

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

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WRIT PETITION NO. 4771 OF 2012

- 1) Saipuja (Purush) Bachatgat
At Wari, Tq. Kopargaon,
District Ahmednagar
Through its President
Fakira Dnyaneshwar Teke,
Age 30 yrs, Occu. Agriculture,
R/o Wari, Tq. Kopargaon,
District Ahmednagar
- 2) Murar s/o Rajendra Dinkar,
Age : 32 years, Occ. Agriculture
- 3) Rajednra s/o Vishwanath Shinde,
Age : 40 years, Occ. Labour,
- 4) Santosh Changdeo Walzade,
Age : 33 years, Occ. Agriculture,
- 5) Pandit s/o Vitthal Veer,
Age : 42 years, Occ. Service,
- 6) Bapu s/o Shukleshwar Pawar,
Age : 58 years, Occ. Labour
- 7) Dhondiram s/o Kashinath Hiwre,
Age : 52 years, Occ. Agriculture,

All R/o Wari, Tq. Kopargaon,
District : Ahmednagar.

...PETITIONERS

versus

- 1) The State of Maharashtra
through the Secretary for Food,
Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai.
- 2) The Deputy Commissioner (Supply)

Nashik Division, Nashik

- 3) The District Supply Officer,
Ahmednagar, Dist. Ahmednagar
- 4) The Tahsildar, Kopargaon,
Tq. Kopargaon, District. Ahmednagar
- 5) Suresh Zumbarlal Parekh,
Age : 54 years, Occ. Business,
R/o Wari, Tq. Kopargaon,
District Ahmednagar.

...RESPONDENTS

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Mr. V. D. Hon, Senior Advocate instructed by
Mr. U. U. Wagh, Advocate for petitioners
Mr. P. G. Borade, AGP for Respondent No. 1 to 4
Mr. N. S. Godsay, Advocate holding for
Mr. S. M. Godsay, Advocate for Respondent No. 5

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CORAM : K.K. SONAWANE, J.

DATE : 17TH JANUARY, 2017.

PER COURT:

- 1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.
- 2] The petitioners, by resorting to remedy under Article 226 of the Constitution of India, preferred present petition to get the impugned order of Minister of State for Food, civil Supplies and Consumer Protection, Mantralaya, Mumbai dated 9.4.2012 quashed and set aside to facilitate the respondent No.3 District Supply Officer to continue with the process of proclamation dated 7.10.2011 for allotment of Kerosene Licence at village Wari, Talulka Kopargaon, Dist. Ahmednagar.
- 3] The genesis of the petition culled out in brief is as under :-

That, on 7.1.2011, in the noon hours, the Deputy Commissioner (Supply) Nasik Division, paid surprise visit to the Retail Kerosene Shop of respondent No.5 Suresh Parekh for inspection. But, the kerosene shop of respondent No.5 Shri Parekh found closed. He was contacted on his cell phone. But, the revenue personnel did not received any response. Taking umbrage of the reluctant conduct and demeanour on the part of the retail kerosene licence holder Shri Parekh, Sub-Inspector of Kopargaon carried further inspection and pointed out the infirmities in the affairs of the retail kerosene business. The concerned Tahsildar forwarded his Inspection Report to the District Supply Officer, Ahmednagar, with recommendation to cancel the kerosene retail licence issued in favour of respondent No.5 Shri Parekh. Accordingly, respondent No.3 District supply Officer, pursuant to the report of the Tahsildar Kopargaon, proceeded to cancel the retail kerosene licence of the respondent No.5 Shri Parekh and passed an order to that effect on 29.3.2011.

Being dissatisfied with the order, the respondent No.5 Shri Parekh approached to the Deputy Commissioner (supply) Nasik Division, Nasik and prayed to revoke the order of cancellation of retail kerosene licence issued in his favour. But, respondent No.5, Shri Parekh did not receive any response from the Deputy Commissioner (supply) Nasik Division Nasik and his kerosene appeal NO. 55 of 2011 came to be dismissed. Eventually, respondent No.5 Shri Parekh rushed to the authority of the State and initiated the proceeding under Clause 24 of the Maharashtra Scheduled Committees (Regulation of Distribution) Order, 1975, (hereinafter referred

to as, “the order of 1975” for the sake of brevity).

4] The concerned Minister for Food, civil Supplies and Consumer Protection, M.S. Mumbai, appreciated the grievances ventilated on behalf of respondent No.5 and concluded that a reasonable opportunity was not given to the respondent No.5. The Retail Kerosene Licence was issued in favour of Shri Parekh since long and he denied the allegations as well as no opportunity was given to him, prior to cancellation of kerosene licence by revenue authority. It has also been observed that there was no complaint against the license holder Shri Parekh. There was no any reference in the documents of enquiry by revenue personnel about the panchanama conducted at the kerosene shop of the license holder. Therefore, the authority of the State Government passed the impugned order and revoked the orders of cancellation of retail kerosene license of respondent No.5 Shri Parekh passed by the revenue authorities and remanded back the matter for enquiry afresh in regard to the irregularities and mischief, if any, committed in the affairs of the retail kerosene business.

5] Meanwhile, pending the proceeding of respondent NO.5 Shri Parekh, under clause 24 of the order of 1975 before the authority of the State Government, respondent No.3 issued the proclamation and invited applications for allotment of fair price shop/retail kerosene licence, to the various villages including village Wari. Pursuant to the proclamation of the District Supply Officer, dated 7.10.2011, the petitioners Bachat Gat deposited requisite fees and submitted application for allotment of fair price

shop/kerosene license. Prior to final decision of the allocation of fair price shop/kerosene license, as per the proclamation dated 7.10.2011, the impugned order came to be passed by the authority of the State Government, and it has stalled the entire process of proclamation issued by the District Supply officer, Ahmednagar, dated 7.10.2011. According to the petitioners, impugned order of the State Government, allowing the respondent No.5 for renewal of retail kerosene licence is unjust, improper and against the principles of natural justice. The impugned order caused prejudice to the petitioners as they could not get the retail kerosene licence for village Wari. Therefore, petitioners rushed to this Court and preferred the present petition to set aside and quash the impugned order of State Government, to facilitate the revenue personnel to proceed further for compliance of the procedural formalities for allotment of fair price shop of kerosene licence as per the proclamation dated 7.10.2011.

6] Learned counsel for the petitioners vehemently submitted that the impugned order passed by the State Authority is contrary to the provisions of law, equity and good conscience. The authority of State Government committed error by passing the impugned order and allowing the respondent No.5 to get the renewal of his kerosene licence on certain terms and conditions. The findings recorded by the concerned Minister are without any basis and not appreciable one. The action initiated by the revenue authorities against the respondent No.5 for committing mischief and illegality in the affairs of kerosene business ought to have been upheld by

the authority of the State Government. There was no scope for the concerned State Authority to cause any interference in the order of cancellation of kerosene licence issued by the revenue authorities of Nasik Division. The petitioners had taken participation in the process of allotment of kerosene licence as per the proclamation issued by the revenue authorities. The impugned order of the State government is against the principles of natural justice and it would cause prejudice to the petitioners. Therefore, petitioners requested to quash and set aside the impugned order of the authority of State Government dated 9.4.2012, to facilitate the revenue personnel of Nasik Division to proceed further for allocation of fair price shop/kerosene license for village Wari. Learned counsel for the petitioners prayed to allow the petition.

7] Learned AGP appearing for respondent Nos. 1 to 4, submitted that in view of the impugned order of authority of State Government dated 9.4.2012, the respondent No.3 district Supply Officer, issued an order dated 5.7,.2012 and restored the retail kerosene license No. 25 of 1990 of the respondent No.5 Shri Parekh. Moreover, in view of the interim order passed by this Court, no allotment of fair price shop in question were made to the applicants. Learned AGP submitted that there is no substance in the writ petition and the same be dismissed.

8] Learned counsel for the respondent no.5, vociferously opposed the contentions put forth on behalf of petitioners and submitted that the petitioners have no concern at all with the proceeding initiated against

respondent No.5 for cancellation of retail kerosene license by the revenue authorities. petitioners has no locus standi to seek relief as prayed in the petition. They are not aggrieved person as contemplated under the Order of 1975. Therefore, the petition deserves to be dismissed for want of maintainability and locus, to seek relief from this court. Hence, he prayed to reject the petition.

9] I have given anxious consideration to the arguments advanced on behalf of respective learned counsel for the petitioners and respondents. I have also delved into the documents produced on record. Admittedly, the revenue authority, Nasik Division, has issued a retail kerosene licence since long in favour of respondent No.5 Shri Parekh for kerosene business at village Wari. The intense scrutiny of the documents reflects that the revenue officer conducted the inspection of kerosene shop of respondent No.5 and found irregularities and illegalities in the affairs of the kerosene business. It has been alleged that the licence holder Shri Parekh committed mischief while dealing with the supply of kerosene oil, for its distribution amongst the ration card holders. Therefore, the revenue authority took the decision to cancel the retail kerosene licence issued in favour of respondent No.5. The decision of the District Supply Officer, Nasik was upheld by the Deputy Commissioner (Supply) Nasik Division, but the concerned Minister of food, civil supply and consumer protection turned down the decision and observed that reasonable opportunity was not given to the licence holder to prove his innocence. Therefore, the matter was remanded back with the direction to

get the kerosene license of respondent No.5 renewed on certain terms and conditions.

10] At this juncture, it is to be noted that the petitioners have no concern at all with the alleged proceedings of cancellation of kerosene license of respondent No.5, on the allegation of mischief and illegality committed by him in the affairs of business. petitioners rushed to this court to set aside the impugned order only to facilitate the revenue authorities to proceed further for allocation of fair price shop/retail kerosene license, as per the proclamation issued earlier on 7.10.2011. It has been contended that the petitioners deposited the requisite fees and submitted application for allotment of fair price shop/kerosene license in its favour. They have also complied with the documentary formalities and, therefore, they may be allowed to proceed further in respect of allocation of Kerosene License at village Wari, by setting aside the impugned order of renewal of kerosene licence of respondent No.5. The arguments propounded on behalf of petitioners appears preposterous and incomprehensible one.

11] It would be reiterated that since cancellation of retail kerosene license by the revenue authority, in March, 2011, the respondent No.5 Shri Suresh Parekh, was persuading for justice by filing the proceeding of Kerosene Appeal No. 55 of 2011, before the Deputy Commissioner (Supply), Nasik Division, Nasik etc. But, he did not succeed in his attempt. However, he received the response from the authority of the State Government. It has been observed that the injustice has been caused to

respondent No.5 as he did not receive any opportunity to put forth his contention against the allegations nurtured on behalf of revenue authorities. Therefore, the decision of the revenue authority for cancellation of Kerosene License was upset for the reason that it was against the principles of natural justice. Obviously, the issue of cancellation of kerosene license of respondent No.5 Shri Parekh was subjudice since year 2011 before the concerned authority under the provisions of Order of 1975. In such circumstances, it would not proper and justifiable on the part of respondent No.3 District Supply Officer, to issue notification for allotment of fair price shop/ kerosene license at vilage Wari. The action on the part of the revenue officers appears deprecating and not comprehensible one. The proclamation for inviting applications for kerosene license at village Wari pending the issue subjudice before the concern authority was improper, invalid and not as per the procedure prescribed under the law. The revenue authority should have taken care prior to issuance of proclamation about the proceedings pending under Section 24 of the order of 1975. But, the concerned revenue authority by ignoring the circumstance ventured to proceed further and issued the proclamation dated 7.10.2011. In such circumstances, the kerosene license of respondent No.5 Shri Parekh would not be put at stake due to erroneous act committed by the revenue authority by issuing proclamation dated 7.10.2011. In case the petitioners have any grievance against the revenue officers, they may ventilate grievances before the appropriate forum by availing remedy under the law. But the petitioners have no locus to get the impugned order of the Authorities of State Government to set aside &

quashed, to facilitate the revenue authority to continue their illegal and erroneous act of allocation of fair price shop/retail kerosene license at village Wari. Reference has been made in regard to legal guidelines delineated by the learned Single Judge of this Court in the case of ***Shivaji Tulshiram Thakare Vs. State of Maharashtra***, in which the learned Single Judge elaborately discussed the term “aggrieved person” in the appeal under clause 24(1) of the order of 1975. But the facts of the aforesaid case of Shivaji Thakare are totally distinguishable. In the said case, petitioner was himself the complainant and he was aggrieved by order of imposing the simple punishment of forfeiture of security deposit. Hence, he preferred an appeal under Section 24 for enhancement of order. In the matter in hand, petitioners are totally alien to the litigation going on before the revenue authority and the State Government, in regard to revocation of kerosene license of respondent No.5. There was no participation or involvement of the petitioners at any point of time in the proceeding, i.e. order of the State Government allowing the respondent No.5 to get renewed kerosene license on certain terms and conditions. There was also no complaint for any sort of allegation against the respondent No. 5. The petitioners claimed the relief on the basis of proclamation issued by District Supply Officer Dtd. 07/10/2011.

12] Moreover, petitioners did not assail the impugned order on merit. They are seeking the relief against the impugned order only to facilitate the revenue authority to proceed further for allotment of kerosene

license at village Wari. Considering the nature of the relief claimed on behalf of petitioners, and their locus to get the impugned order of the State Government set aside, precluding the respondent No.5 from renewal of kerosene license, I am of the opinion that the petitioners are not entitled for any sort of relief from this Court as prayed.

13] In the above premise the circumstances do not permit to accept the contentions put forth on behalf of the petitioners for favourable order. I am not prepared to exercise inherent powers as contemplated under Articles 226 and 227 of the constitution of India in favour of the petitioners. The petition being devoid of merit deserves to be dismissed. In sequel, petition stands dismissed. Rule is discharged. No orders as to costs.

[K.K.SONAWANE]
JUDGE

grt/-