

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11598 OF 2015**

Shri Kantilal Anandji Thakkar

..Petitioner

Vs.

State of Maharashtra & Ors

..Respondents

Mr. M. V. Aiya for the Petitioner

Mr. S. H. Kankal AGP for the Respondent Nos.1 to 4

CORAM : R. M. SAVANT, J.

DATE : 22nd FEBRUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 3-8-2015 passed by the Revisionary Authority i.e. the Hon'ble Minister for Food and Civil Supplies and Consumer Protection, Government of Maharashtra, by which order the Review Application filed by the Petitioner against the order dated 20-3-2015 passed by the Revisionary Authority, came to be dismissed.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner was allotted a fair price shop being No.36-F-108. The Petitioner's licence was suspended by the Deputy Controller of Rationing by order dated 13-11-2014. The said order discloses that the same was passed on the basis of the door visits made by the officials from the office of the Deputy Controller of Rationing in which door visits they

have found misappropriation of 436 kg Rice, 738 kg of Wheat, 10kg of Food Safety Rice, 904kg Food Safety Wheat, 464 liters of kerosene. The said order of suspension was passed by the Deputy Controller of Rationing under the Maharashtra Food Grains and Rationing (Second) Order 1966 and especially under Rule 3(2) thereof, as also Essential Commodities Distribution Order 1986 and Rule 3(2)(3) thereof. The said order was carried in Revision by the Petitioner by filing a Revision before the Revisionary Authority i.e. the Hon'ble Minister for Food and Civil Supplies. The Revision filed by the Petitioner came to be dismissed by the Revisionary Authority by order dated 20-3-2015. The Revisionary Authority has adverted to the alleged misappropriation of the food grains which is mentioned in the order of the Deputy Controller of Rationing and thereafter has taken into consideration the value of the misappropriated food grains as Rs.58,338/-. The Revisionary Authority has also adverted to the fact that the food grains meant for distribution under the public distribution system was apprehended by the police at Bhiwandi, whilst the same was taken for sale in the free market. It is on the said basis that the Revisionary Authority did not deem it appropriate to interfere with the order dated 13-11-2014 passed by the Deputy Controller of Rationing. The Revisionary Authority accordingly dismissed the Revision Application filed by the Petitioner.

3 The Petitioner thereafter filed a Review Application before the Revisionary Authority seeking review of the said order dated 20-3-2015. The

Revision Application as indicated above came to be rejected by the Revisionary Authority by reiterating the reasons mentioned in the earlier order dated 20-3-2015. Hence the above Petition challenges the order dated 13-11-2014 passed by the Deputy Controller of Rationing, the order dated 20-3-2015 passed by the Revisionary Authority and the order dated 3-8-2015 passed by the Revisionary Authority rejecting the Review Application.

4 Heard the Learned Counsel for the parties.

5 It was the contention of the Learned Counsel for the Petitioner that the order passed by the Deputy Controller of Rationing is founded on the door visits allegedly carried out by the officials from the office of the Deputy Controller of Rationing. It was the submission of the Learned Counsel that the report of such door visits was not furnished to the Petitioner nor was the Petitioner given an opportunity to be present at the time of the door visits. In so far as the reference made to the tempo being accosted by the police is concerned, it was the submission of the Learned Counsel that after the tempo was apprehended it was the case of the authorities that the food grains found in the said tempo were belonging to 4 shops which include the shop of the Petitioner being 36-F-108 as also Shop No.197. In so far as Shop No.197 is concerned, it was the submission of the Learned Counsel for the Petitioner that the suspension of the licence of the said shop has been revoked by the same

Revisionary Authority and that the said shop is functional. The Learned Counsel also sought to draw this courts attention to a list wherein in similar cases the suspension of the Shops was revoked by forfeiting the security deposit and by directing the licence holder to deposit the value of the food grains allegedly misappropriated. Hence it was the submission of the Learned Counsel that only the Petitioner is sought to be discriminated.

6 Per contra, the Learned AGP would seek to support the impugned order. The Learned AGP draws this courts attention to the fact that an FIR has been registered in respect of the tempo which was apprehended by the police and in which the food grains allegedly belonging to the shop of the Petitioner were recovered. It was therefore the submission of the Learned AGP that the order need not be interfered with.

7 Having heard the Learned Counsel for the parties I have considered the rival contentions. The question that arises is whether the impugned order can be sustained. As indicated above, the order passed by the first authority i.e. the Deputy Controller of Rationing is based on the alleged door visits conducted by the officials from his office. In so far as the door visits are concerned, which is visiting the houses of the card holders who are attached to the particular shop, no such procedure is prescribed under the food grain orders. However, assuming such a procedure can be followed by

the authorities, the least that was expected of the authorities is to give notice to the Petitioner of such door visits so that the Petitioner could remain present at the time of door visits or depute somebody to remain present. The report that has been prepared after the door visits has also not been furnished to the Petitioner. The Petitioner it seems carried out counter door visits wherein no such allegations were made by the card holders against the Petitioner. The said material has been annexed to the affidavit in rejoinder filed on behalf of the Petitioner. However, the case set out in the affidavit in rejoinder has not been denied by the authorities. Hence the first flaw in the order passed by the Deputy Controller of Rationing is that the material which was adverse to the Petitioner has not been furnished to him so as to give an opportunity to the Petitioner to deal with the said material.

8 Now coming to the contention urged on behalf of the Petitioner that licences similarly situated as the Petitioner and against whom allegations of similar nature were made and their licences suspended, the Revisionary Authority has allowed the Revision filed by the said licencees and thereby revoked the suspension. One such case is in respect of shop No.197 in respect of which shop the allegations can be said to be the same as against the Petitioner's shop. The suspension qua the said shop has been revoked by the Revisionary Authority on the basis of the value of the goods allegedly misappropriated being directed to be paid and by forfeiting the security

deposit. However, the same has not been done in the Petitioner's case. The Petitioner has also relied upon 12 cases wherein identical orders were passed by the Revisionary Authority revoking suspension. It is required to be borne in mind that the shops in question which are fair price shops catering to the lower strata society hence a modicum of procedure which is fair is required to be followed.

9 In my view, therefore, on the ground that the material adverse to the Petitioner was not furnished to the Petitioner, it would be just and proper to set aside the orders passed by the Revisionary Authority and remand the matter back to the Revisionary Authority for a denovo consideration in terms of the above. Hence the following directions :

(i) The order dated 20-3-2015 passed by the Revisionary Authority dismissing the Revision Application filed by the Petitioner as also the order dated 3-8-2015 dismissing the Review Application filed by the Petitioner are set aside. The matter is relegated back to the Revisionary Authority for a denovo consideration of the Revision Application.

(ii) The Revision Application to be decided by the Revisionary Authority on its own merits and in accordance with law, having regard to the observations made hereinabove. It would be open for the Petitioner to contend that in

similar cases the suspension has been revoked by the Revisionary Authority.

(iii) The parties to appear before the Revisionary Authority on 7-3-2017. The Revisionary Authority thereafter to decide the Revision Application latest by 30-4-2017.

10 The Petition is allowed to the aforesaid extent and is disposed of.

[R.M.SAVANT, J]