

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PETANT APPEAL NO. 150 OF 2009
WITH
CIVIL APPLICATION NO. 14983 OF 2011
WITH
CIVIL APPALICATION NO. 1809 OF 2010
IN
WRIT PETITION NO.1897 OF 2008

Baburao S/o Kisanrao Birajdar,
Age 60 years, Occu. Agril.
R/o Mangrul, Taluka Ausa,
District Latur.

...Appellant.

Versus

1. The State of Maharashtra,
through State Minister,
Food, Civil Supply and
Consumer Protection
Department, Mantralaya.
Mumbai - 32.
2. The State of Minister, Food
Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai 32.
3. The District Supply Officer,
Latur, District Latur.
4. Pralhad S/o Ambadas Bedre,
Age 70 years, Occu. Agril.
R/o Mangarul, Taluka Ausa,
District Latur.
5. Tahsildar, Ausa,
Taluka Ausa, Dist. Latur.

...Respondents.

Mr. N.P. Patil (Jamalpurkar), Advocate for Appellant.

Mr. M.M. Nerlikar, AGP for State/Respondent.

Mr. A.S. Kadam, Advocate for respondent No. 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 8th January, 2019.

JUDGMENT :

1) The appeal is filed to challenge the order made by the learned Single Judge of this Court in Writ Petition No. 1897/2008 dated 28.8.2008. Both the sides are heard. The learned counsel for respondent No. 4 Pralhad Bedre did not turn up.

2) The aforesaid writ petition was filed by present appellant to challenge the order made by the Hon'ble Minister, Food, Civil Supply and Consumer Protection Department, Government of Maharashtra dated 2.2.2008. By this order, the Hon'ble Minister had allowed the revision filed by Pralhad Bedre. The revision was filed against the order made by Supply Office of District by which the application for renewal of licence issued to Pralhad Bedre on 18.10.1999 was to be renewed. At the relevant time, there was stay to Government Resolution (G.R.) dated 14.6.1999. Under this G.R., the licence was issued in favour of Bedre on 18.10.1999. The learned counsel for appellant placed reliance on the decision given by the Division

Bench of this Court in Writ Petition No. 4649/2009 (Sanjay s/o. Khanderao Surwase Vs. The State of Maharashtra and Ors.) decided with other similar matters on 9.2.2011. The relevant portion, reasoning given by the Division Bench is at para Nos. 14 to 16 and para No. 23 and that portion is as under :-

"14] We have perused the G.Rs. of 1999 and 2000. It appears that the G.R. of 2000 was issued in view of the representations made by the then existing kerosene dealers' license holders stating that in view of the licenses issued in pursuance of the G.R. of 1999, their kerosene quota was likely to be substantially reduced and thereby, they would suffer financial loss and as a result thereof, they would not be able to maintain their families. It is against this backdrop, the G.R. of 2000 was issued and the benefits extended under the G.R. of 1999 were withdrawn. This apprehension stands proved in view of the orders passed by the Tahsildar which are impugned in the second group of Writ Petitions. These orders show that in fact kerosene quota of the objectors was reduced. In view thereof, it cannot be stated that the objectors have no locus and that their right were not affected by the impugned orders, whereby the applications for renewal made by the applicants were allowed. That apart, the objectors were added as respondents in the revision application itself and they were heard by the Minister. Therefore, they cannot be stated to have no locus in filing the petitions challenging the orders passed by the Minister in revision applications.

15] The policy to issue licenses to women need not be considered in these Writ Petitions. The challenge in the Writ Petitions is to the order of renewal of licenses which were issued pursuant to the G.R. of 1999, which was withdrawn by the G.R. of 2000. Therefore, merely because the policy to issue license to women was continued even in the G.R. of

2000, does not mean that the applicants are entitled for renewal of their licenses which were issued on the basis of the withdrawn G.R. of 1999. Moreover, out of the six applicants in these petitions, only one applicant is a woman, which fact cannot be overlooked.

16] We do not find any substance in the submission of Mr.Salunke that merely because the G.R. of 1999 was withdrawn, that does not lead to an inference that the licenses issued in pursuance thereof stood cancelled. The question involved in these Writ Petitions, in our opinion, is whether renewal of the license was correct and not cancellation of the licenses. Though we cannot concede to the submission of Mr.Salunke, the propriety demands that the Minister ought not have renewed the licenses which were issued pursuant to the G.R. of 1999 since the said G.R. stood withdrawn/modified substantially by the G.R. of 2000. In other words, the order of renewal cannot be sustained in law, since the source of issuing the licenses i.e. the G.R. of 1999 to the applicants in 1999 itself did not exist in view of the subsequent G.R. of 2000. The test is whether fresh license could be issued pursuant to the G.R. of 1999, after the G.R. of 2000 was issued. Since in our opinion, answer to this question is in the negative, the impugned orders of renewal passed in 2008-2009 are also wrong and illegal and deserve to be set aside.

17]

23] In these circumstance, we allow the Writ Petitions in the first group, setting aside the orders passed by the Minister dated 19/11/2008 which is challenged in Writ Petition No.4649/2009 and Writ Petition No.7299/2008 and the orders dated 3/3/2009 and 19/10/2007 which are subject matter of Writ Petition Nos.2063/2009 and 2648/2009 and dismiss the petitions in the second group of Writ Petitions. Rule is disposed of in terms of this

judgment with no order as to costs.”

3) The aforesaid reasoning given by this Court shows that the licence which was renewed in favour of Bedre by Hon'ble Minister was issued under G.R. of 1999 which itself was withdrawn by the Government and so, the benefit of that G.R. could not have been given to Bedre. Though this circumstance is there, that circumstance was not addressed by the learned Single Judge of this Court in aforesaid writ petition and the learned Single Judge refused to interfere in the order. For the reasons given by this Court in aforesaid Writ Petition No. 4649/2009 decided with other matters, this Court holds that the decision given by Hon'ble Minister in favour of Bedre in the present matter cannot sustain in law. For the same reasons, this Court holds that the appeal needs to be allowed.

4) In the result, the appeal is allowed. The order made by the learned Single Judge of this Court in Writ Petition No. 1897/2008 is hereby set aside. Writ Petition No. 1897/2008 ought to have been decided by Division Bench as the order was made by Hon'ble Minister. Now this Court is deciding the matter and so, the Writ Petition No. 1897/2008 is hereby allowed and

the order made by the Hon'ble Minister dated 2.2.2008 in favour of Bedre is hereby set aside. Civil Applications, if any, are disposed of. Rule made absolute in those terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/