

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 9829 OF 2018**

Sou. Jayashri Vithoba Yadav  
Through Power of Attorney Holder  
Vithoba Maruti Yadav

...Petitioner

*Versus*

The State of Maharashtra  
and others

..Respondents

....

Mr. Tanaji Mhatugade, Advocate for the Petitioner.  
Mr. S.D. Rayrikar, A.G.P. for Respondents No.1 to 3-State.  
Mr. Vanraj R. Shinde, Advocate for Respondent No.4.

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CORAM : R. G. KETKAR, J.

DATE : 04<sup>th</sup> DECEMBER, 2018

P.C.

1. Heard Mr. Tanaji Mhatugade, learned counsel for the petitioner, Mr. S.D. Rayrikar, learned A.G.P. for respondents No.1 to 3-State and Mr. Vanraj R. Shinde, learned counsel for respondent No.4, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 12.7.2018 passed by the Hon'ble Minister, Food, Civil Supplies and Consumer Protection. By that order, the Hon'ble Minister allowed the petition filed by the fourth respondent seeking review of the order dated 25.11.2015 passed by the

then Hon'ble Minister for Revenue. The Hon'ble Minister modified the order dated 20.2.2015 passed by the District Supply Officer, Kolhapur (for short, 'Supply Officer') and the order dated 30.5.2015 passed by the Deputy Commissioner (Supply), Pune Division, Pune (for short, 'Commissioner'). The Hon'ble Minister directed the Supply Officer to initiate process afresh for sanctioning licence by issuing proclamation by following the process laid down in the Government Resolutions.

3. The petitioner was a kerosene dealer and was issued licence from the year 2001. As the petitioner committed illegalities, show-cause notice dated 6.2.2015 was issued framing as many as nine charges was issued. The petitioner was called upon to show-cause as to why the kerosene licence No.209/2014 should not be cancelled. In pursuance thereof, the parties were heard by the Supply Officer. The Supply Officer also considered the report dated 14.1.2015 submitted by the Sub-Divisional Officer, Ajara-Bhudargad Sub-Division, Gargoti. By order dated 20.2.2015, the Supply Officer cancelled the kerosene licence of the petitioner.

4. Aggrieved by that decision, the petitioner instituted appeal under clause-24 of the Maharashtra Scheduled Commodities Retail Dealer's Licensing Order, 1979 (for short, 'Order') before the

Commissioner. By order dated 30.5.2015, the Commissioner dismissed the appeal. Aggrieved by these decisions, the petitioner instituted Revision Application before the Hon'ble Minister. By order dated 25.11.2015, the then Hon'ble Minister partly allowed the Revision Application and set aside the order dated 20.2.2015 passed by the Supply Officer as also the order dated 30.5.2015 passed by the Commissioner and restored the kerosene licence of the petitioner. The Hon'ble Minister further directed the Supply Officer to record the statements of the card-holders in presence of the petitioner as also inspect the record. If it is found that there is misappropriation, the amount should be recovered from the petitioner at the market rate. The Supply Officer also should take undertaking from the petitioner to the effect that in future she will not commit any irregularity or illegality while running the kerosene shop. Respondent No.4 instituted petition seeking review of that order. By the impugned order, the Hon'ble Minister has partly allowed the Review Petition, as indicated earlier. It is against this order, the petitioner has instituted the present petition.

5. In support of this petition, Mr. Mhatugade strenuously contended that no ground for reviewing the order dated 25.11.2015 is made out. Review Petition is filed on 13.4.2017. He heavily relied upon clause-16 of the Order which deals with the power of review. He

submitted that clause-16(1)(b) lays down that the Government may on an application made or *suo motu* at any time before the expiry of two years from the date of any order passed by it in revision under this clause, may review such order if it is satisfied about the reasons to do so on any of the following ground, namely,

- (1) discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced at the time when the order was passed or order was made;

6. Mr.Mhatugade submitted that in the first place, the review was not filed before the expiry of two years from 25.11.2015 when the revision filed by the petitioner was allowed. Secondly, there is no discovery of new and important matter of evidence produced by respondent No.4 before the Hon'ble Minister to enable him to seek review of the order dated 25.11.2015. That apart, even respondent No.4 has not made out a case of exercise of due diligence. He further submitted that the Supply Officer had passed order dated 20.2.2015 on the charges which were not covered by the show-cause notice dated 5.2.2015. As the order was passed traveling beyond the show-cause notice, the Hon'ble Minister was justified in setting aside the order dated 20.2.2015 passed by the Supply Officer and the order dated

30.11.2015 passed by the Commissioner. He, therefore, submitted that the petition requires consideration.

7. On the other hand Mr. Shinde supported the impugned order. He submitted that the contention of the petitioner that the review is filed beyond the period prescribed in clause-16 of the Order is factually incorrect. He submitted that the review petition was filed on 29.12.2015. He submitted that respondent No.4 issued reminder on 13.4.2017. In other words, the Review Petition was filed within a period of one and half months from 25.11.2015 which is well within time prescribed in clause 16(1)(b) of the Order. He has also taken me through the charges levelled in the show-cause notice as also the order passed by the Supply Officer on 20.2.2015 and the order dated 30.5.2015 passed by the Commissioner. He submitted that for the reasons stated in paragraph-6 of the order dated 25.11.2015, the Hon'ble Minister has partly allowed the revision application filed by the present petitioner herein. While passing the impugned order, the Hon'ble Minister has observed that the petitioner has committed several illegalities while running the kerosene shop. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the Supply Officer cancelled the kerosene licence by order dated 20.2.2015. Against that order, the petitioner preferred appeal before the Commissioner which was dismissed on 30.5.2015. Revision filed by the petitioner was partly allowed on the ground that the orders of the Authorities were beyond the charges mentioned in the show-cause notice. With the assistance of the learned counsel appearing for the parties, I have perused the show-cause notice dated 5.2.2015, the order dated 20.2.2015 passed by the Supply Officer as also the order dated 30.5.2015 passed by the Commissioner. After perusal of these documents, I do not find that the orders travelled beyond the show-cause notice. In view thereof, the reasons given in paragraph-6 of the order dated 25.11.2015 cannot be sustained. The Hon'ble Minister has rightly exercised the power of review under clause-16 of the Order while passing the impugned order. In view thereof, I do not find any merit in the submission of Mr.Mhatugade that the orders passed earlier by the authorities travelled beyond the show-cause notice.

9. Coming to the next submission of Mr.Mhatugade that review was not filed within two years from passing of the impugned order in terms of clause-16(1)(b) of the Order is concerned, equally I do not find

any merit in this submission. A perusal of the affidavit of respondent No.4 dated 3.12.2018 shows that Review was filed on 29.12.2015. The contention of the petitioner that review is filed on 13.4.2017 even if accepted, still it is within two years. In view thereof, I do not find any merit in this submission. Mr.Mhatugade submitted that respondent No.4 did not bring any new and important matter of evidence. He relied upon clause-16(1)(b) of the Order. Clause-16 of the Order reads thus:

**“16. Review or revision.--**

[1] (a) Government may, at any time before the expiry of two years from the date of any order passed by the licensing authority, or any other competent authority under this Order, call for the records of the proceedings underlying such order for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceedings and if it shall appear to the State Government that such order or proceedings should be modified, annulled or confirmed, it may pass such order as it deems it:

Provided that an Order shall be made under this clause unless the person who is likely to be aggrieved thereby has been given a reasonable opportunity of stating his case;

(b) Government may on an application made or *suo motu* at any time before the expiry of two years from the date of any order passed by it in revision under this clause may review such order if it is satisfied about the reasons to do so on any of the following grounds, namely,

- (1) Discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was passed

- or order was made; or
- (2) some mistake or error apparent on the face of the record; or
- (3) for any other sufficient reason.”

10. A perusal of the above clause shows that the power of review can be exercised when there is any mistake or error apparent on the face of record or for any other sufficient reason. In my opinion, there were several mistakes and errors apparent on the face of record of the order dated 25.11.2015 and, therefore, the Hon'ble Minister was justified in reviewing that order. Even otherwise, there is sufficient cause as the petitioner has committed several irregularities while running business of kerosene shop. In view thereof no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)