

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 WRIT PETITION NO. 2513 OF 2018

Vimalbai Ramsing Girase
Age: - 56 years,
Occu. Business & Agriculture,
R/o At Post Amamlthe,
Taluka Shindkheda, District Dhule ... Petitioner.

Versus

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies &
Consumer Protection Department,
Mantralaya, Mumbai.
2. The Commissioner (Supply)
Nasik Division, Nasik,
District Nasik.
3. District Supply Officer,
District Supply Office,
Dhule, District Dhule.
4. Sub Divisional Officer,
Shirpur Division,
Shirpur, District Dhule
5. Shri N.S. Mali,
Senior Clerk,
Sub Divisional Office,
Shirpur, District Dhule. ... Respondents.

WITH

WRIT PETITION NO. 2528 OF 2018

Yashwant Shamrao Wadile
Age: - 55 years, Occu. Business,
R/o At Post Virdel,
Taluka Shindkheda, District Dhule ... Petitioner.

Versus

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies &
Consumer Protection Department,
Mantralaya, Mumbai.
2. The Commissioner (Supply)
Nasik Division, Nasik,
District Nasik.
3. District Supply Officer,
District Supply Office,
Dhule, District Dhule.
4. Sub Divisional Officer,
Shirpur Division,
Shirpur, District Dhule
5. Shri N.S. Mali,
Senior Clerk,
Sub Divisional Office,
Shirpur, District Dhule.

... Respondents.

WITH

WRIT PETITION NO. 2529 OF 2018

Tushar Gajmal Patil
Age: - 29 years, Occu. Business,
R/o At Post Lohagaon,
Taluka Shindkheda, District Dhule

... Petitioner.

Versus

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies &
Consumer Protection Department,
Mantralaya, Mumbai.
2. The Commissioner (Supply)
Nasik Division, Nasik,
District Nasik.

3. District Supply Officer,
District Supply Office,
Dhule, District Dhule.
4. Sub Divisional Officer,
Shirpur Division,
Shripur, District Dhule
5. Shri N.S. Mali,
Senior Clerk,
Sub Divisional Office,
Shirpur, District Dhule.

... Respondents.

WITH

WRIT PETITION NO. 2530 OF 2018

Shashikala Sattarsing Girase,
Age: - 55 years, Occu. Business,
R/o At Post Kumbhare,
Taluka Shindkheda, District Dhule

... Petitioner.

Versus

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies &
Consumer Protection Department,
Mantralaya, Mumbai.
2. The Commissioner (Supply)
Nasik Division, Nasik,
District Nasik.
3. District Supply Officer,
District Supply Office,
Dhule, District Dhule.
4. Sub Divisional Officer,
Shirpur Division,
Shripur, District Dhule
5. Shri N.S. Mali,
Senior Clerk,
Sub Divisional Office,
Shirpur, District Dhule.

... Respondents.

WITH
WRIT PETITION NO. 2531 OF 2018

Tapimata Mahila Bachat Gat,
Vasmane, Taluka Shindkheda,
District Dhule
Through Sunandabai Sambhaji Patil,
Age: - 52 years, Occu. Business,
R/o Taluka Shindkheda, District Dhule ... Petitioner.

Versus

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies &
Consumer Protection Department,
Mantralaya, Mumbai.
2. The Commissioner (Supply)
Nasik Division, Nasik,
District Nasik.
3. District Supply Officer,
District Supply Office,
Dhule, District Dhule.
4. Sub Divisional Officer,
Shirpur Division,
Shirpur, District Dhule
5. Shri N.S. Mali,
Senior Clerk,
Sub Divisional Office,
Shirpur, District Dhule. ... Respondents.

....

Mr. Amit S. Savale, Advocate for the Petitioner in all W.Ps.
Mr. Mr. V.S. Badakh, A.G.P. For Respondent-State in all W.Ps.

....

CORAM : V.L. ACHLIYA, J.

DATED : 13th APRIL, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith. By consent heard finally at the stage of admission.
2. Since the challenge raised in these petitions is identical, the petitions are heard together and decided by common order.
3. By these petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the orders in their respective matters passed by the District Supply Officer, Dhule i.e. respondent no.3 and confirmed in Appeal by respondent no.2. By the impugned order dated 15.12.2016, the respondent no.3 has cancelled the licence of the petitioners to run the fair price shops and also forfeited the deposit. The order passed by respondent no.3 confirmed in appeals by orders dated 13.04.2017 separately passed by respondent no.2 in the matter of each of the petitioners. Being aggrieved, the petitioners have preferred these petitions.
4. Heard the learned counsel for the petitioners and learned A.G.P. For the respondents. Perused the impugned orders.
5. Petitioners herein have approached with case that the impugned orders are not sustainable in law for the sole reason that the same are passed in complete breach of the principles of

natural justice and without application of mind. It is contended that respondent no.3 has passed the orders without giving an opportunity of hearing and before filing reply to show cause notice. It is further contended that though the petitioners have taken a specific plea in the appeals filed before respondent no.2 that orders were passed without giving opportunity of hearing and reply filed in response to show cause notice, the respondent no.2 has overlooked the same and passed the impugned orders.

6. By referring the orders passed by respondent no.2, it is pointed out that respondent no.2 has acted mechanically in passing the orders. Although the respondent no.3 has passed the orders by recording therein that the petitioners have not filed reply to show cause notice and case is decided without their reply, the respondent no.2 while deciding the appeal has recorded in the order that the respondent no.3 has passed the impugned orders after due consideration of response filed by the petitioners. In this background, the learned counsel for the petitioner submit that the orders passed by the respondent no.3 are passed without affording an opportunity of hearing and considering their reply, and the respondent no.2 too passed orders without application of mind.

7. It is further contended that the similar action was taken

against large number of fair price shop owners from Taluka Shindkheda, District Dhule, and the identical orders were passed by the respondent no.3, which were confirmed in appeal by respondent no.2. In revision preferred against those orders the Hon'ble Minister for Food and Civil Supplies, has allowed all such revisions. The orders passed by the District Supply Officer, Dhule and confirmed in appeal by Deputy Commissioner (Supply), Nasik Division, Nasik in all those cases were set aside and the District Supply Officer was directed to conduct an enquiry as to the allegations levelled against them in the show cause notice and after recording statement of card holders and after assessing as to whether any case of lifting of excess quota of food grain is made out pass fresh orders. It is contended that the case of the petitioners stands on same footing and therefore in the light of the order passed by the Hon'ble Minister for Food and Civil Supplies, in the identical matters the cases of the petitioners also be remanded back for fresh decision by setting aside the impugned orders.

8. On the other hand, the learned A.G.P. supported the orders passed by respondent nos.2 and 3 and objected the maintainability of petitions with contention that the petitioners have alternate remedy by way of revision to challenge the impugned orders before the Hon'ble Minister for Food and Civil

Supplies.

9. So far as the objection raised as to maintainability of the petitions, on the ground of availability of alternate remedy by way of revision before the State Government, I am of the view, the availability of alternate remedy itself not sufficient to operate as a bar to entertain petitions filed under Article 226 of the Constitution of India by High Court. It is quite settled position in law that not to entertain the writ petition, on the ground of availability of alternate remedy is a self imposed restriction by the High Court and not the prohibition under law. Normally, if an effective and efficacious remedy is available, the High Court prefer not to exercise its jurisdiction under Article 226 of the Constitution of India unless case of exceptional nature is made out to invoke its jurisdiction under Article 226 of the Constitution of India. However, the self imposed restriction no way prevent the High Court to exercise its discretion in an appropriate case, even if alternate remedy is available to party seeking exercise of jurisdiction under Article 226 of the Constitution of India. It has been consistently held by the Apex Court that availability of alternate remedy not to operate as a bar in at least three contingencies, (I) Where writ petition has been filed for enforcement of any of the fundamental rights or (II) Where there has been violation of principles of natural justice or (III) Where

the order of proceedings are wholly without jurisdiction or the vires of an act is challenged. In this context, it is useful to refer the decision of the Apex Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.***, reported in ***AIR 1999 SCC 22***. In para 14 and 15, the Court has observed as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

10. In the present case, respondent no.3 has passed orders without affording an opportunity of hearing to the petitioners and thereby acted in gross violation of principles of natural justice. In that view, the availability of alternate remedy by way of revision do not preclude this Court to entertain these petitions. It is apparent from the face of the orders passed that impugned

orders have been passed without giving an opportunity of hearing to the petitioners and conducting enquiry into the allegations against the petitioners. By solely relying upon some reports filed by the task force alleging some action and irregularity on the part of petitioners and other fair price shop owners from Shindkheda, District Dhule, the respondent no.3 has passed these orders. The date on which the orders were passed, the notice of hearing was not given to the petitioners. In view of the gross violation of principles of natural justice in passing the orders, it is a fit case wherein the petitions filed under Article 226 of the Constitution of India deserves to be entertained. I am, therefore, inclined to entertain the petition.

11. If we consider the show cause notice issued to petitioners leading to passing of orders by respondent no.3 to cancel the licence of fair price shops of petitioners and forfeiture of deposit, then action is based upon following deficiencies detected during the inspection of the task force.

I) During the period 2014-2016 excess quantity of wheat and rice was lifted by petitioners.

II) Petitioners have not displayed the list of beneficiary.

III) Petitioners have not displayed Rate card/chart of the prices of commodities.

12. If we consider the overall facts of the case, then the fact is not in dispute that petitioners were not heard by respondent no.3 before passing the impugned orders. So also the respondent no.3 has not conducted any independent enquiry to assess the correctness of lapses pointed out in the report submitted by task force. The date on which the orders were passed, no notice was issued to petitioners to appear for hearing. Thus, it can safely stated that the orders passed by respondent no.3 are passed in gross violation of principles of natural justice also not reflect the application of mind. The orders passed are cryptic and stereo type. The report filed by task force has been treated as sole basis to cancel the licence of the petitioners and forfeit their deposit.

13. Similarly, if we consider the orders passed by respondent no.2, then the orders passed by respondent no.2 are also found to be without application of mind and stereo type. It is pertinent to note that though the respondent no.3 has mentioned in the order that the petitioners have failed to appear and file reply in response to show cause notice, in contrast to that the respondent no.2 has observed in the order that respondent no.3 has passed

orders after considering the reply/inspection put forth by the petitioners. In fact the petitioners have taken specific ground in appeal that respondent no.3 has passed orders without affording an opportunity of hearing. The record reflects that the respondent no.3 has passed orders on 15.12.2016, whereas the reply filed by the petitioners were received in the office of respondent no.3 on 16.12.2016. This glaring aspect reflected from the order of respondent no.2 itself sufficient to show that he has passed the orders without application of mind and even perusing record and proceedings.

14. In view of the conclusion to which arrived at, that the impugned orders are passed without due opportunity of hearing to petitioners and passed without application of mind, same deserves to be set aside and cases needs to be remanded back for fresh decision of respondent no.3.

15. In the result, the petitions are allowed in terms of prayer clause (B) in respective petition. The impugned orders passed by respondent nos.2 and 3 in the matters of petitioners are set aside. The cases of the petitioners are remanded back for fresh decision to respondent No.3. Petitioners are directed to appear before the respondent no.3 on 1.6.2018 at 11.00 a.m. The respondent no.3 is directed to conduct the necessary enquiry in the matter of each of the petitioner and after conducting enquiry

and giving opportunity of hearing to the petitioners, pass a reasoned order. The petitioners are granted liberty to file additional reply, documents in support of their respective case in response to the show cause notice issued to them. The Respondent No.3 is directed to conclude the hearing and decide the matter before 30.06.2018.

16. Rule made absolute in above terms with no order as to costs.

(V.L. ACHLIYA)
JUDGE

SPR