

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

WRIT PETITION NO. 1457 OF 2014

Sau. Meena Devidas Lahire,
Age 35 years, Occ. Household
and Business,
R/o. Tilaknagar, Kopargaon,
Tq. Kopargaon, District Ahmednagar.

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary for
Food, Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai.
2. The Collector, Ahmednagar,
District Ahmednagar.
3. The District Supply Officer,
Ahmednagar, Dist. Ahmednagar.
4. The Tahsildar, Kopargaon,
Tq. Kopargaon, District Ahmednagar.
5. Rajendra Vishwanath Bagul,
Age 51 years, Occ. Business,
R/o. Tilaknagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

... RESPONDENTS

...

Mr. V. B. Jadhav, h/f Mr. A. V. Hon, Advocate for Petitioner.

Mr. M. M. Nerlikar, APP for Respondent Nos.1 to 4.

Mr. S. T. Shelke, h/f Mr. P. V. Balkhande, Advocate for Respondent No.5.

...

CORAM : **T. V. NALAWADE, J.**

DATE : 13th February, 2019.

JUDGMENT:

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The petition is filed to challenge the order made by the Honourable Minister for Food, Civil Supply and Consumer Protection Department, Maharashtra by which the Honourable Minister set aside the order of Commissioner Supply, Nashik Division, Nashik, which was against Respondent No.5, Rajendra Bagul. The Commissioner had set aside the order of District Supply Officer by which licence was granted to Respondent No.5 in respect of fair price shop.

3 The submissions made and record show that in the year 1997, one incident of irregularity was noticed as against Respondent No.5 and other persons holding similar licence for other shops. One transport vehicle was intercepted in which huge quantity of food grains were found and they were being taken for sale in black market. During inquiry, it revealed that quantity like two quintal wheat, around

one quintal sugar, some Palm Tel from the shop of Respondent No.5 was sold in black market by making false record of distribution in fair price shop. Report was given in respect of that incident to police and Crime at C.R. No.7 of 1997 was registered against Respondent No.5 and two others in Kopargaon Police Station for the offences punishable under Sections 7 and 8 of the Essential Commodities Act, 1955. During pendency of that case, show cause notice was issued against Respondent No.5 in respect of suspension of his licence. After giving opportunity to Respondent No.5 and on the basis of record of inquiry, the order of cancellation of his licence came to be passed on 17th April, 1997. This order of District Supply Officer was challenged before the Deputy Commissioner Nashik Division in revision, but the revision came to be dismissed. The circumstance that there was no explanation with Respondent No.5 with regard to aforesaid irregularity was considered at that time. The learned counsel for Respondent No.5 submitted that Respondent No.5 had filed proceeding before the State Government, but he had not prosecuted the said matter. In any case, it can be said that the order of cancellation of licence passed by the competent authority had become final.

4 It appears that Respondent No.5 came to be acquitted on 30th October, 2012 in the case filed in the aforesaid crime. After that, he filed application before the District Supply Officer for restoring his licence. He took the stand that the Criminal Court had acquitted him and so he was entitled to get restoration of licence. By accepting that contention, the District Supply Officer made the order of restoration of licence in his favour.

5 The present Petitioner is also having a fair price shop at Tilak Nagar, which is adjacent to Mahadeo Nagar. After cancellation of the licence of Respondent No.5, the card holders of his shop were attached to the shop of present Petitioner. She filed revision against the order of District Supply Officer made on 8th January, 2013 before the Deputy Commissioner Supply Nashik. The Commissioner allowed the revision and set aside the order of District Supply Officer. The Honourable Minister has set aside the order of Deputy Commissioner by holding that the circumstance that criminal case was decided in favour of Respondent No.5 was relevant circumstance and this circumstance was not considered by the Deputy Commissioner. On

that ground, the order of Deputy Commissioner is set aside by the Honourable Minister.

6 The submissions made and record show that the licence given to Respondent No.5 was cancelled on the basis of record of inquiry available to the competent authority. That order had become final in 1997. In view of these circumstances, it was necessary for the authority to follow the routine procedure for issuing licence if any new shop was to be created for Mahadeo Nagar in place of shop, which was run by Respondent No.5. Only because in criminal case Respondent No.5 was acquitted, the order of cancellation passed in the year 1997 could not have been reviewed by the authority. The manner of proof is different for inquiry conducted for cancellation of licence and criminal case filed in respect of the same incident. Only the principles of natural justice are required to be followed by the competent authority and subjective satisfaction of the competent authority is important for taking the decision. There was no explanation with Respondent No.5 with regard to irregularity and there was material to show that he had diverted food grains, edible oil etc. to black market by creating false record in his shop. That was a case

of misappropriation as in fair price shop these articles are sold at subsidized price. In view of these circumstances and as the matter involved immoral conduct of Respondent No.5, the authority could not have reviewed its decision, which had become final many years back. These aspects are not considered by the Honourable Minister. Due to such persons, beneficiaries of public distribution system are not getting the necessary items of their life and persons like Respondent No.5 are making money by selling that stock in black market. In such case, no lenient view can be taken. This Court has no hesitation to hold that the Honourable Minister has committed serious error in deciding the matter in favour of Respondent No.5. On this point, the previous decision of this Court in the cases reported as **2014 (1) Mh.L.J. 579**, (*Balbhim s/o Sukhdeo Limbkar Vs. State of Maharashtra and others*) and **2012 (6) Bom.C.R. 602**, (*Shivaji Tulshiram Thakre Vs. State of Maharashtra & Ors.*) can be referred. In those cases, this Court laid down that on humanitarian ground the licence issued in such cases cannot be restored. So, the order of Honourable Minister needs to be set aside. However, it needs to be made clear that the Petitioner has no vested right to keep with her the ration cards in respect of the shop of Respondent No.5 forever. Convenience of card

holders is first thing, which needs to be considered by the authority and card holders cannot be compelled to go to other village including adjacent village. If there is necessity of creation of shop in the village where licence was given to Respondent No.5, after following procedure, shop needs to be allotted to that village. In the result, the following order is passed:

ORDER

- I. The petition is partly allowed.
- II. The order made by the Honourable Minister in favour of Respondent No.5 and the order made by the District Supply Officer in favour of Respondent No.5 for restoring the licence which was cancelled, is hereby set aside. However, it is made clear that the Petitioner is not entitled to retain or claim the right in respect of ration cards, which are attached to her shop due to cancellation of licence, which was issued in the past in favour of Respondent No.5.
- III. The Authority, State Government is to take steps within 45 days to see that separate arrangement including giving of licence to any person other than Respondent No.5 are taken and convenience of the people of village Mahadeo Nagar is given priority.

- IV. The quota given in possession of Respondent No.5 is still there, it is to be taken by the District Supply Officer as per the procedure and the price is to be returned to Respondent No.5.
- V. Rule is made absolute in those terms.

[T. V. NALAWADE, J.]

ndm