

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.27 OF 2018

Rajendra s/o Harinarayan Sharma,
Age-54 years, Occu:Social Activist
& Journalist, Editor of Weekly
Newspaper "NandedPol-Khol",
R/o-32, Pharande Nagar, Nanded,
Tq. & Dist-Nanded,
M.No.8007086877

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Food, Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai-32,
- 2) The Divisional Commissioner,
(Civil Supplies), Aurangabad Division,
Commissioner Officer, Near to
Delhi Gate area, Aurangabad,
- 3) The Collector, Nanded District,
Collector's Office, Nanded,
- 4) The District Civil Supplies Officer,
Collector Office, Nanded,
- 5) The Tahsildar,
Tahsil Office,
Nanded,

- 6) Jogendersingh Gagansingh
Age-50 years, Occu:Business,
Semi Wholesale Dealer of Kerosene
at Nanded, Opposite Datiwala
Petrol Pump, New Mondha,
Nanded, Tq. & Dist-Nanded.

...RESPONDENTS

...

Mr.Quadri Taher Ali Advocate for Petitioner.
Mr.S.J. Salgare, A.G.P. for Respondent Nos.
1 to 5.

Mrs.M.A. Kulkarni Advocate h/f. Mr. A.M.
Kulkarni Advocate for Respondent No.6.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING ORDER : 12TH APRIL, 2018.

DATE OF PRONOUNCING ORDER: 23RD APRIL, 2018.

ORDER [PER S.S. SHINDE, J.]:

1. This Public Interest Litigation is filed
with following substantive prayers:

"B) By way of Writ of Mandamus, or any
other writ, direction may kindly be
issued to Respondent no.2 to 5 to
strictly and uniformly implement the
Maharashtra State Government Circular
bearing No. Kerosene-1098/2563/File

No.5794/S.S.27, dated 07.01.1999, which is issued as per the directions given by Hon'ble High Court of Bombay Bench at Aurangabad vide order dated 30.09.1998 in Writ Petition No.2505 of 1998,

C) By way of Writ of Mandamus, or any other writ, direction may kindly be issued to Respondent no.3 to 5 to decide the representation-cum-complaint of petitioner dated 16.08.2017 and to take serious action against Respondent No.6 by cancelling its license and recovering excess amount received by him towards implementation of Scheme for Supply of "Door-step Delivery of Kerosene to Retail Kerosene Distributors."

D) By way of Writ of Mandamus, or any other writ, kindly direct the Respondent No.1 to 5 by issuing general directions to recover separate transportation amount paid to Wholesaler, Semi-Wholesale Dealer including Respondent No.6, since 07.01.1999, for implementing scheme of supplying Door-step Delivery of

Kerosene to Retail Kerosene Dealer,
which they have not delivered.

E) The Respondent nos.3 to 6 and/or
responsible authorities/ officers may
kindly be booked under Contempt of
Courts Act for making willful
disobedience of order of Hon'ble High
Court dated 30.09.1998 passed in
WP/2505/1998."

2. The background facts for filing the
present Petition, as disclosed in the memo of the
Petition, in brief, can be stated as below:

A) It is the case of the Petitioner that as per
the policy decision taken by Respondent No.1, it
has issued letter dated 5th May, 1998 to all
concerned Departments of Public Distribution
System clarifying that, it is mandatory upon the
Wholesaler Kerosene Dealers, Semi-Wholesale
dealers of Kerosene to supply "Door-step Delivery
of Kerosene to Retail Kerosene Distributors", at
least 50% villages in each District and for that

purpose, the Wholesale Kerosene dealer are paid with transportation charges of that purpose. In said letter it was directed to all the concerned including the Wholesale Dealers, Semi-Wholesale Dealers of Kerosene to implement the said scheme from May, 1998 and submit its detailed report to Government.

B) The said letter of Respondent No.1, dated 5th May, 1998 has been challenged in group of Writ Petitions, before the High Court. Writ Petition No.2505 of 1998 (Mohd. Saleem s/o Abdul Gaffar vs. State of Maharashtra and others) and other Writ Petitions were decided by common Judgment and Order dated 30th September, 1998 and the Division Bench of this Court has directed Respondent No.1 - State Government to implement the scheme of supplying "Door-step Delivery of Kerosene to Retail Kerosene Distributors", at least in 50% villages in each District.

C) On the basis of order passed in above-

said Writ Petition No.2505 of 1998, Respondent No.1 has issued Government Circular bearing No. Kerosene-1098/2563/File No.5794/S.S. 27, dated 7th January, 1999, and directed all the concerned to follow scheme of supplying "Door-step Delivery of Kerosene to Retail Kerosene Distributors". The directions mentioned in the said Government Circular regarding implementation of scheme of supplying "Door-step Delivery of Kerosene to Retail Kerosene Distributors" are mandatory. Even the wholesale dealer and semi-wholesale dealers are paid separately for implementing said scheme.

D) It is the case of the Petitioner that the directions issued in the order passed in Writ Petition No.2505 of 1998 and Government Circular dated 7th January, 1999 have not been followed by Respondent Nos.3 to 6 and therefore there is huge loss of public funds and apprehension of black-marketing of Kerosene cannot be ruled out. After making detailed research on said topic, the Petitioner has filed a representation-cum-

complaint to the District Supply Officer, Nanded i.e. Respondent No.4, dated 16th August, 2017 regarding non implementation of the scheme of "Door-step Delivery of Kerosene to Retail Kerosene Distributors" by Respondent No.6, and serious irregularities noticed in distribution of Kerosene and for recovering the excess amount paid to Respondent No.6, and for taking action as per law against Respondent No.6. It is submitted that Respondent Nos.4 and 5 are not effectively implementing the said scheme and no action is yet taken against Respondent No.6, hence this Petition is filed.

3. Learned counsel appearing for the Petitioner submits that after scrutinizing and verifying the complaint of the Petitioner, Respondent No.4 - District Supply Officer, Nanded has made detailed inquiry and found that Respondent No.6 acted in contravention of the order passed in Writ Petition No.2505 of 1998, referred above and the Government Circular dated

7th January, 1999, however no any action has been taken against Respondent No.6. Learned counsel submits that in pursuance of directions given by District Supply Officer, detailed enquiry conducted by Tahsildar, Nanded and submitted his report. It is submitted that even after submission of report by Tahsildar, Nanded, no any action has been taken by Respondent Nos.2 to 5 against Respondent No.6. Hence it is prayed that the Public Interest Litigation deserves to be allowed.

4. Learned A.G.P. appearing for the State, referring to the reply filed on behalf of Respondent Nos.1 to 5 submits that the Petitioner filed complaint/ representation dated 16th August, 2017 alleging failure of implementation of door step delivery of Kerosene to retailer Kerosene Distributors against Respondent No.6. It is submitted that Respondent No.4 issued show cause notice to Respondent No.6 calling upon to explain why action of cancellation of his license shall not be initiated. Concerned Tahsildar was also

issued show cause notices dated 23rd January, 2018 and 10th March, 2018, calling upon his explanation why action should not be initiated against him. It is submitted that, in turn, Tahsildar has also issued show cause notice to concerned Respondent No.6. The report was submitted by the concerned Tahsildar on 17th March, 2018. After going through the report, hearing the concerned Respondents, and taking into consideration the explanation given by Respondent No.6, the District Civil Supply Officer - Respondent No.4 passed the order on 17th March, 2018, and cancelled the license issued in favour of Respondent No.6.

5. Learned A.G.P. further submits that after going through the report submitted by Tahsildar and hearing Respondent No.6, Respondent No.4 has passed an order dated 17th March, 2018, thereby cancelling license issued in favour of Respondent No.6. An alternative arrangement has been made so that Kerosene distribution is not affected. Learned A.G.P. submits that in respect of

irregularities committed by Respondent No.6 already action has been taken and his license is cancelled, therefore the Public Interest Litigation may be dismissed.

6. Learned counsel appearing for Respondent No.6, referring to the reply filed on behalf of Respondent No.6, submits that the Public Interest Litigation filed by the Petitioner is misconceived and based on incorrect information. It is submitted that in pursuance to the representation filed by the Petitioner, show cause notice was issued to Respondent No.6. Respondent No.6 filed reply contending that, no such directions for Door Step Delivery of Kerosene are given to him. It is further submitted that though Government has issued Circular on 7th January, 1999, the concerned authority has not initially framed any rules for implementation of the scheme of Door Step Delivery of Kerosene to the Retailers. It is further submitted that said Circular was not brought to the notice of Respondent No.6 and other

similarly situated semi wholesalers.

7. Learned counsel appearing for Respondent No.6 further submits that the Door-step Delivery of Kerosene to Retail Kerosene Distributors, is to be implemented by the State authorities under the supervision of their representatives. It is further submitted that though guidelines were issued by letter dated 2nd August, 2013, at no point of time the Tahsil Office has deputed official for distribution of 50% quota. As per the guidelines, it is the responsibility of the concerned authority to depute the official and distribute 50% quota. It is submitted that since the authority has not implemented the scheme and has not given any directions to Respondent No.6 in that behalf, the implementation of the scheme could not be done. It is the duty of State authorities to implement the said scheme.

8. Learned counsel appearing for Respondent No.6 further submits that Respondent No.6 has not

received any amount towards transportation. Since the transportation is done by the Agent or the Wholesalers, the commission/ charges for transportation would go to the Agent or the Wholesaler. It is submitted that Respondent No.6 was getting a commission in the range of 30 Paise to 31 Paise per liter and except that he was not getting any amount. It is submitted that both the grounds raised by the Petitioner about non-implementation of the scheme and recovery of transportation charges are misplaced and misconceived. It is submitted that because of misconceived complaints by the Petitioner, the license of Respondent No.6 has been cancelled by authorities without considering actual facts and circumstances and guidelines issued. It is submitted that Respondent No.6 has filed appeal before the appropriate authority. When the enquiry in respect of the same issue was going on before the authority and the authority has already taken action, the Petitioner had no reason to file this Public Interest Litigation. Learned counsel

therefore submits that the Public Interest Litigation is liable to be dismissed with costs.

9. We have heard learned counsel appearing for the Petitioner, learned A.G.P. appearing for the State and its officials and learned counsel appearing for Respondent No.6. With their able assistance, we have perused the averments in the Petition, replies filed by the respective Respondents and the annexures thereto.

10. Upon careful perusal of the reply filed on behalf of the Respondent-State, it reveals that on receipt of the representation filed by the Petitioner, an inquiry was conducted wherein it was found that certain irregularities were committed by Respondent No.6 in distribution of Kerosene, and therefore Respondent No.4- the District Civil Supply Officer, after giving hearing to Respondent No.6, by order dated 17th March, 2018, cancelled the license issued in favour of Respondent No.6. Learned A.G.P.

appearing for the State has submitted that further appropriate steps, if necessary, will be taken, in accordance with law.

11. Pursuant to the grievance raised by the Petitioner, the State Authorities have taken appropriate action and after due enquiry, cancelled the license issued in favour of Respondent No.6. In case of any further grievance, it would be open for the Petitioner to avail of an appropriate remedy as available in law.

12. In view of the reply filed by the State and its officials, in our opinion, no further orders are necessary in this Public Interest Litigation. Hence the Public Interest Litigation stands disposed of.

13. Learned counsel appearing for the Petitioner, on instructions of the Petitioner submits that, the Petitioner has deposited an amount of Rs.15,000/- (Rupees Fifteen Thousand) in

the Registry of this Court, and out of the said amount, 50% amount be given to the Government Certified School For Girls, Paithan, District- Aurangabad, and remaining 50% amount be refunded to the Petitioner. Accordingly, we direct the Registry to pay / give an amount of Rs.7,500/- (Rupees Seven Thousand Five Hundred) in favour of "the Superintendent, Government Certified School For Girls, Paithan, District- Aurangabad" from the total amount of Rs.15,000/- deposited by the Petitioner, and remaining amount of Rs.7,500/- (Rupees Seven Thousand Five Hundred) be refunded to the Petitioner.

[S.M. GAVHANE, J.]

asb/APR18

[S.S. SHINDE, J.]