

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6998 OF 2017

UDHALSINGH DHANSINGH GOLWAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Shri S.A. Ambilwade.
AGP for Respondent Nos. 1 to 4 : Shri S.R. Yadav.
Advocate for Respondent No. 5 : Smt. M.A. Kulkarni.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 24th July, 2018

PER COURT :

1. The petitioner/complainant is aggrieved by the order dated 18/02/2015, delivered by the Hon'ble Minister for Food, Civil Supplies and Consumer Protection, Shri Girish Bapat, by which, the order passed by the Deputy Commissioner (Supplies), Aurangabad, dated 03/03/2012, has been sustained and the earlier order passed by the earlier Hon'ble Minister Shri Anil Deshmukh, dated 10/09/2014, has been quashed and set aside.

2. After hearing this matter on 05/07/2018, I had passed the following order :

"1. Respondent No.5 (Kasabai W/o Mhatarba Gadekar) shall file an affidavit on the following counts :-

(a) Her full name and address prior to her marriage.

(b) *The date of her marriage and the place where it was solemnized.*

(c) *The profession of her husband and his permanent place of residence.*

(d) *The duration of her duties as an Anganwadi Madatnis and her duty hours.*

2. *The above said affidavit shall be filed on or before 13.07.2018 and there shall be no extension of time. Failure to do so, shall lead to an adverse inference.*

3. *List this Writ Petition for “Passing Orders” on 20.07.2018.”*

3. Respondent No. 5/Kasabai W/o. Vithal Gadekar, has filed an affidavit dated 13/07/2018, in which, she has contended as follows :

(A) Her name before her marriage is Kasabai Vitthal Gadekar, R/o. Hasanabadvadi, Village. Shekta, Taluka. Phulambri, District. Aurangabad, and she carries voter ID by that name.

(B) She was married to Baban S/o. Bapurao Jadhav in the year 1992 who was resident of Village Shekta. He died in the year 1992.

(C) In the year 1995, she entered into a Gandharva marriage with Mhatarba Gadkari, who resides at Shindhikalegaon.

(D) She acquired a fair price shop license to operate the fair

price shop at Village Hasanabadwadi.

(E) She got an appointment as an Anganwadi Madatnis on 28/10/2006, at Sindhikalegaon as she claimed to be a resident of the said village after she married Mhatarba Gadkari.

(F) Her appointment order mandates that she must be a resident of the village in which she has been appointed as an Anganwadi Madatnis and which is Sindhikalegaon.

4. After considering the submissions of the learned advocates, this court had passed the following order on 20/07/2018 :

“1. I have perused the affidavit filed by respondent No.5 dated 13.7.2018, by which, it has become quite apparent that pursuant to the death of her first husband in 1992, followed by her second marriage in 1995, she is residing at Hasanabadwadi, where the fair price shop is situated and she is pursuing her service as an Anganwadi Madatnis at Sindhi Kalegaon, where her second husband also resides.

2. The learned AGP submits that Clause 4 of her appointment order dated 28.10.2006 mandates that she should reside in the same village where she has been appointed as an Anganwadi Madatnis notwithstanding the hours of duty. If she is found to be residing at Hasanabadwadi which is so disclosed and admitted by her in the affidavit, she will have to be discharged as an Anganwadi Helper appointed at Sindhi Kalegaon.

3. Learned counsel for respondent No.5 seeks a short accommodation to disclose on the next date, as to whether she

would prefer to continue with her service as an Anganwadi Madatnis at Sindhi Kalegaon or give up the said job and pursue the fair price shop litigation, which is situated at Hasanabadwadi.

4. *S.O. to 24.7.2018 for recording the statement of respondent No.5 and for passing further orders.”*

5. Pursuant to the above, respondent No. 5 has now filed another affidavit contending that she is not required to reside at Sindhikalegaon for her job as an Anganwadi Madatnis. She is having her own house at Hasanabadwadi. It is, further, submitted by the learned advocate that she can reside at Hasanabadwadi for her fair price shop. She then submits that she can reside with her husband at Sindhikalegaon and perform her duties as Anganwadi Madatnis and can also operate the fair price shop at Hasnabadwadi by travelling during the day.

6. The Government Resolution dated 16/10/2006, which has been issued for the cancellation of the license of the fair price shop if the license holder is found to be in government employment, provides in clause 'D' that any person, notwithstanding that he/she is not in government service, cannot operate the fair price shop, if the said candidate is in full time service/appointed at any place.

7. Learned counsel for respondent No. 5 contends that her engagement as an Anganwadi Madatnis is not a full time employment.

I find from the appointment order dated 28/10/2006, that it is nowhere provided that respondent No. 5 is engaged on 'clock hour' basis or for a 'limited' period of about two hours. The appointment order mandates that she has to be constantly available and be residing in the village in which the Anganwadi is situated and under which Anganwadi she has been appointed.

8. Learned advocate for respondent No. 5 submits, on instructions, that she is prepared to face the enquiry pursuant to the suspension of her license with regard to the complaints against her shop. There is no dispute that the suspension of a license has not been revoked and the license has not been restored. The learned AGP rightly submits that while conducting an enquiry with regard to the alleged misdeeds committed by respondent No. 5, the enquiry would also be in view of clause 'D' of the GR dated 16/10/2006, which prohibits candidates like respondent No. 5 from operating the fair price shop.

9. I find that though respondent No. 5 was given an opportunity to choose between the two assignments viz the fair price shop or her employment as an Anganwadi Madatnis, she has filed the affidavit dated 23/07/2018, and has contended that she has a right to continue with both these assignments. It is in this backdrop, I find that the contention of the learned AGP is sustainable.

10. Insofar as the grievance of the petitioner is concerned that the present Hon'ble Minister should not have interfered with the order dated 10/09/2014, passed by the earlier Hon'ble Minister, I find that the order dated 10/09/2014, led to the cancellation of the license of the fair price shop that stood in the name of respondent No. 5, only under the directions of the Hon'ble Minister. There can be no debate that post suspension of such a license, an appropriate procedure has to be followed and the decision has to be taken by the District Supply Officer (DSO), as to whether the suspension of the license should be revoked or whether the charges are proved there by leading to the cancellation of the license. The order dated 10/09/2014, has led to the cancellation of the license of respondent No. 5 under the orders of the Hon'ble Minister without following the due procedure.

11. The impugned order dated 18/02/2015, passed by the present Hon'ble Minister, is in the nature of a direction to the DSO to follow the procedure with regard to the complaints against respondent No. 5. Such a direction issued by the Deputy Commissioner (Supplies), Aurangabad, dated 03/03/2012, has been sustained and as such the DSO is directed to follow the procedure. This direction of the present Hon'ble Minister, therefore, cannot be faulted. The reliance placed upon the judgment of this Court dated 05/03/2013, in Kalyan Dhondiba Lende Versus The State of Maharashtra and Others [Writ Petition No. 5375 of 2012], is misplaced and there are different facts

in the said case.

12. As such, this petition is disposed of with a direction to respondent No. 3 as under :

(A) To initiate the procedure with regard to the complaints against respondent No. 5's fair price shop and after conducting the enquiry in accordance with the procedure as is laid down.

(B) He shall pass a reasoned order as expeditiously as possible and in any case on/or before 30/09/2018.

(C) DSO shall consider the effect of clause 'D' of the GR dated 16/10/2006, while taking a decision, as to whether the license of respondent No. 5's fair price shop can be continued or not.

(RAVINDRA V. GHUGE, J.)

S.P.C.