

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7710 OF 2017

1] Bapurao S/o Balbhim Kothule
Age 54 years, Occu : Agri.,
R/o. and Post Javlala, Tq. Patoda,
District Beed

2] Jeevan S/o Dadarao Devtarse,
Age 49 years, Occu : Agri.,
R/o. and Post Javlala, Tq. Patoda,
District Beed

.. Petitioners

Versus

1] The State of Maharashtra,
Through : Secretary,
Food Civil Supply and
Consumer Protection Department,
Mantralaya, Mumbai – 32.

2] The Minister,
Food Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai – 32.

3] The Deputy Commissioner (Supply)
At Aurangabad,
District Aurangabad

4] The District Supply Officer,
Beed, Tq. and Dist. Beed

5] The Tahsildar, Patoda,
Tq. Patoda, Dist. Beed

6] Sarjerao S/o Dhondiba Kothule,
Age Major, Occu. : Agri. and Fair
Price Shop License Holder,
Post Javlala, Tq. Patoda,
District Beed

.. Respondents

...
Mr. N.L. Jadhav, Advocate for petitioners
Mr. S.N. Morampalle, AGP for respondents no.1 to 5
Mr. S.S. Thombre, Advocate h/f Mr. M.S. Karad, Advocate for
respondent no.6

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-09-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties by consent, finally.

2. The petition is moved against order passed by the Hon'ble Minister, Food Civil Supply and Consumer Protection Department dated 21-04-2017, whereunder, the order dated 04-03-2010 passed by the District Supply Officer, Beed and order dated 30-09-2015 passed by Deputy Commissioner (Supply), Aurangabad have been set aside and the licence of fair price shop of respondent no. 6 has been revived.

3. Learned counsel for petitioners Mr. Jadhav submits that petitioners had complained of the manner in which the fair price shop was being conducted. Thereupon, a preliminary enquiry had been conducted and licence of respondent no.6 had been suspended. The District Supply Officer under order dated 04-03-2010, had revoked licence granted to respondent no.6 and

no appeal therefrom within time, had been preferred by respondent no.6. He submits that five years down, purportedly an appeal was sought to be preferred before the Deputy Commissioner (Supply), Aurangabad. The Deputy Commissioner (Supply) Aurangabad had refused to condone delay of 5 years and 4 months since there had been no material produced justifying delay caused. As such, on the ground of delay, proceeding had been dismissed under order dated 30-09-2015.

4. Learned counsel Mr. Jadhav further goes on to submit that this being the position, respondent no.6 had taken out proceedings against aforesaid order before the Hon'ble Minister. He submits that around May, 2016, an application to intervene in the matter had been filed on behalf of present petitioners, however, disregarding the same, and without giving notice to the petitioners, an order strangely came to be passed condoning delay and even reviving the licence. He submits that in the process, there is breach of principles of natural justice and that while previously the proceedings filed by respondent no. 6 before the Deputy Commissioner (Supply), Aurangabad had been dismissed, yet, vide impugned order dated 21-04-2017, the Hon'ble Minister not only condoned the delay but purported to decide the matter on merits. He submits that in the process, the cause which had been sustained on merits at the ground level, gets lost under a cursory

approach of the authority. He, therefore requests to set aside the impugned order.

5. On the other hand, learned counsel Mr. Thombre holding for Mr. Karad, appearing for respondent no. 6 submits that the complaints have been a matter of village level politics. There have been no substance in the same and unfortunately licence of respondent no. 6 got suspended and culminated into order dated 4th March, 2010, cancelling the licence. He submits, thereafter, respondent no.6 went through torrid times. It took him for a while to recover from the shock and, ultimately, he had filed appeal before the Deputy Commissioner (Supply), Aurangabad. However, without calling upon respondent no. 6 and hearing him, the application for condonation of delay straightaway has been rejected. He submits that perusal of order passed by Deputy Commissioner (Supply), Aurangabad dated 30-09-2015 would indicate the same. He submits that in the circumstances, respondent no.6 had no alternative, but to take whole of the matter before the Hon'ble Minister for delay condonation as well as revival of licence.

6. Learned counsel for respondent no.6 submits that order of cancellation of licence has been a non-speaking order passed on frivolous complaints. Secondly, he purports to contend

that although ostensibly intervention in the matter before the Hon'ble Minister had been sought, however, it is not clear, as to when such an intervention has been sought and whether it is sought before the order was passed by the Hon'ble Minister. He, therefore, submits that in the circumstances, absence of notice which is being referred to by the petitioners, would have no significance of any nature. He submits that learned Hon'ble Minister had taken proper stock of the situation and has considered that complaints against respondent no.6 were not of serious nature and were moved on flimsy grounds. It would not be proper to cancel the licence for the same. The order also refers that there had been no preliminary enquiry properly carried out and thus found that the action of suspension of licence is drastic. He further adverts to that the quite a few villagers have by application on affidavit, have taken back their complaints. He, therefore submits that on technicalities, the matter may not be interfered with. He further refers to that the licence has been restored and respondent no.6 has been running the fair price shop for over a year and more. He, therefore, urges not to take any meddlesome approach.

7. Learned A.G.P. supports the impugned order, referring to paragraph no. 2 of the affidavit-in-reply filed.

8. Perusal of order dated 04-03-2010 would indicate that the matter has been cursorily dealt with and it does not depict proper application of mind except recording that some communications have been received and then preliminary enquiry has taken place and there has been recommendation to cancel the licence.

9. It emerges that the order impugned before the Hon'ble Minister, had been an order passed by the Deputy Commissioner (Supply), Aurangabad on an application for condonation of delay. The Deputy Commissioner under his order dated 30-09-2015 had refused to condone the delay of 5 years and 4 months. Perusal of the impugned order passed by the Hon'ble Minister would reveal that present petitioners' application has not been adverted to. It further reveals that besides narrating the cases pleaded by appearing parties before him, the Hon'ble Minister, has not adverted as to what was the nature of allegations against respondent no.6 and why those are being considered to be of non-serious nature. Further, the Hon'ble Minister's order does not refer to as to whether there has been any application of mind to the amount of delay involved. There is no reference to any delay condonation in said order, yet, the Hon'ble Minister went on to set aside the orders dated 04-03-2010 and 30-09-2015. The

impugned order, as such is grossly deficient of consideration of relevant aspects. The situation emerges that there is no proper application of mind by the Hon'ble Minister as well as by the Deputy Commissioner (Supply) to the averments for delay condonation filed by respondent no. 6 under his order dated 30-09-2015.

10. The circumstances thus warrant this court to consider that in order to have a proper adjudication in the matter, it would be worthwhile that the matter is relegated to the Deputy Commissioner (Supply), for re-adjudication of delay condonation in the proceeding filed by respondent no.6, and by the District Supply Officer, Beed under order dated 04-03-2010.

11. As such, the writ petition is allowed. Impugned order passed by the Hon'ble Minister dated 21-04-2017, order dated 30-09-2015 passed by Deputy Commissioner (Supply) Aurangabad and order dated 04-03-2010 passed by District Supply Officer, Beed, are set aside.

12. Having regard to aforesaid, it would be expedient that the matter is restored to the District Supply Officer, Beed. It may as well be noted that all the parties concerned be given due opportunity of hearing.

13. The proceedings before the District Supply Officer, Beed, be decided as early as possible, preferably within a period of three months from the date of receipt of writ of this order. Since it is being stated that respondent no.6 has already started running of business, the same shall be subject to decision by the District Supply Officer, Beed.

14. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

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