

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

Writ Petition No.6538/2018

(Maa Durga Mahila Bachat Gat, Rajura Vs. Hon'ble Minister for Food and Civil
Supplies, Mumbai and others)

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

Court's or Judge's orders.

Shri Devdatta Gawande, Advocate for the petitioner.
Shri S.B.Bissa, AGP for the respondent nos.1 to 3.

CORAM : Manish Pitale, J.
DATED : APRIL 26, 2019.

By this Writ Petition, the petitioner - Maa Durga Mahila Bachat Gat, through its Secretary, has challenged order dated 26.07.2018 passed by respondent no.1, whereby the Revision Application filed by respondent no.4 has been allowed and the order passed by the District Supply Officer i.e. respondent no.3 herein, cancelling fair price shop licence, has been restored.

The petitioner was granted licence of fair price shop under the Maharashtra Scheduled Commodities (Regulation & Distribution) Order, 1975 and it was running fair price shop at village Rajna Tq. Pusad, District Yavatmal. Certain complaints were made against the petitioner, in pursuance of which the Inspector (Supply) inquired into the matter and submitted report dated 13.09.2017. The Inspector recorded statements of card holders and others and upon analysis of the material that came on record,

concluded that it appeared that the complaint made against the petitioner was due to political rivalry and that no substance was found in the complaint.

Thereafter, it appears that further complaints were received against the petitioner and the Naib Tahsildar further inquired into the matter. By a report dated 20.11.2017, the Naib Tahsildar found that there were allegations made against the petitioner regarding failure to record the food grains given to certain card holders in their cards and that such other allegations demonstrated that serious faults could be attributed to the petitioner. On the basis of this and other material, on 01.01.2018 the respondent - District Supply Officer passed the order cancelling the licence of the petitioner.

Aggrieved by the same, the petitioner preferred a Revision Application under Clause 24 of the aforesaid Order of 1975 before respondent no.2 - the Deputy Commissioner (Food and Civil Supplies) Amravati Division, Amravati. By order dated 15.03.2018, respondent no.2 found that although the report of Inspector (Supplies) dated 13.09.2017 found that there was no substance in the complaint made against the petitioner and it was motivated by political rivalry, within a period of two months, the Naib Tahsildar came up with his report dated 20.11.2017 concluding that serious discrepancies were found in the functioning of the petitioner. Respondent no.2 analysed the material on record and found that defaults, if any, committed by the petitioner could be said to be only of a minor nature

and that, therefore, the order issued by respondent - District Supply Officer cancelling licence of the petitioner was wholly disproportionate and drastic in nature. On this basis, respondent no.2 - the Deputy Commissioner partly allowed the Revision Application of the petitioner, thereby setting aside the order dated 01.01.2018 of the District Supply Officer and further directed that for the minor discrepancies found in the case of the petitioner, entire deposit amount be forfeited and further penalty of Rs.2000/- was imposed on the petitioner.

Thereafter, respondent no.4 filed an Appeal before respondent no.1 challenging the said order of respondent no.2 - the Deputy Commissioner. Since, no Appeal would lie under the provisions of the said Order 1975, respondent no.1 seems to have treated the Appeal filed by respondent no.4, as Revision Application. By the impugned order dated 26.07.2018, respondent no.1 allowed the Revision Application filed by respondent no.4, set aside the order dated 15.03.2018 passed by respondent no.2 - the Deputy Commissioner and restored the order of the District Supply Officer dated 01.01.2018, cancelling the licence of the petitioner. Present Writ Petition is filed challenging the said impugned order.

It is pointed out on behalf of the petitioner that respondent no.4 did not have any locus to challenge the order dated 15.03.2018 passed by respondent no.2 - the Deputy Commissioner, as he was

not a party to the proceedings before the said Authority. It was further submitted that no Appeal could have been filed under the provisions of the aforesaid Order of 1975 and that the entire proceedings filed by respondent no.4 before respondent no.1 were not maintainable. It was further submitted on merits that respondent no.2 - the Deputy Commissioner has correctly found that the discrepancies attributed to the petitioner, if at all, were minor in nature and that the drastic order of cancellation of licence could not have been passed by the District Supply Officer. It was submitted that the said order of respondent no.2 - Deputy Commissioner was based on proper appreciation of the material on record and that respondent no.1 erred in interfering with the same. It was further pointed out that even in the impugned order, respondent no.1 had observed that a detailed inquiry was warranted in the present case and despite making such observations, respondent no.1 restored the order of the District Supply Officer cancelling the licence of the petitioner. Reliance was placed on behalf of the petitioner on a Government Resolution dated 12.11.1991, which laid down guidelines classifying charges against fair price shop licence holders and penalties that could be imposed on them depending upon the seriousness of the charges. It was submitted that upon application of the said guidelines, it became clear that the order passed by respondent no.2 - the Deputy Commissioner dated 15.03.2018 was in consonance with the same and that respondent no.1 could not have interfered with it by passing the impugned order.

On behalf of respondent - Authorities, it is submitted that the charges levelled against the petitioner were serious warranting the order for cancellation of licence. In any case, it is submitted that the matter deserves to be remanded for fresh inquiry by the respondent Officer so that the truth of the matter could be ascertained and appropriate order could be passed in the matter.

Having heard the rival parties, the question for consideration in the present case is, as to whether there was sufficient material for the respondent - Authorities to pass an order of cancellation of licence against the petitioner. The material on record shows that on complaints received against the petitioner, an inquiry was conducted by the Inspector (Supplies) and report dated 13.09.2017 was prepared. The said report categorically concludes that no substance was found in the complaint against the petitioner regarding irregularities and that the complaint was politically motivated. It is surprising that within two months of the said report, on further complaints submitted against the petitioner, the Naib Tahsildar came up with a report dated 20.11.2017 concluding that serious charges were made out against the petitioner and that there was substance in the said charges. On the basis of the said report of the Naib Tahsildar, the District Supply Officer passed order dated 01.01.2018, cancelling licence of the petitioner.

The respondent no.2 - Deputy Commissioner took into consideration the aforesaid material and found that there was insufficiency of material to come to the conclusion that the petitioner had committed grave defaults justifying the drastic order of cancellation of licence. The Deputy Commissioner found, on appreciation of the material on record, that charges, if at all, proved against the petitioner appeared to be of minor nature and that the order of cancellation of licence was wholly disproportionate. On this basis the order of the District Supply Officer was set aside and instead it was directed that the deposit amount towards licence of the petitioner would stand forfeited and that the petitioner shall further deposit an amount of Rs.2000/- towards penalty.

While setting aside the said order of respondent no.2 - the Deputy Commissioner, respondent no.1 had proceeded on the basis of seriousness of the allegations made against the petitioner. The existence of the report dated 13.09.2017 of the Inspector (Supplies) at the first instance has been completely ignored by respondent no.1 while passing the impugned order. Yet, there is observation made in the impugned order that a detailed enquiry was required, in view of the allegations made against the petitioner. Thereafter, respondent no.1 has proceeded to set aside the order of the Deputy Commissioner and restored the order of cancellation of licence issued by the District Supply Officer. It appears that respondent no.1 has been impressed more by the seriousness of the allegations

rather than the substantial material against the petitioner on record.

In this regard, the guidelines placed on record on behalf of the petitioner contained in the Government Resolution dated 12.11.1991 are of significance and much relevance in the present case. The said guidelines classify the offences against licence holders like the petitioner and the penalties that could be imposed against such offences has also been laid down. The classification is in the form of minor offences, medium level offences and serious offences. A perusal of the same shows that the charge levelled against the petitioner of failure in recording food grains given to the Card holders could, at the most, qualify as a medium level offence, for which the prescribed penalty under the said guidelines was forfeiture of the deposit amount. Although, respondent no.2 - the Deputy Commissioner in his order dated 15.03.2018 has not specifically referred to the guidelines but, it appears that logic behind the said guidelines has been followed and the said respondent correctly imposed proportionate penalty upon the petitioner for the nature of offence that it could have been found to have committed. Therefore, the order dated 15.03.2018 passed by the Deputy Commissioner was in consonance with the policy of respondent - State itself, which respondent no.1 clearly failed to appreciate while passing the impugned order dated 26.07.2018.

In view of above, this Court finds that the

impugned order is unsustainable and that order dated 15.03.2018 passed by respondent no.2 - the Deputy Commissioner needs to be restored. Since this Court has considered the matter on merits, the contention raised on behalf of the petitioner that the appeal/revision filed by respondent no.4 was not maintainable before respondent no.1, is not being considered.

None has appeared on behalf of respondent no.4 despite service.

Accordingly, the present Writ Petition is allowed. The impugned order dated 26.07.2018 passed by respondent no.1 is quashed and set aside and the order dated 15.03.2018 passed by respondent no.2 - the Deputy Commissioner is restored.

The learned counsel appearing for the petitioner informs this Court that the amount of Rs.2000/-, as per the said order of respondent no.2 - the Deputy Commissioner, has already been deposited.

Hence, the petitioner shall be permitted to operate the said fair price shop licence granted in its favour. The petitioner is directed to comply with condition no.4 mentioned in the order dated 15.03.2018 passed by respondent no.2 - the Deputy Commissioner.

Writ Petition is allowed in above terms.

JUDGE