

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9153 OF 2013

Smt. Archana Rohitlal Gupta

..Petitioner.

Vs

State of Maharashtra and Ors

.. Respondents

Ms. Neha Bhide, Advocate for Petitioner.

Ms. Vaishali Nimbalkar, A.G.P., for Respondent no.1.

Mr. Sharad S. Suryavanshi, Advocate for Respondent no.3.

CORAM : R.G.KETKAR,J.

DATE : 02/05/2017

PC:

1. Heard Ms.Neha Bhide, learned counsel for the petitioner, Ms. Vaishali Nimbalkar, learned A.G.P for respondents no.1 and 2 and Mr. Sharad Suryavanshi, learned counsel for respondent no.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 13.10.2011 passed by the Honourable Minister for Food, Civil Supplies and Consumer Protection, Government of Maharashtra. By that order, the Honourable Minister set aside orders dated 31.7.2004 and 1.6.2010 passed by Dy.Controller of Rationing, F-Region, and allotted the rationing shop to the third respondent herein. Rule. Learned counsel for the respective respondents waives service. Having regard to the narrow controversy raised in this petition and at the request and by

consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing. The relevant and material facts giving rise to filing of the present petition, briefly stated, are as under.

3. On 8.11.2002, respondent no.2, Dy. Controller of Rationing issued advertisement inviting applications for allotment of Fair Price Shops in the city of Mumbai and its suburban districts including the fair price shop at Buvapada, Ambernath under category No.187/2002. The petitioner and the third respondent along with others submitted applications. By order dated 31.7.2004, respondent no.2 recommended allotment of shop to the petitioner having priority no.2 (educated unemployed). In so far as the third respondent is concerned, respondent no.2 held her ineligible on the ground that the shop proposed by her is inconvenient to the card holders. Aggrieved by this decision, respondent no.3 and others preferred Revision Applications before the Honourable Minister, Food and Civil Supplies, Consumer Protection challenging the allotment in favour of the petitioner. By common order dated 18.5.2007, the Honourable Minister dismissed the Revision Applications preferred by the third respondent and 14 others and upheld the order of 31.7.2004 passed by respondent no.2.

4. Aggrieved by this decision, respondent no.3 instituted Writ Petition No. 5213 of 2007. One Ms Vijaya Mane also instituted

Writ petition No. 5150 of 2007. By order dated 10.12.2007, the learned Single Judge dismissed the writ petitions. Aggrieved by this decision, respondent no.3 instituted Letters Patent Appeal No.170 of 2009 before Division Bench of this Court. By order dated 30.11.2009, the Division Bench dismissed the Letters Patent Appeal. It is not in dispute and Mr. Suryawanshi did not bring anything on record to show that aggrieved by these decisions, respondent no.3 approached the Apex Court. In other words, the order passed by the learned Single Judge which was upheld by the Division Bench attained finality.

5. Instead of challenging the orders passed by this Court, respondent no. 3 appears to have instituted Review Petition before the Honourable Minister seeking review of order dated 18.5.2007. By order dated 14.10.2009, the Honourable Minister dismissed the review principally on the ground that it was instituted after two years and three months. Respondent no.3 instituted Writ Petition No. 1011 of 2010 in this Court challenging the order rejecting the Review petition. On behalf of the respondents therein, Madhukar Sheshrao Bodke, Assistant Controller of Rationing, 'F' Region, Thane, made affidavit dated 2.3.2010. In paragraph 6 of that affidavit, he specifically made reference to the order dated 10.12.2007 passed by the learned Single Judge in Writ Petition No. 5213 of 2007. In paragraph 12, reference was made to application/representation dated

11.2.2010 made by the petitioner which was received by him on 15.2.2010. The Division Bench of this Court accepted the statements made in paragraph 12 of that affidavit and permitted the petitioner to withdraw the petition. In pursuance thereof, the matter was again considered by Dy. Controller of Rationing, F-Region, Thane. By order dated 1.6.2010, respondent no. 2 dismissed the application/representation of the third respondent. Aggrieved by that decision, respondent no.3 preferred Revision Application before the Honourable Minister. By the impugned order, the Honourable Minister has allowed the Revision Application. It is against this order the petitioner has instituted the present petition.

6. In support of this petition, Ms. Bhide submitted that the order dated 31.7.2004 passed by the Deputy Collector was affirmed in Revision by the Honourable Minister on 18.5.2007. Aggrieved by these orders, respondent no.3 and another instituted writ petitions in this court which were dismissed. Letters Patent Appeal preferred against that order was also dismissed. She, therefore, submitted that the only course available to the third respondent was to challenge the orders passed by this Court before the Apex Court or file review in Letters Patent Appeal. Instead of challenging those orders, respondent no.3 filed Review Petition before the Hon'ble Minister which was dismissed on 14.10.2009. Aggrieved by this decision,

respondent no.3 instituted Writ petition No. 1011 of 2010 in this Court. By order dated 3.3.2010, the Division Bench disposed of the writ petition. She submitted that basically Review itself was not maintainable. That apart, the petitioner also made representation before the authorities on 11.2.2010. Respondent no.3 could not have made representation before Dy. Controller of Rationing, 'F' Region, as he became functus officio. Respondent no.2 rejected the representation/application on 1.6.2010. That order was challenged by respondent no.3 by filing Revision Application before the Honourable Minister. By the impugned order, the Honourable Minister has allowed the Revision Application by setting aside the orders dated 31.7.2004 and 1.6.2010 passed by Dy. Controller of Rationing, F-Region. She submitted that the attention of the Division Bench was not invited to earlier round of litigation and merely on the basis of paragraph 12 of the affidavit, this Court permitted the petitioner therein (respondent no.3) to withdraw the petition. This Court did not deal with the earlier round of litigation. She, therefore, submitted that the Honourable Minister was not justified in passing the impugned order thereby setting aside the orders dated 31.7.2004 and 1.6.2010 passed by the second respondent and further allotting the fair price ration shop to the third respondent. She, therefore submitted that the impugned order deserves to be set aside.

7. On the other hand, Mr. Suryawanshi invited my attention to the affidavit in reply submitted by the third respondent. He submitted that after passing of the orders by this Court, respondent no.3 made application under Right to Information Act, 2005. After getting hold of relevant documents, she filed Review Application as also made application/representation on 11.2.2010. He submitted that after considering the affidavit filed on behalf of the State Government, this Court accepted statements in paragraph 12 of the affidavit which recorded that necessary decision will be taken on the application/representation dated 11.2.2010 made by the third respondent and accordingly permitted the third respondent to withdraw the petition. He submitted that the earlier orders will not come in the way of the third respondent in making representation/application for reconsidering the earlier decisions. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. From the material on record, it is evident that following facts are not in dispute.

1. By order dated 31.7.2004, respondent no.2 recommended allotment of fair price shop to the petitioner and held that the third respondent is not eligible as the premises suggested by her

for running fair price shop was not suitable to the card holders.

2. Respondents no.3 and 14 others instituted Revision Applications before the Honourable Minister challenging order dated 31.7.2004 passed by the second respondent. By common order dated 18.5.2007, the Honourable Minister dismissed all the Revision Applications and upheld the order dated 31.7.2004 passed by the second respondent.

3. Aggrieved by this decision, respondent no.3 instituted Writ Petition No. 5213 of 2007 and one Ms Vijaya R. Mane instituted Writ Petition No. 5150 of 2007. By order dated 10.10.2007, this Court (Coram: S.C.Dharmadhikari,J.) dismissed the Writ Petition by observing that there was no reason to interfere with these orders because the authority in-charge of allotment of ration shops, has after considering all applications, came to a conclusion that the petitioners of these petitions were not eligible and rather disqualified from allotment of ration shops. The successful allottee (petitioner herein) has satisfied all conditions. This order is confirmed by the Revisional Authority. All opportunities were given to the petitioner to put forward their case. Once a view has been taken by the authorities who are in-charge of the public distribution system, the allotment of ration shops, then, merely because in the opinion of the petitioner he/she was better suited, is no ground to interfere.

4. Aggrieved by this decision, respondent no.3 preferred

Letters Patent Appeal No.170 of 2009 before the Division Bench of this Court. While dismissing the Letters Patent Appeal, the Division Bench observed that the discretion exercised by the learned Single Judge was in consonance with the settled principles of law and, therefore, there was no reason to interfere. It is further observed that eligibility is no ground for claiming preferential treatment between the parties. Mr. Suryawanshi did not bring any material to show that aggrieved by these decisions, respondent no.3 approached the Apex Court.

5. Instead of challenging these orders, respondent no.3 filed Review Petition before the Honourable Minister which was dismissed on 14.10.2009.

6. Aggrieved by this decision, respondent no.3 instituted Writ Petition No. 1011 of 2010 in this Court. In that petition, on behalf of the State Government, affidavit of Madhukar Sheshrao Bodke was filed. Paragraphs 6 and 12 of that affidavit read thus:

“6. I say that petitioner had approached this Hon'ble Court by way of filing Writ Petition No.5213 of 2007. The said Writ Petition came up before His Lordship Mr Justice S.C.Dharmadhikari on 10.12.2007. His Lordship was pleased to dismiss the said Writ Petition. The said order is on page 40 to 41 of the writ petition.”

12. I say that the office of the Deputy Controller of Rationing, 'F' Region, Thane has received petitioner's application / representation dated 11.2.2010 on 15.2.2010. I say that the petitioner's application/representation dated 11.2.2010 which was received by the office of the Deputy Controller of Rationing, F Region, Thane shall be considered and inquiry thereof shall be conducted; and detail report shall be prepared by the office of the Deputy Controller of Rationing, F Region, Thane accordingly; and necessary

decision upon the application/representation dated 11.2.2010 of the petitioner shall be taken within a period of 12 weeks by the Deputy Controller of Rationing, F Region, Thane."

7. By order dated 3.3.2010, Division Bench of this Court disposed of the Writ Petition No.1011 of 2010 by passing following order.

"Paragraph No.12 of the affidavit filed on behalf of the Respondent No.2, reads as under:-

I say that the office of the Deputy Controller of Rationing, F- Region, Thane has received Petitioner's application/ representation dated 11.2.2010 on 15.2.2010. I say that the Petitioner's application/representation dated 11.2.2010 which was received by the office of the Deputy Controller of Rationing, F-Region, Thane shall be considered and inquiry thereof shall be conducted; and detail report shall be prepared by the office of the Deputy Controller of Rationing F-Region, Thane accordingly; and necessary decision upon the application / representation dated 11.2.2010 of the Petitioner shall be taken within a period of 12 weeks by the Deputy Controller of Rationing, F Region, Thane.

The statements made above are accepted. In view of the statements on a motion made by the learned counsel for the petitioner, petition is permitted to be withdrawn. Civil Application does not survive. Same is disposed off."

9. A perusal of the order dated 3.3.2010 shows that though the petitioner herein was made party in the petition, was not heard at the time of passing order on 3.3.2010. This Court reproduced paragraph 12 of the affidavit. In paragraph 12, reference was made to application/representation dated 11.2.2010 made by the petitioner and it was stated that Deputy Controller of Rationing, F-Region, Thane will consider and inquiry

to be conducted and a detailed report will be prepared by the office of the Deputy Controller of Rationing, F-Region and decision will be taken within a period of 12 weeks on the representation/application dated 11.2.2010 made by respondent no.3 herein. This Court accepted the statements and in view of the statements, on the motion made on behalf of the third respondent, petition was permitted to be withdrawn.

10. In pursuance thereof, by order dated 1.6.2010, Dy. Controller of Rationing once again dismissed the application/representation made by the third respondent. Revision preferred by the third respondent was allowed by the impugned order dated 13.10.2011. In my opinion, the third respondent was not justified in filing either review petition which was dismissed on 14.10.2009 or making application/representation dated 11.2.2010. The only course available to the third respondent was either to approach Apex Court or to file petition seeking review of the order passed by the Division Bench of this Court dated 30.11.2009 in Letters Patent Appeal. Mr. Suryawanshi submitted that as the third respondent obtained vital documents after the decision in Letters Patent Appeal, she filed Review Petition as also made representation. The submission is stated to be rejected. Respondent no.3 could not have filed either Review Petition or made representation on 11.2.2010. The authorities below were bound by the decision of

the learned Single Judge which was upheld by the Division Bench. If at all respondent no.3 claims to have obtained vital documents having bearing on the controversy, he should have filed petition seeking review of the order dated 30.11.2009 passed by this Court on Letters Patent Appeal. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside. Hence, the following order.

(i) Impugned order dated 30.10.2011 passed by the Honourable Minister for Food, Civil Supplies and Consumer Protection, is set aside. Revision Application preferred by the third respondent stands dismissed. Equally, application/representation dated 11.2.2010 stands disposed of accordingly. Order dated 31.7.2004 passed by Deputy Controller of Rationing, F-Region, Thane which is confirmed by the learned Single Judge on 18.10.2007 and by the Division Bench of this Court on 30.11.2007 stands revived.

(ii) Rule is made absolute accordingly with no order as to costs reserving liberty to the third respondent to consider filing petition seeking review of the order dated 30.11.2009 passed in Letters Patent Appeal No. 179 of 2009, if so advised. Order accordingly.

(R.G.Ketkar,J.)