

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

REVIEW APPLICATION NO.75 OF 2017 IN
WRIT PETITION NO.11088 OF 2016

Jogeshwari Mahila Self Assistance Saving
Group (Bachat Gat) at Chandekasare,
Tq. Kopargaon, District Ahmednagar
through its Chairman,
Sou. Pushpa w/o Ramesh Hon
Age 40 years, Occu. Household,
R/o Chandekasare, Tq. Kopargaon,
District Ahmednagar

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REVIEW APPLICANT
(Original Petitioner)

VERSUS

1. The State of Maharashtra
Through the Secretary for
Food, Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai
2. The Deputy Commissioner,
Food, Civil Supply and Consumer
Protection, Nashik Division,
Nashik
3. The District Supply officer,
Ahmednagar, Dist. Ahmednagar

(Copy of respondent nos.1 to 3 is
to be served on the Government
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad)

4. Samata Mahila Self Assistance
Saving Group (Bachat Gat)
At Chandekasare, Tq. Kopargaon,
District Ahmednagar
through its Chairman
Smt. Savita Subhash Jawale,
Age 45 years, Occ. Household
R/o Chandekasare, Tq. Kopargaon,
District Ahmednagar.

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RESPONDENTS

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Shri V.D. Salunke, Advocate holding for
shri N.D. Sonawane, Advocate for applicant
Shri A.S. Shinde, A.P.P. for Respondents No.1 to 3
Shri V.D. Sapkal, Advocate for Respondent No.4

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CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 30th August, 2019

Date of pronouncing judgment : 13th November, 2019

J U D G M E N T :

Heard learned counsel for the parties.

2. This Application has been filed for review of the order dated 13.2.2017, dismissing Writ Petition No.11088/2016, filed by the applicant herein.

3. The applicant "Jogeshwari Mahila Self Bahat Gat (for short the applicant Bachat Gat) is based at village Chandekasare, Taluka Kopargaon, District Ahmednagar. A proclamation dated 19.11.2012 was issued by the respondent No.3 - District Supply Officer (D.S.O.), inviting applications for two fair price shops and one retail kerosene outlet licence to be issued/ allotted to eligible persons/ groups. The applications were required to be submitted on or before 15.12.2012 along with requisite documents. In response to the proclamation, the applicant Bachat Gat and seven others

preferred applications for both – fair price shops and retail kerosene outlet as well. After scrutiny of the applications in the light of necessary requirements, the applicant Bachat Gat came to be selected for grant of a fair price shop. Accordingly, the respondent No.3 – D.S.O. issued order dated 15.1.2013.

4. The respondent No.4 is Chandekasare based Mahila Self Assistance Bachat Gat. It was one of the applicants. Being aggrieved and dissatisfied by the order dated 15.1.2013, the respondent No.4 preferred revision to the Deputy Commissioner, Food, Civil Supplies and Consumer Protection, Nasik (respondent No.2).

Since the respondent No.4 was unsuccessful in the revision application, it preferred second revision to the respondent No.1 – State of Maharashtra in Food, Civil Supplies and Consumer Protection Department. The Minister for Foods and Civil Supply, by order dated 6.10.2016, allowed the revision preferred by the respondent No.4. The order passed by the D.S.O., granting the applicant Bachat Gat fair price shop came to be set aside. The Minister did not stop at that. He was pleased to direct to grant the respondent No.4 the licence to run fair price shop.

5. The applicant Bachat Gat took exception to the order of

the Minister, dated 6.10.2016 by filing Writ Petition (Writ Petition No.11088/2016). Learned Single Judge of this Court was pleased to dismiss the Writ Petition by order dated 13.2.2017 with following observations :-

“3. From the affidavit-in-reply filed on behalf of respondent No.4, it becomes quite clear that this petitioner has managed to obtain Fair Price Shop in its favour by submitting documents which were not in existence before cut off date of 15.12.2012. This is discernible from the documents filed along with the petition and particularly documents at Page No.30 and 31 which appear to have been prepared on 19.12.2012. This is nothing but fraud played on the Government Authority. This petitioner does not deserve indulgence by this Court. The impugned order need not be interfered with.

6. The applicant Bachat Gat preferred Special Leave Petition against the judgment and order dismissing the Writ Petition. The Hon'ble Supreme Court of India, by its order dated 22.2.2017, allowed the Special Leave Petition in terms of the following order :-

“It is submitted by learned counsel appearing for the petitioner that the revisional authority has recorded a finding that no resolution was passed and, therefore, if the petitioner was disqualified, the respondent No.4 could not have been granted in the absence of any resolution. Additionally, it is

submitted by him that the second revision was not maintainable before the concerned Minister.

On a perusal of the order passed by the High Court, we find that these two contentions though raised, have not been dealt with by the High Court. Therefore, we grant liberty to the petitioner to file an application for review before the High Court within two weeks hence and request the High Court to deal with the same with quite promptitude. In case the order passed in review is not favourable to the petitioner, liberty is granted to him to challenge the impugned order dated 13th February, 2017, as well as the passed in review.”

7. The applicant Bachat Gat is, therefore, before this Court.

Shri V.D. Salunke, learned counsel for the applicant Bachat Gat would submit that, no second revision is maintainable. The order passed by the Minister was, therefore, non est. In support of his contentions, the learned counsel placed reliance on (1) **Gurudassing Nawoosing Panjwani Vs. State of Maharashtra & ors. [(2016) 2 SCC 213]** and (2) **Matru Ashish Co-operative Housing Society Ltd. Vs. Bhagwan V. Moorjaney & ors. [2004 (5) Bom.C.R. 737]**.

The learned counsel would further submit that, even if it is accepted that second revision was maintainable, the Minister

exceeded his jurisdiction in granting the respondent No.4 licence to run fair price shop. According to learned counsel, this Court is expected to give findings only on these two issues. The learned counsel meant to say that, the grounds on which the Writ Petition was dismissed by order dated 13.2.2017 could not be reopened.

8. Shri V.D. Sapkal, learned counsel for respondent No.4 would, on the other hand, submit that, since the order dated 13.2.2017 dismissing the Writ Petition has been set aside, all questions involved in the matter get revived. The learned counsel took me through the relevant documents on record to ultimately submit that the applicant Bachat Gat forged certain documents to bag licence of fair price shop. According to learned counsel, it was nothing but a fraud practiced on the authorities concerned. The petition has, therefore, rightly been dismissed. On the other two questions, the learned counsel would submit that, by virtue of Clause 24 of the Maharashtra Scheduled Commodities (Regulation of) Order, 1975, second revision to the State Government is maintainable. According to him, the Minister was well within his jurisdiction to allow the respondent No.4's application for grant of the licence of fair price shop.

9. The learned counsel for the applicant Bachat Gat was asked as to what he wanted to say as regards the questions on the

basis of which the Writ Petition came to be dismissed. He preferred not to make any submissions since according to him, the said issue could not be reopened.

10. As per the proclamation dated 19.11.2012, applications were required to be submitted on or before 15.12.2012 along with certain documents. On perusal of affidavit filed by the respondent No.4 and documents produced along with the same, it is found that a few of the documents had been brought into being post 15.12.2012 and came to be submitted to the authority concerned. There is one more startling fact. After the application of the applicant Bachat Gat found favour for grant of the licence, the respondent No.3 D.S.O., by his communication dated 11.1.2013 asked the Block Development Officer, Kopargaon to ensure that the proposal of the applicant Bachat Gat is placed before Women's Gram Sabha of the village for approval. There is on record the so called resolution passed in the Women's Gram Sabha dated 30.12.2012, recommending the applicant Bachat Gat for grant of the licence. The Secretary of the applicant Bachat Gat was the Sarpanch of the village for the preceding term. The elections for the Village Panchayat took place a few days before 30.12.2012. The Secretary of the Bachat Gat, who was the Sarpanch of the village, did not contest the said elections. There was other elected body of the Village Panchayat. It is true that the duly elected body had not taken charge of the office. The

proceeding book does not contain any record indicating Women's Gram Sabha to have been held. As such, the said document appears to have been created so as to suit the purpose. There are some other documents as well to suggest that those had not been submitted along with the application, but came into being and submitted later on. As such, the order dated 12.3.2017, dismissing the Writ Petition on the ground of fraud can, in no way, be reviewed.

11. So far as regards question of maintainability of second revision is concerned, it is to be stated that the proceedings before the concerned Minister were initiated pursuant to Clause 24 of the Maharashtra Scheduled Commodities (Regulation of) Order, 1975. For better appreciation, Clause 24 is reproduced below :

24. Power to call for and examine records of proceedings and revise orders :-

(1) If any person is aggrieved by an order passed by the Collector, the Commissioner, and if any person is aggrieved by an order passed by the Commissioner, the State Government, may, on an application made to him or it by the aggrieved person, within thirty days from the date of receipt of such order, stay the enforcement of such order. The Commissioner or the State Government, as the case may be, may also call for and examine the record of any enquiry or proceedings of the concerned Officer exercising or

failing to exercise the powers under this Order to add, to amend, vary, suspend or cancel any authorization issued or deemed to be issued under clause 3 or any supply card issued or deemed to be issued under clause 6 or to forfeit the deposit for any part deemed thereof paid or deemed to be paid by a fair price shop or authorized agent as security or to take any other action under the provisions prescribed by or under this order, for the purpose of satisfying himself or itself as to the legality or propriety of the order passed by such officer, and as to the regularity of the proceedings of such officer and may pass such order thereon as he or it, as the case may be, thinks fit :

Provided that State Government may at any time, during the pendency of any enquiry or proceedings or within one year from the date of any order passed by any officer under the provisions prescribed by or under this order, suomotu stay any pending enquiry or proceedings or the enforcement of such order if considered necessary and may call for and examine the record of any such enquiry or proceedings and pass such order as it thinks fit :

Provided further that, the Commissioner or the State Government, as the case may be, shall not pass any order under this clause which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

(2)”

12. In view of the aforesaid specific provision, it has to be observed that, second revision is maintainable before the Minister and consequently, the order passed by the Minister concerned cannot be termed to have been passed without jurisdiction.

13. The learned counsel for the applicant Bachat Gat has relied on provisions of Section 154 of the Maharashtra Co-operative Societies At. The judgment in case of Gurudassing (supra) pertains to Section 247 of the Maharashtra Land Revenue Code. While the judgment in case of Matru Ashish (supra) speaks of Section 154 of the Maharashtra Co-operative Societies Act. It needs to be restated that the proceedings at hand are governed by the Maharashtra Scheduled Commodities (Regulation of) Order, 1975. The provisions of the M.L.R.C. and Maharashtra Co-operative Societies Act are no way relevant here.

POINT NO.2 : The Minister set aside the order granting licence to the applicant Bachat Gat. He, however, did not stop at that. He was pleased to direct to grant respondent No.4 fair price shop licence. The learned counsel for the respondent No.4 might have been justified to say that Clause 24 of the Maharashtra Scheduled Commodities (Regulation of) Order, 1975 authorises the State

Government to pass such order thereon as it thinks fit.

14. In response to the proclamation dated 19.11.2012, seven applications were received. Three of them were preferred by individuals. The remaining four applications were of Mahila Bachat Gats. (Women's Saving Groups). These four applications came to be assessed. Method of allotting of marks was adopted for selection. As per the record, the applicant Bachat Gat secured more marks. Since the Minister was justified in setting aside the order granting licence to the applicant Bachat Gat, he was expected to consider merit in terms of marks obtained by other applicants. The charts containing the marks indicate that respondent No.4 and one more Women's Bachat Gat by name "Om Guru Mahila Swayam Sahayyata Mahila Bachat Gat" secured equal marks. Although the latter Women's Bachat Gat was not a party to the proceedings before the Minister, its claim got defeated by the impugned order of the Minister. Proviso to clause 24 of the Maharashtra Scheduled Commodities (Regulation of) Order, 1975 states that, Government shall not pass any order under this clause which adversely affects any person unless such person is given a reasonable opportunity of being heard.

The Minister was also not justified in observing that requirement of resolution in Women's Gram Sabha of the village was not a requirement as per the proclamation dated 19.11.2012, inviting

applications. True, the proclamation did not make any whisper as regards the said requirement. The communication dated 11.1.2013 between the respondent No.3 D.S.O. and the Block Development Officer indicates that it was the requirement in terms of the Government Resolution dated 3.11.2007, post selection of an applicant.

15. For the aforesaid reasons, the Minister was not justified to pass the order directing to grant licence to run fair price shop to the respondent No.4. The order of the Minister needs to be set aside to this extent.

16. In the result, the review application succeed in terms of the following order :-

ORDER

The review application is allowed.

The order dated 13.2.2017 passed in Writ Petition No.11088/2016 is modified as under :

Writ Petition No.11088/2016 is partly allowed.

The impugned order dated 6.10.2016, passed by the Minister, Food, Civil Supplies and Consumer Protection

is set aside to the extent it directs the authorities to grant the respondent No.4 licence to run a fair price shop.

(R.G. AVACHAT)
JUDGE

fmp/-