

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9985 OF 2017

M/s. Balaji Mahila Swasahai		
Bachat Gat	..	Petitioner
vs.		
The State of Maharashtra & Ors.	..	Respondents

Mr. Mukesh V. Aiya for Petitioner.
Mr. S. H. Kankal -AGP for State.
Mr. P. A. Pol with Sharad Suryawanshi, Ranjit Hutkar and Shyam Bhardwaj for Pol Legal Juris for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 18 SEPTEMBER 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] Rule. Rule is made returnable forthwith with the consent of and at the request of the learned counsel for the parties.
- 3] The challenge in this petition is to the order dated 2nd August 2017 made by the Hon'ble Minister (Food and Civil Supplies) in his capacity as revisional authority under the Maharashtra Foodgrain Rationing 2nd Order, 1966 (said enactment).
- 4] In this case, the permission to authorization to commence a ration shop was granted to respondent No. 4 on 23rd July 2014. This authorization was challenged by the petitioner by instituting a

revision application before the Hon'ble Minister. The revision application was allowed by order dated 11th September 2014 and the authorization in favour of respondent No. 4 was set aside.

5] In the meanwhile, the respondent no. 2 i.e. Deputy Controller of Rationing also made a detailed enquiry in the matter and passed an order dated 6th June 2015, in which, he also held that there were several irregularities in the application submitted by respondent No. 4 and therefore, it would be appropriate if fresh applications are invited.

6] The respondent No. 4 instituted a review petition before the Hon'ble Minister on 3rd January 2015. The review petition has been allowed by the Hon'ble Minister vide the impugned order dated 2nd August 2017. The impugned order also proceeds to set aside respondent Nos. 2's order dated 6th June 2015, even though, there was no challenge to the said order raised by the respondent No. 4 in the review petition.

7] Mr. Aiya, learned counsel for the petitioner submits that in the absence of any challenge to the order dated 6th June 2015 made by the respondent No. 2, the Hon'ble Minister had no jurisdiction to set aside the said order. Besides, he points out that the impugned order has been made in violation of principles of natural justice. He

submits that application for adjournment was submitted and even without the consideration of the same the impugned order has been made. Further, he points out that neither has the reply which was filed by the petitioner been considered nor the said Hon'ble Minister adverted to irregularities pointed out in respondent No.s 2's order dated 6th June 2015.

8] Mr. Pol, learned counsel for the respondent no. 4 submits that the petitioner himself was ineligible for allotment of authorization. In the absence of the petitioner being eligible, there is no question of entertaining the present petition. Mr. Kankal, learned AGP supports the impugned order by submitting that necessary notice had been furnished to the petitioner and it was the duty of the petitioner to remain present.

9] After due consideration of the rival contentions and upon perusal of the material on record, I am satisfied that the impugned order is required to be set aside. The reasons for the same are as follows.

10] In this case, the petitioner was served with the notice dated 16th June 2017 to attend the hearing scheduled for 20th June 2017. The petitioner, by application dated 19th June 2017 which was received in the office of the Hon'ble Minister, applied for

adjournment. There were reasons stated in the application seeking adjournment. The reasons were not entirely frivolous. Accordingly, in the matter of this nature, additional opportunity ought to have been granted to the petitioner.

11] That apart, in the review petition, there was no challenge to the order dated 6th June 2015 made by the respondent No. 2. Yet the said order has been set aside. In the absence of any formal challenge by way of amendment, the petitioner was deprived an opportunity to make its submissions as to the validity or otherwise of the order dated 6th June 2015. This also amounts to breach of principles of natural justice.

12] The impugned order does not address the issue of irregularities noted by the respondent No. 2 in order dated 6th June 2015. There is no discussion or in any case any serious discussion as regards such irregularities. To that extent also, the impugned order warrants interference.

13] Though, the impugned order is being set aside, this is a fit case where the matter is required to be remanded to the Hon'ble Minister for reconsideration. This is because the impugned order is being set aside not on merits but mainly on account of failure to follow the principles of natural justice.

14] Further, it will be appropriate if both the petitioner as well as the respondent No. 4 are granted liberty to institute revision petitions to challenge respondent Nos. 2's order dated 6th June 2015, since they claim that both of them are aggrieved by the said order. Respondent no. 4 is aggrieved because he has been held to be ineligible and the petitioner claims to be aggrieved because fresh applications are directed to be invited instead of award of authorization to the petitioner. If such revision petitions are instituted within a period of two weeks from today, the Hon'ble Minister is requested to dispose of the same on their own merits and in accordance with law without going into the issue of limitation. The two revision petitions to be considered along with review petition which is now remanded for reconsideration.

15] It is made clear that this Court has not adverted to the merits of the matter and therefore all contentions of all parties are left open for determination by the Hon'ble Minister in review petition as well as the two revision applications if instituted within two weeks from today.

16] The Hon'ble Minister is requested to dispose of the review petition as also the revision petitions within a period of two months from the date of their institution.

17] All concerned to act on basis of authenticated copy of this order.

18] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka