

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5730 / 2016

Mahadeo Rathod Vs. State Through Secretary, Ministry for Food & Civil Supply

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

Court's or Judge's orders

Mr. S.V. Ingole, Advocate for petitioner
Smt. Kalyani Deshpande, AGP for respondents No.1 to 3.
Mr. A.V. Bhide, Advocate for respondent No.4.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 29, 2019

This writ petition arises out of an order passed by the respondent No.3 – District Supply Officer, cancelling license of fair price shop of the petitioner. Initially, this writ petition was filed challenging an order passed by the respondent No.1 as the revisional authority vacating the interim order operating in favour of the petitioner. By order dated 01/10/2016, this Court issued notice for final disposal in the writ petition and granted stay of the said impugned order in the mean time. As a result, the petitioner continued to operate the fair price shop. During pendency of this writ petition, the revisional authority passed final order dismissing revision application, thereby confirming the order of cancellation of license of the petitioner. By way of amendment, the final order was also made subject matter of challenge in the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the orders passed by the respondents No.1 to 3 were all unsustainable because the complaints filed against the petitioner were politically motivated and the enquiry conducted by the Tahsildar demonstrated that there was no substance in the allegations made against the petitioner. Reliance was placed on report dated 31/12/2015, whereby the Tahsildar concluded that the complaints deserved to be dismissed.

4. The respondent No.3 – District Supply Officer, issued show cause notice to the petitioner on the basis of allegations levelled against him, which included selling essential commodities at prices higher by Rs.10/- and misbehaving with the beneficiaries / card holders. The respondent No.3 also referred to the resolution passed by the *Gramsabha*, seeking closure of fair price shop of the petitioner.

5. The respondent No.3 passed order dated 22/3/2016, cancelling license of the petitioner. The same was challenged by filing an appeal before respondent No.2 – Deputy Commissioner of Food and Civil Supply. The said appeal was dismissed. The revision application filed by the petitioner against the said order also stood dismissed. The learned counsel appearing for the petitioner contended that perusal of

the report of Tahsildar revealed that no adverse finding was rendered and in fact it was found that the complaints against the petitioner deserved to be rejected. Yet, the respondent No.3 had passed the order of cancellation of license mainly based on the resolution passed by the *Gramsabha* and the allegation that the commodities were being sold at a higher price. According to the learned counsel for the petitioner, the order passed by the respondent No.3 as well as subsequent orders passed in appeal and revision by the respondents No.1 and 2 did not reveal any discussion of the contents of the report of the Tahsildar, which was in fact in favour of the petitioner, thereby demonstrating error committed by the said respondents. It was submitted that the resolution of the *Gramsabha* and the complaints lodged against the petitioners were politically motivated and, therefore, the impugned order deserved to be set aside.

6. On the other hand, the learned counsel appearing for the contesting respondent No.4 submitted that perusal of the report of the Tahsildar would show that findings rendered therein were primarily based on the alleged document carrying signatures of as many as 478 ration card holders, wherein it was stated that such card holders had no grievances against the petitioner and they wanted the shop of the petitioner to continue to operate. It was submitted that the said document was not genuine and

this was evident from the name and signature of the respondent No.4 also being found in the said document. It was submitted that affidavit was prepared and filed on behalf of the respondent No.4 denying signature on the said document, thereby raising serious doubt about the genuineness of the same. It was submitted that the petitioner was not justified in relying upon the report of the Tahsildar and looking to the serious allegations made against the petitioner and also the resolution passed by the *Gramsabha*, the order cancelling the license of the petitioner was justified. On this basis, it was submitted that the writ petition deserved to be dismissed.

7. Heard learned counsel for rival parties and perused the material on record. A perusal of the report of the Tahsildar dated 31/12/2015, on which the petitioner has placed much reliance, indeed shows that the findings rendered therein were completely in favour of the petitioner. The Tahsildar had given a finding at the end of the report that there did not appear to be any substance in the complaints made against the petitioner and the same deserved to be rejected.

8. A perusal of the orders passed by the respondent No.1, 2 and 3, whereby license of the petitioner was cancelled and it stood confirmed, shows that in none of the orders, the said report of the

Tahsildar has been discussed. There is no material to show that the said respondents found reasons to differ from the report of the Tahsildar to take the drastic action of cancellation of license of the petitioner. In fact, all the three orders passed by the said respondents are brief and detailed discussion on each of the allegations levelled against the petitioner is not found in the said orders.

9. At the same time, it is evident that the allegations made against the petitioner were of serious nature and in the face of denial of signature by the respondent No.4 on the document showing signatures of 478 persons, which was relied upon by the Tahsildar, would show that a further and deep enquiry was necessary before any finding could be rendered either for or against the petitioner. Since the license is operating in favour of the petitioner concerning distribution of essential commodities to the ration card holders, it is necessary that a proper enquiry is conducted before taking the drastic action of cancellation of license of the petitioner.

10. Therefore, although the petitioner has made out a case for interference with the orders passed by the respondents No.1, 2 and 3, but at the same time it needs to be examined whether there was any substance in the complaints made against the petitioner or the entire campaign against the petitioner

was politically motivated. This becomes even more significant because the respondents No.1, 2 and 3 heavily relied upon the resolution of the *Gramsabha* recommending closure of the fair price shop of the petitioner. It needs to be examined whether there is any substance in the contentions raised on behalf of the petitioner that the said resolution as well as complaints levelled against him were politically motivated and they were for extraneous reasons. Mere passing of resolution by the *Gramsabha* cannot be a deciding factor regarding cancellation of license of the petitioner, although, it may be relevant for by the competent authority.

11. In view of above, the present writ petition is partly allowed. The impugned order passed by the respondent No.3 cancelling the license of the petitioner, confirmation of the same by dismissal of the appeal by the respondent No.2 and dismissal of the revision by respondent No.1 are quashed and set aside. The respondent No.3 - District Supply Officer is granted opportunity to conduct fresh enquiry into the allegations levelled against the petitioner. The petitioner as well as contesting respondent No.4 will be at liberty to place on record additional material before the respondent No.3 in the said enquiry. The respondent No.3 shall conduct the enquiry by following the principles of natural justice and thereafter pass a reasoned order in respect of the

complaints made against the petitioner.

12. The writ petition is disposed of in above terms.

13. The enquiry shall be completed within a period of three months from today.

14. Needless to say, the petitioner will be able to operate the fair price shop, since the impugned orders have been set aside by this Court.

JUDGE

MP Deshpande