

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

37 WRIT PETITION NO.3178 OF 2019

PRAMOD ATMARAM PAWAR
VERSUS

THE HONBLE MINISTER FOOD CIVIL AND CONSUMER
PROTECTION DEPT AND OTHERS

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Advocate for Petitioner : Mr. A. D. Pawar
AGP for Respondent Nos. 1 to 6-State : Mr. N. T. Bhagat
Advocate for Respondent No.7 : Mr. A. S. Savale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner, original complainant, is aggrieved by the order dated 13.11.2018 passed by the Honourable Cabinet Minister, Food, Civil Supply and Consumer Protection, Government of Maharashtra (Shri Girish Bapat), who has over turned his earlier order dated 09.01.2018 by passing a diagonally opposite order on the ground of entertaining a review filed by respondent No.7, fair price shop license holder, under Order 24 (3) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975 framed under the Essential Commodities Act, 1955.

2. I have heard the strenuous submissions of the learned

advocate for the petitioner, the fair price shop license holder-respondent No.7 and the learned AGP on behalf of respondent Nos. 1 to 6.

3. Though the learned AGP and Mr. Sabale, learned advocate have strenuously supported the impugned order, I find that the same Honourable Minister had concluded after a detailed hearing and upon perusing the entire record available vide order dated 09.01.2018 that the authorities have investigated into the matter and it is noticed that there are serious misdeeds committed by the fair price shop license holder. The grains are not distributed to the card holders regularly, receipts are not being issued etc. Serious misdeeds appeared from the record and therefore, considering the importance of the public distribution system and the need of the card holders at issue, the said fair price shop license holder cannot be trusted and the license cannot be restored.

4. However, the Honourable Minister, while reviewing his own order, vide his further order dated 13.11.2019, has concluded that the family members of the license holder are dependent upon the earnings from the fair price shop. She must be given an

opportunity to conduct a business and by imposing a penalty of Rs.10,000/-, the license can be restored.

5. The learned advocate for the petitioner relies upon the earlier orders passed by this Court in ***Writ Petition No.8649 of 2018 (Sahebrao Maruti Waghmare vs. The State of Maharashtra and others)***, ***Writ Petition No. 10800 of 2017 (Sakharam Pandurang Rathod vs. The State of Maharashtra and others)***, ***Writ Petition No. 2701 of 2015 (Rajendra Devidas vs. State of Maharashtra and others)*** and ***Writ petition No. 10343 of 2017 (Digambar Karbhari vs. The State of Maharashtra)*** and submits that this Court had earlier made certain observations against the same Honourable Minister by order dated 11.09.2017 in Writ Petition No. 10800 of 2017 in the matter of Sakharam Pandurang Rathod (*supra*). This Court has once again passed orders setting aside similar orders of the same Honourable Minister in Writ Petition No. 2701 of 2015 (Rajendra vs. State of Maharashtra) and in Writ Petition No. 10343 of 2017 (Digambar vs. The State of Maharashtra).

6. He then points out the observations of this Court in the case of Sakharam Pandurang Rathod (*supra*) in paragraph Nos. 9 and

14, wherein this Court has held that the Honourable Minister's impugned order practically means that the respondent No.5 has robbed people once, he should refrain from robbing them again and he should be given an opportunity to conduct his business. He further relies upon a reasoned order passed by this Court dated 14.01.2019 in Writ Petition No. 8649 of 2018 in the matter of Sahebrao Maruti Waghmare Vs. The State of Maharashtra and others, wherein an identical order passed by the same Honourable Minister was set aside.

7. The Honourable Supreme Court has settled the law on deciding review petitions in the matter of ***Lily Thomas Vs. Union of India, AIR 2000 SC 1650*** concluding that a review application is to be entertained only if there is an error apparent on the face of the order. A review application is not to be entertained as if the original proceedings are once again being reconsidered. I do not find any such conclusion arrived at by the Honourable Minister in the impugned order dated 13.11.2018, except that he holds that as the family members of the respondent No.7 depend upon the income from the fair price shop, she should be granted an opportunity to conduct a business.

8. In view of the above, this petition is allowed. The impugned order dated 13.11.2018 in Review Application No. 1417/P.K.-207/NP-23 passed by the Honourable Minister is quashed and set aside. The review application filed by respondent No.7 stands rejected.

9. Needless to state, if respondent No.7 is desirous of challenging the order of the Honourable Minister dated 09.01.2018, by which her revision application was rejected, she would be at liberty to do so. Needless to state, respondent Nos. 3 and 4 shall forthwith stop supplying grains to respondent No.7 and shall allot the same, either to the earlier substituted fair price shop No.42 operated by the Jaibhim Mahila Bachat Gat or any other fair price shop which is closest to the card holders registered with respondent No.7's shop.

(RAVINDRA V. GHUGE, J.)

vsm/-