

FARAD CONTINUATION SHEET No.  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

**WRIT PETITION NO. 871/2017**  
(PRAKASH SHYAMRAO LAYALE **VERSUS** STATE OF MAHARASHTRA & OTHERS)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

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Shri R.B. Dhore, counsel for petitioner.  
Ms S.S. Jachak, A.G.P. for R-1 to 4.  
Shri M.P. Kariya, counsel for R-5.

**CORAM : A.S. CHANDURKAR, J.**  
**DATE : APRIL 09, 2019.**

Heard finally with consent of learned counsel for the parties.

The petitioner is aggrieved by the order dated 26.10.2016 passed by the respondent no.1 in the revision application preferred by the respondent no.5. This Court in Writ Petition No.5892 of 2015 had on 15.05.2016 remanded the proceedings to the respondent no.1 for fresh consideration. The reason for remanding the proceedings was stated in paragraph 9 of the said judgment by observing that an earlier order dated 05.02.2009 passed by the Deputy Commissioner (Supplies) restoring the authorization in favour of respondent no.4 after imposing fine of Rupees One Thousand ought to have been taken into consideration while deciding the revision application. After remand, the respondent no.1 has passed fresh order that is impugned in the present writ petition.

Shri R.B. Dhore, learned counsel for the petitioner submits that the purpose of remand by this Court has not been

served as the earlier order dated 05.02.2009 and its effect has not been considered by the respondent no.1. Since the order restoring authorization in favour of the respondent no.4 was being questioned, the earlier background of the proceedings ought to have been taken into consideration. Without doing so, the impugned order has been passed.

Ms S.S. Jachak, learned Assistant Government Pleader for the respondent nos.1 to 4 and Shri M.P. Kariya, learned counsel for the respondent no.5 supported the impugned order. They submitted that after considering all relevant material, the impugned order has been passed. It is the submission of Shri M.P. Kariya, that the respondent no.5 is being harassed by the petitioner by initiating various proceedings. As the impugned order has been passed after considering the entire record, the same deserves to be maintained.

On hearing the learned counsel for the parties and after perusing the judgment in Writ Petition No.5892 of 2015, it is seen that the matter was remanded to the respondent no.1 with a specific observation that an earlier order passed by the Deputy Commissioner (Supplies) on 05.02.2009 imposing a fine of Rupees One Thousand on the respondent no.5 while restoring the authorization ought to be taken into consideration. That fine was imposed with a view to grant one opportunity to the respondent no.5 to do the fair price business. The impugned order does not reflect that aspect being considered by the respondent no.1. No reference can even be found in the order dated 05.02.2009 in the impugned order. Hence, there is no alternative but to remand the proceedings again to the respondent no.1 for fresh adjudication.

Accordingly, the order dated 26.10.2016 passed by the respondent no.1 is set aside. The proceedings are restored for fresh consideration in the light of observations of this Court in Writ Petition No.5892 of 2015 in its letter and spirit. The parties shall appear before the respondent no.1 on 03.05.2019. The proceedings be decided within a period of three months from the date of first appearance of the parties and due opportunity be given to all the concerned parties. Till the proceedings are decided by the respondent no.1, the respondent no.5 shall continue to operate the Fair Price Shop in accordance with law.

The Writ Petition is disposed of in aforesaid terms. No costs.

**JUDGE**

APTE