held guilty. However, the Hon'ble Minister could not have lost sight of the intent and object of the introduction of the Essential

Commodities Act which is to provide for, in the interest of the general public, control of production, supply and distribution of trade and commerce in commodities which are specified in the Essential Commodities Act. The specific object of the E.C.Act is to ensure that the poor and the needy are supplied with food grains to feed them and their families and to check the continuous inflationary trends in the prices of food grains. The object of the State is to ensure that the food grains are supplied at lower rates to those who do not have the financial strength to purchase such food grains from the market. If the State desires to achieve this object in its real sense, it would be the primary duty of the State to ensure that neither the Act is misused nor unscrupulous elements are permitted to profit from unethical acts.

23. In the above backdrop and keeping in view the concurrent findings of the D.S.O. and the Deputy Commissioner, Civil Supplies, which are based on the record that is maintained by the State, I am of the view that the Hon'ble Minister has failed in discharging his duties as the Revisional Authority of the State. Without assigning any justifiable reason, the Hon'ble Minister has restored the license of the fair price shop allotted to respondent No.5. To say the least, the Hon'ble Minister has done disservice to the State as a laudable cause

stands defeated by such orders. .

24. For the above reasons, the impugned order dated 04/03/2015 is quashed and set aside and the order of the D.S.O. dated 19/11/2013 and the order of the Deputy Commissioner, (Supply) dated 04/09/2014 are restored.

25. This petition is, accordingly, allowed and rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)