

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14607 OF 2017

Shaikh Ahmed Ali S/o Ali Hyder,
Age : 77 years, Occu : Business,
R/o. Shevdi, (Bk.), Tq. Loha,
Dist. Nanded,
Through its Power of Attorney Holder;
Shaikh Mehraj S/o Shaikh Ahmed Ali,
Age : 31 years, Occu : Business,
R/o. As above

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Civil Supplies and Consumer Protection
Mantralaya, Mumbai – 32.
- 2) District Supply Officer, Nanded,
Collector Office, Nanded,
Dist. Nanded
- 3) The Tehsildar Loha,
Tq. Loha, Dist. Nanded
- 4) Baburao S/o Ramrao Phulzulke,
Age : 64 years, Occu : Agriculture,
R/o. Village Shevdi, Tq. Loha,
Dist. Nanded

.. Respondents

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Mr. S.S. Kazi, Advocate for petitioner
Mr. S.N. Kendre, AGP for respondent-State
Mr. V.D. Sapkal, Advocate h/f. Mr. R.P. Bhumkar, Advocate for
respondent no.4

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 23-01-2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. Learned counsel Mr. Kazi appearing for petitioner refers to various documents particularly, communications dated 29-02-2016 and 20-12-2017 and communication dated 29-03-2016 by respondent no. 3 and *panchanama* dated 22-03-2016 annexed to petition at page 38 and documents annexed at Exhibit - "C" as well as order dated 28-04-2016 passed by respondent no. 2 – District Supply Officer. He submits that despite this being the position, yet, said order dated 28-04-2016 had been purportedly reviewed under order dated 13-06-2016 annexed to petition at Exhibit - "I", resulting into complete reversal to the earlier position.

3. He submits that authority – District Supply Officer under the scheme of Maharashtra Essential Commodities Regulations and Dispute Order, 1975, is not vested with powers of reviewing its decision. He submits that unless the provisions specifically invests an authority with the power to review, the authority would not have *suo-motu* power to review its order. He submits that this is discernible from the scheme of order,

particularly, clause 24 thereof, which specifically deals with powers to authorities and that it is only the State government under sub-clause (2) thereof which is vested with such powers. He submits that despite said ground being specifically taken before appellate authority, the Deputy Commissioner had declined to interfere with order dated 13-06-2016 without taking into account and applying mind to grounds taken and submissions made on behalf of petitioner. In the revision as well, the grounds had been taken before revisional authority, however, those had been ignored and overlooked. He submits that even on merits, despite several events referred to in order dated 28-04-2016, considerations therein have been completely overlooked and ignored by appellate and revisional authorities without giving attention to the same, on a completely different aspect and without sufficient opportunity being given to petitioner to address himself on the same, have rendered decisions which are in gross violation of principles of natural justice. He, therefore, urges to set aside the order dated 13-06-2016 and subsequent orders of Deputy Commissioner and revisional authority.

4. On the other hand, Mr. Sapkal, learned counsel h/f. Mr. Bhumkar, learned counsel for respondent no. 4 submits that powers under section 3 of the order, authorization to a person are

administrative powers and the authority is comprehensively vested with the power to grant, suspend and revoke authorization.

5. He, therefore, submits that decision dated 13-06-2016 cannot be faulted with on the ground that the authority is not vested with power to review. He submits that all relevant considerations which have weighed with the authority while passing order dated 13-06-2016 have been sustained by the subsequent two authorities. He, therefore, submits that there is no substance in writ petition and same deserves to be thrown out.

6. Perusal of order dated 16-11-2016 passed by Deputy Commissioner (Supply), Aurangabad and order dated 01-11-2017 passed by revisional authority though purport to make reference to various aspects, those fall short to account for grounds taken by present petitioner questioning power, jurisdiction and authority of respondent no.2 to pass order dated 13-06-2016, to take up the matter and substitute its earlier decision and as to whether it would amount to reviewing its order. An argument has been advanced on behalf of petitioner that said order would depict that relevant aspects and the events while passing the earlier orders have been ignored. Those aspects do not appear to have been addressed to under the orders of Deputy Commissioner and the revisional authority.

7. In the circumstances, it appears that it would be expedient that the matter is remitted for decision afresh, by giving fresh opportunity to parties concerned to address themselves on all the aspects which are considered relevant.

8. In view of aforesaid, impugned order passed by revisional authority is set aside. The revision is restored for decision afresh.

9. It would be expedient that having regard to the age of petitioner, the revision is proceeded with as early as possible and decided preferably within a period of three (3) months from the date of receipt of writ of this order.

10. Writ petition, as such, stands partly allowed to aforesaid extent. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/