

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11992 of 2016

1. Narayan S/o Pandurang Kale,
Age-62 years, Occu-Agriculturist,
2. Sudhakar S/o Avadhutrao Shendage,
Age-36 years, Occu-Agriculturist,

Both R/o Pangari (Kh),

Taluka : Mantha, Dist : Jalna

– PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Food, Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai,
2. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad,
Taluka and District : Aurangabad,
3. The District Supply Officer, Jalna,
District Collector Officer (Supply),
Jalna, Taluka and Dist. Jalna,
4. The Tahsildar (Supply), Mantha,
Taluka : Mantha, District : Jalna,
5. Tanaji Ramrao Shendge,
Age-35 years, Occu-Agriculturist,
6. Sopan Bajirang Shendge,
Age-30 years, Occu-Agriculturist,

Respondent Nos. 5 and 6 both R/o (kh),
Taluka : Mantha, Dist : Jalna

– RESPONDENTS

Mr.V.D.Salunke h/f Mr.D.P,Munde, Advocate for the petitioners.
Mr.S.P.Deshmukh, AGP for respondent Nos. 1 to 4.
Mr.D.P.Palodkar, Advocate for respondent No.5.
Mr.G.L.Awate, Advocate for respondent No.6.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 13/06/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioners are aggrieved by the order passed by respondent No.2 / Deputy Commissioner, Supply, Aurangabad dated 09/08/2016 and the order of the Hon'ble Minister dated 08/11/2016.
3. I have considered the strenuous submissions of Mr.Salunke, the AGP and Mr.Palodkar, learned Advocates for the respective sides and have gone through the record available with their assistance.
4. Considering the order that I intend to pass, I am not required to advert to the extensive submissions of the learned Advocates. I would be referring to those factors which are germane.
5. Respondent No.5 has been granted the license for operating a

fair price shop in village Pangari (Kh), Tal.Mantha, Dist.Jalna under the Maharashtra Scheduled Commodities (Distribution and Regulation) Order, 1975. There are said to be about 265 card holders in the said village. About 42 card holders have lodged complaints against respondent No.5 pertaining to selling the grains at higher rates and refusing to issue receipts for the amounts paid while selling the grains. The District Supply Officer (for short, D.S.O.) is said to have conducted a panchnama and a preliminary enquiry on 17/11/2015. Statements of about 29 complainants have been recorded.

6. The D.S.O. thereafter issued a show cause notice dated 24/11/2015 to respondent No.5 calling upon him to explain away the charges levelled upon him. Respondent No.5 is said to have tendered his explanation on 29/12/2015. The D.S.O. has observed in his order dated 06/01/2016 that despite opportunities, respondent No.5 did not submit the records for inspection and held back those documents. By the said order, the allotment of the shop to respondent No.5 was set aside and the deposit amount was forfeited.

7. Respondent No.5 moved respondent No.2/Appellate Authority by filing a revision application. By the impugned order dated

09/08/2016, the order of the D.S.O. dated 06/01/2016 was set aside and the license of respondent No.5 was restored. The petitioners then approached respondent No.1/State and the Hon'ble Minister, vide order dated 08/11/2016, has rejected the revision petition.

8. Learned Advocate for respondent No.5 has strenuously contended that out of 265 card holders, there are about 42 complainants and only 29 have recorded their statements before the D.S.O. He has tendered a detailed explanation by reply dated 29/12/2015 and has attributed political rivalry between him and the petitioners. The wife of respondent No.5 has been elected as the "Sarpanch" of the village and the petitioners belong to a group which has been defeated in the Gram Panchayat elections of 2015. It is out of the political rivalry that the group which has lost the elections is keen in getting the license of respondent No.5 withdrawn. It is further stated that he is operating the fair price shop from 2001 and in all these 16 years, it is for the first time that complaints have been lodged against him after the Gram Panchayat elections.

9. Having considered the submissions of the learned Advocates, I find that the following factors become relevant while deciding this petition :-

[a] Though the show-cause notice dated 24/11/2015 was served upon respondent No.5 and though he tendered his reply on 29/12/2015, he did not produce the records which any fair price shop owner is required to maintain.

[b] Respondent No.2/revisional authority has observed at length in the last paragraph of the impugned order dated 09/08/2016 that the D.S.O. has passed an unreasoned order, proper opportunity for producing the record and the documents was not given to respondent No.5, statements of the card holders recorded by the D.S.O. were not supplied to respondent No.5 and the procedure of conducting an enquiry as is explained in Government Resolution dated 12/11/1991 was not followed before the D.S.O. passed the order dated 06/01/2016.

10. Though respondent No.2 has concluded that a proper procedure of hearing was not followed, sufficient opportunity was not granted to respondent No.5 and the decision of the D.S.O. is unsustainable for lack of reasons and violation of the principles of natural justice, respondent No.2 has surprisingly closed the proceedings and restored the license of respondent No.5, which is unconscionable.

11. The Hon'ble Minister, by order dated 08/11/2016 has also

concluded that principles of natural justice have not been complied with and the proper procedure of hearing was not followed and yet he has sustained the order of respondent No.2.

12. It is quite obvious that when respondent No.2 had concluded at length in the impugned order as regards the procedure not being followed and principles of natural justice having been violated, the matter should have been remanded to the D.S.O. for a re-hearing. After virtually concluding that the procedure laid down by the Government Resolution for conducting the enquiry was not followed rendering the action of the D.S.O. unsustainable, respondent No.2 has closed the proceedings and restored the license of respondent No.5. Said conclusion cannot be sustained. It was expected of respondent No.2 to remand the matter to the D.S.O. for a proper re-hearing. So also, though respondent No.2 has observed in the order that the records were produced before it, no reference has been made to the registers which are mandatorily required to be maintained by a fair price shop owner.

13. In this backdrop, the order of respondent No.2 of closing the file and presuming that respondent No.5 has not committed any illegality and restoring the license of respondent No.5, deserves to be

quashed and set aside.

14. For the same reasons as above, the impugned order passed by the Hon'ble Minister also needs to be quashed and set aside.

15. Mr.Palodkar has strenuously submitted that as respondent No.2 has restored the license of the fair price shop and as the Hon'ble Minister has also maintained the said order, he be permitted to operate the fair price shop until the D.S.O. decides the issue. Mr.Salunke points out that the license of the respondent No.5 was withdrawn on 06/01/2016. The Hon'ble Minister had granted stay to the order of respondent No.2 which was vacated on 08/11/2016 and this Court has stayed the orders of respondent No.2 and the Hon'ble Minister. It is obvious that respondent No.5 is precluded from operating the shop from 06/01/2016 till this date notwithstanding the statement made by Mr.Palodkar that the food grains have been supplied by the Government to respondent No.5.

16. Considering the above, this petition is allowed. The impugned orders of respondent No.2 dated 09/08/2016 and respondent no.1 dated 08/11/2016 are set aside. However, the conclusions of both these authorities that the D.S.O./respondent No.3 has failed to follow

the procedure, are sustained. The case of respondent No.5 is, therefore, remitted to the office of respondent No.3 for following the procedure while conducting the proceedings as per the Government Resolution dated 12/01/1991 and such other subsequent rules or Government Resolution, if any.

17. Consequentially, the order of respondent No.3 dated 06/01/2016 is set aside to the extent of the cancellation of the license of respondent No.5. However, the suspension of his license shall continue and the alternate arrangement made by the District Authorities for supplying food grains to the card holders shall continue till the decision in the proceedings.

18. The litigating sides shall appear before respondent No.3 on 27/06/2017 at 11.00 a.m. Respondent No.5 is at liberty to produce all documents, if any, and rely upon such documents if are already filed. Respondent No.3 shall consider the case on its own merits after considering the record and the submissions of the litigating sides and shall pass a reasoned order. At the request of the litigating sides, the matter is expedited and respondent No.3 shall decide the said case on or before 08/09/2017.

19. Rule made absolute in the above terms.

(Ravindra V.Ghuge, J.)