

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

913 WRIT PETITION NO. 1249 OF 2015

OMPRAKASH NATHMAL KABRA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Mehul Vikas Navandar.

AGP for Respondent Nos.1 to 4 : Mr. S. P. Tiwari.

Advocate for Respondent No.9 : Mr. Dhiraj Jethalia, h/f Mr. V. A. Bagdiya.

Advocate for Respondent No.12 : Mr. Dhananjay M. Shinde.

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CORAM : **V. K. JADHAV, J.**

DATE : 24th January, 2018.

ORDER:

. The learned counsel for Petitioner submits that being aggrieved by the order dated 17th June, 2013 passed by the District Supply Officer, Nanded cancelling thereby the kerosene licence possessed by the Petitioner, the Petitioner has preferred appeal bearing Appeal No.142 2013 before the Divisional Commissioner, Aurangabad. The learned counsel submits that the Divisional Commissioner, Aurangabad in identical facts decided the appeal in favour of one Balaji Raghunath Yemmewar, however, dismissed the appeal preferred by the present Petitioner. The learned counsel submits that being aggrieved by the same, the Petitioner has approached the State Government by filing the revision and the Honourable Minister by impugned order dated 5th August, 2014 also

dismissed the said revision. Hence, this writ petition.

2 The learned counsel for Petitioner submits that the purpose of filing this writ petition would be served if the matter is remanded to the Commissioner to decide the appeal afresh after considering the relevant Government Resolutions and the guidelines as referred in the appeal preferred by Balaji Raghunath Yemmewar, resident of Hadgaon, Taluka Hadgaon, District Nanded.

3 The learned counsel for Respondent No.12 / Ex-M.L.A. submits that since the Petitioner has made allegations for the first time against Respondent No.12 / Ex-M.L.A., Respondent No.12 has filed the reply and denied all the allegations made against him. The learned counsel submits that Respondent No.12 has no objection if any appropriate order passed in this writ petition on merits.

4 The learned counsel for Respondent No.9 submits that in fact Respondent No.9 has not given any statement against the Petitioner and the signatures of Respondent No.9 were obtained on blank papers.

5 Other Respondents whose statements shown to have

been recorded during the course of inquiry, though duly served, none appears for them.

6 On perusal of the order passed in appeal preferred by one Balaji Raghunath Yemmewar, it appears that in the identical facts, the Commissioner by referring the Government Resolutions and relying upon the various case laws, allowed the appeal. In the instant case also, the Respondents, whose statements came to be recorded, have not put their appearance before this Court though duly served and further Respondent No.9 has also disputed the statement as recorded by the authorities. In view of the same, it would be just and appropriate if the matter is remanded to the learned Divisional Commissioner by setting aside the orders passed by the Honourable Minister and also by the learned Commissioner. Hence, the following order:

ORDER

- I. The writ petition is hereby partly allowed. No costs.
- II. The order dated 13th May, 2015 passed by the Divisional Commissioner, Aurangabad in Appeal No.142 2013 and the order dated 5th August,

2014 passed by the Honourable Minister, are hereby quashed and set aside with the following directions.

- III. The matter is remanded to the learned Divisional Commissioner.
- IV. The Divisional Commissioner shall restore Appeal No.142 2013 to its original position and decide it afresh after giving an opportunity of being heard to all the concerned having due regard to the observations made by this Court while disposing of this writ petition.
- V. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]