

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3086 OF 2018

Anandrao Pandurang Patil

...Petitioner

Versus

1. The State of Maharashtra through
Secretary food and civil supply
department, Mantralaya, Mumbai.

2. The Hon'ble Minister for food and
civil supply department, Mantralaya,
Mumbai.

3. The Deputy Commissioner
(Supply) Pune Division, Pune.

4. The District Supply Officer, Satara.

5. Dinkar Bapu Patil

6. Tanaji Bapu Suryavanshi

...Respondents

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Mr. P.A. Pol I/b. M/s. Pol Legal Juris for the Petitioner.

Mr. Sachin H. Kankal, AGP for the Respondent Nos.1 to 4.

Mr. Milind Deshmukh for the Respondent Nos.5 and 6.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT DATE : 16th JANUARY, 2019.

ORAL JUDGMENT:-

Rule. Rule is made returnable forthwith. By consent of the parties matter is taken up for final hearing.

2. The Petitioner herein has impugned judgment dated 29th April, 2017 passed by the Respondent No.2 in the review application No.VP-1216/ P.K.86/ N.P.23.

3. The Petitioner has a fair price shop at Mhasoli, Taluka-Karad, District-Satara. The license of the said fair price shop was cancelled by the Respondent No.4 by order dated 7th October, 2014 on the basis of the report submitted by the Naib Tahasildar, Karad. The appeal filed against the said order was dismissed by the Deputy Commissioner (Supply), Pune, by order dated 18th March, 2015. Being aggrieved by the said orders, the Petitioner had filed revision application. The Respondent No.2- the learned Minister for Food and Civil Supply after hearing the Petitioner by his order dated 1st July, 2016 set aside the orders dated 7th October, 2014 and 18th March, 2015 and restored the license of the Petitioner. The learned Minister also directed the District Supply Officer to conduct an enquiry before restarting the supply with reference to the alleged complaint. Pursuant to the said order the District Supply Officer conducted an enquiry through the Tahasildar, Karad and confirmed that there was no substance in the allegations against the Petitioner. Hence, accordingly by order dated 10th January, 2017 the District Supply Officer has

directed to restart the fair price shop by accepting licence fee of Rs.1000/-. The Petitioner paid the penalty as well as the license fee and the District Supply Officer restored the license of the Petitioner on 9th March, 2017.

4. The records reveal that after the license was restored, the Respondent Nos.5 and 6 filed review application before the learned Minister for Food and Civil Supply. Notice of the said review application was served on the Petitioner. After hearing the Petitioner, the learned Minister passed the impugned order dated 29th April, 2017. whereby the learned Minister set aside his earlier order dated 1st July, 2016 and thus confirmed cancellation of license. Being aggrieved by the order dated 29th April, 2017, the Petitioner has invoked the writ jurisdiction of this Court.

5. It is to be noted that clause 24(2) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, which enables the Government to review its order, reads thus:-

“24(2) Government may on an application made or su-motu at any time before the expiry of one years from the date of any order passed by it in revision under this clause may review such order if it is satisfied about the reasons to do so on any of the

following grounds namely:-

(1) Discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was passed or order was made; or

(2) Some mistake or error apparent on the face of the record; Or

(3) for any other sufficient reason.

And upon such review if it shall appear to the State Government that such order should be modified, annulled or conformed, it may pass such order it deem fit. ”

6. A plain reading of the section would indicate that the Government can review the order passed in the revision either suo motto or on an application. In the instant case, the learned Minister has not exercised 'suo-motto powers' but has reviewed the order on the basis of an application by Respondent Nos.5 and 6, who were not parties to the revision application. It is well settled that a review application can be filed only by a party to the lis in which order sought to be reviewed is passed. Since the Respondent Nos.5 and 6 were not parties to the revision application, they could not seek review of the order. Consequently, the learned Minister could not have reviewed the order on the basis of the application filed by the Respondent Nos.5 and 6. On this ground alone the impugned order is liable to be set aside.

7. The impugned order indicates that the learned Minister has reviewed the order on the basis of the report dated 13th April, 2017. The said report was prepared subsequent to the disposal of the revision application. It is not in dispute that the Petitioner was not furnished copy of the said report and he was not given an opportunity to explain the allegations or observations made in the report. Under the circumstances, the action of the learned Minister in reviewing the order on the basis of the said report, is in breach of the principles of natural justice and the same cannot be sustained.

8. Hence, the petition is allowed. The impugned order is quashed and set aside.

9. It is however made clear that this order shall not preclude the Government from taking action against the Petitioner on the basis of any such subsequent report after following due procedure and in accordance with law.

10. The Rule is made absolute in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)