

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8277 OF 2019

M/s. Jai Ganesh Nagari Seva Sah.

San. Maryadit

.... Petitioner

Vs.

State of Maharashtra & Others

.... Respondents

Mr. Mukesh V. Aiya with Ms Seema Y. Babhulkar
for the Petitioner.

Ms Reena A. Salunkhe, AGP, for the Respondent-State.

Smt. Meena Arun Naikwadi, Asstt. Rationing Officer,
Churchgate, Mumbai, present.

Smt. Tejashree M. Walawalkar, Rationing Inspector,
Churchgate, Mumbai, present.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATE : AUGUST 07, 2019

P.C:

1. The writ petitioner before this Court is aggrieved and dissatisfied with an order by which the petitioner has been visited with certain serious consequences. Very few facts are necessary to dispose of this petition finally.

2. The petitioner before us is a co-operative society. The petitioner distributes food grains under the public distribution system to various shops attached to its agency. Ration shops are allotted by the State Government and particularly the 2nd respondent distributes essential commodities such as food grains and kerosene. There is an area allotted to agencies like the petitioner's. The petitioner's agency was allotted a specified area. On 16-5-2015, an order was passed by the 2nd respondent whereby it cancelled the licence of the petitioner to distribute the foods grains to various ration shops attached to its agency. The other order that is challenged is passed by the 3rd respondent on 22-10-2018. There is another order of 14-11-2017, passed by the 1st respondent.

3. Finally, the petitioner challenges Demand Notice of 28-12-2018, by which the sum specified therein is threatened to be recovered as arrears of land revenue. Now, the petitioner says that licence has been given to distribute food grains to the various ration shops attached to the agency of the petitioner herein. The petitioner says that there are specific shops and

attached to the petitioner's agency. The petitioner has been now deprived of the quota on the basis of reduction of these shops. This, the petitioner says, is done allegedly on noticing some alleged irregularities and illegalities. The allegations in that regard are disputed.

4. What we have seen is that there is a Demand Notice which is issued in terms of the communication, copy of which is at Exhibit "L" (page 88) dated 28-12-2018. That is in the sum of Rs.29,84,617/-. There is reliance placed on three communications in that regard.

5. The petitioner has pointed out that there has been no misappropriation and therefore the fine of this enormous amount could not have been imposed. The petitioner has claimed that its agency could not have been deprived of the licence and in the manner done.

6. After this writ petition was heard for some time and the learned AGP found it difficult to sustain the impugned orders, particularly because the petitioner alleged that no

opportunity of prior hearing has been given to it before these orders were passed, our task is made a little easy. We proceed to quash and set aside the order dated 22-10-2018. That is quashed essentially on the ground that the State Government could not have through its Food, Civil Supplies and Consumer Protection Department interfered with the discretionary powers conferred in the Controller of Rationing and other authorities under The Essential Commodities Act, 1955, and particularly the orders made thereunder. Once the order of 22-10-2018 is quashed and set aside, then, the order of 31-10-2018 following the same is also quashed and set aside.

7. Needless to clarify that the 2nd respondent will have to comply with the order, copy of which is at Exhibit “H” to the petition dated 14-11-2017 of the Minister for Food, Civil Supplies and Consumer Protection Department, Government of Maharashtra. Now the 2nd respondent to this petition shall hear the petitioner on the subject show cause notice and pass a fresh order in accordance with law. It will pass a reasoned order uninfluenced by any communications from the Government. It

shall pass a speaking order and communicate the same to the petitioner. The order should be passed as expeditiously as possible and before 20-9-2019. We post this matter on **23-9-2019**, for compliance.

8. Needless to clarify that before the scheduled hearing, the 2nd respondent shall make available for inspection by the petitioner or its representative all original records, particularly the documents based on which the show cause notice has been issued. In the event the petitioner's representative desires obtaining copies of these documents, they may be made available on payment of usual copying charges.

9. The petition is disposed of in the above terms. No costs.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)