

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

52 WRIT PETITION NO.14197 OF 2018

Seva Sahakari Society Marphala
Through its Chairman
Narayan Bramhanath Darpe
Age : 47 years, occ : business
R/o Marfala, Taluka Georai,
District Beed.

Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary
Food and Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai.
2. The Hon'ble Minister
Food and Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai.
3. The Deputy Commissioner of
Civil Supply, Aurangabad.
4. The District Supply Officer,
Beed.
5. The Tahsildar, Georai
District Beed.
6. Vitthal Damodar Kute
Age : 55 years, occ : agri.,
R/o Marfala, Taluka Georai,
District Beed.

Respondents

...

Mr. N.B. Narwade, Advocate for the petitioner.
Mr. S.W.Munde, A.G.P. for respondent Nos.1 to 5.
Mr. Sayyad Tauseef, Advocate for respondent No.6.

...

CORAM : **Rohit B. Deo, J.**

DATE : 13th January 2020.

JUDGMENT :-

. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. This petition brings to the fore certain facts, which are peculiar and disturbing.

3. Before I advert to the facts, a brief reference to the history of the litigation may be made.

4. The petitioner Society is running the Fair Price Shop in question since 1993.

5. Concidedly, the Fair Price Authorization No. 35 of 1985 was issued to respondent No.6 Shri Vitthal Damodar Kute, who was running the Fair Price Shop till 1993.

6. Interestingly, there is absolutely no record to show how the petitioner Society was permitted to run the Fair Price Shop, authorisation as regards which was issued in the name of respondent No.6.

7. The facts culled out from the orders in the litigation reveal that respondent No.6 Shri Vitthal Damodar Kute was named in some irregularities which is referred to by the Authority as 'Bajra Scam'. However, there is no way to find out whether the authorisation of respondent No.6 is permanently cancelled or whether the authorisation was suspended pending enquiry and the allotment of the Fair Price Shop to the petitioner Society was an ad-hoc or interim arrangement. Be that as it may, the petitioner Society continued to run Fair Price Shop till 05.02.2016 on which date respondent No.6 awoke from deep slumber and preferred an application with the District Supply Officer seeking allotment of the Fair Price Shop.

8. The District Supply Officer, vide order dated 02.05.2017 purported to cancel the authorisation in favour of the petitioner Society and declared that respondent No.6 shall be entitled to run the Fair Price Shop. Be it noted that reference to cancellation of authorisation is patently unwarranted since the finding recorded by Sub-Divisional Officer was that there is no documentary material to show that the petitioner Society was issued authorisation to run the Fair Price Shop.

9. The petitioner Society challenged the order of District Supply Officer in Revision before the Deputy Commissioner (Supply), who allowed Revision partly and remitted the matter to the District Supply Officer to conduct fresh enquiry.

10. The District Supply Officer, on remand, held in favour of the petitioner Society. The District Supply Officer purported to cancel the authorisation in favour of respondent No.6 Vitthal Damodar Kute and to restore the same in favour of the petitioner Society. The District Supply Officer was influenced by the inordinate delay of 23 years in respondent No.6 agitating the grievance that he is entitled to run the Fair Price Shop in question.

11. Respondent No. 6 challenged the order of District Supply Officer in Revision, which was rejected by the Deputy Commissioner (Supply) vide order dated 27th April 2018.

12. Respondent No.6 preferred further Revision under Clause 24 of the Maharashtra Scheduled Commodities (Regulation and Distribution) Order, 1975 which is allowed by the Hon'ble Minister vide order dated 16.11.2018. The Hon'ble Minister, purported to partly allow the Revision preferred by

respondent No. 6 and set aside the order dated 08.03.2007 passed by the District Supply Officer and permitted respondent No. 6 to run Fair Price Shop subject to payment of penalty for the delayed renewal of licence / authorisation.

13. Being aggrieved, the petitioner Society is invoking the writ jurisdiction.

14. The State has filed affidavit in response dated 18.02.2019. It would be apt to reproduce the relevant portion of paragraphs 3 to 7 in the affidavit in response filed by on behalf of the State, which read as under :

“3. I say and submit that, the respondent No.6 herein filed application on 5.2.2016 before the Dy. Commissioner (Supply), Aurangabad making grievance that, Fair Price Shop has been allotted to the petitioner without giving opportunity of hearing, the said Fair Price Shop was earlier run by the respondent No.6.

4. I say and submit that, the District Supply Officer vide his letter dated 22.2.2016 directed the Tahsildar, Georai to submit the report in respect of Fair Price Shop of the petitioner to him. The Tahsildar, Georai vide his letter dated 14.3.2016 has submitted report to the Dist. Supply Officer, Beed submitting that, when

the said Fair Price Shop was given to the petitioner and for what reason it was granted in their name. There were no record available in the office to that effect and as such the Tahsildar, Georai has submitted his report to the Dist. Supply Officer, Beed.

5. I say and submit that, the Dist. Supply Officer, Beed vide his order dated 2.5.2017 has cancelled the License of Fair Price Shop and kerosene dealership of the petitioner society and same was allowed in favour of the respondent No.6.

6. I say and submit that, the preferred Revision Petition before the Dy. Commissioner, Supply Aurangabad against the order dated 02.05.2017. The said Revision Petition filed by the petitioner was allowed on 6.9.2017 and directed the District Supply Officer, Beed to pass the order within three months after giving opportunity of hearing to the both the sides by verifying the documents in that respect and cancelled the order dated 2.5.2017 passed by the District Supply Officer, Beed.

7. I say and submit that, being aggrieved by the above said order dated 6.9.2017, the respondent no.6 herein filed Revision No.37/2018 before the Deputy Commissioner (Supply), Aurangabad. The

Dy. Commissioner (Supply), Aurangabad after giving opportunity to both the parties, the Dy. Commissioner (Supply), Aurangabad has allowed the Revision on 8.3.2018 of the petition filed by the petitioner and canceled the license of Fair Price Shop and kerosene Dealership. I say and submit that, respondent no.6 herein being aggrieved by the above said order dated 8.3.2018 has filed Revision before the Hon'ble State Minister for Food, Supply and Consumer Protection Department. The Hon'ble Minister vide his order dated 16.11.2018 has partly allowed the Revision Application filed by the respondent no.6 herein by observing that the license of the Fair Price Shop was in the name of respondent no.6 which was run by him till 1993 thereafter the said Fair Price Shop was cancelled there were no documents available in the office as to on what basis the Fair Price Shop was granted to the petitioner. There was no record available as to whether publication has been made for allotment of the Fair Price Shop, therefore considering the basic requirements and unavailability of the documents regarding sanctioning of the Fair Price Shop to the petitioner. Therefore the Hon'ble Minister has rightly passed the order on 16.2.2018 by giving an opportunity

of hearing to the both the sides, therefore there are no violation of principles of natural justice”.

15. The seminal issue involved is whether the Fair Price Shop was run / managed by the petitioner Society pursuant to any decision-cum-order under the statutory provisions. Evidently even the State is not aware as to how and under which circumstances the petitioner Society was permitted to run the Fair Price Shop. In response to my query, learned Counsel for the petitioner Society fairly and candidly replied that the petitioner Society is not in a position to produce any document to substantiate its claim to run the Fair Price Shop. Learned Counsel for the petitioner Society would submit that possibly the petitioner Society may have been permitted to run the Fair Price Shop as a stop-gap arrangement. Learned Counsel for the petitioner would however submit that considering that the petitioner Society has managed / run the Fair Price Shop since 1993 without any complaint from any quarter, to deprive the petitioner Society of the right to continue to run Fair Price Shop would be travesty of justice.

16. The submission of learned Counsel for respondent No.6 in rebuttal is that the petitioner Society has no legal

right to run the Fair Price Shop and the fact that respondent No.6 protested after 23 years does not detract from the absence of such legal right. However, even the learned Counsel for respondent No.6 is not in a position to bring to my notice any material which would throw light on the circumstances in which the Fair Price Shop Authorisation issued to respondent No.6 in the year 1985 was suspended or cancelled and the Fair Price Shop was handed over to the petitioner Society.

17. It is irrefutable that there is no record available which would throw light on the questions involved. In the absence of record, the findings recorded by the Authorities below have no significance much less sanctity. While the petitioner Society is not in a position to establish the legal right to Fair Price Shop Authorisation, respondent No.6 who concededly was named in the Bajra Scam has not helped the situation by keeping silent for 23 years and then claiming right to run the Fair Price Shop on the premise that his authorisation was never cancelled.

18. In such situation, the order of the Hon'ble Minister is rendered unsustainable. The absence of record has rendered it impossible for any Authority or Court adjudicate

the rival contentions. The only course which would protect the interest of the residents of village would be to direct the State Government to initiate fresh process for allotting the Fair Price Shop in question in accordance with the provisions of the Maharashtra Scheduled Commodities (Regulation and Distribution) Order, 1975 and extant policy.

19. The order impugned is quashed and set aside.

20. In view of the order which I propose to pass, the orders of the Authorities in favour of the petitioner Society are also quashed and set aside.

21. The State is directed to publish proclamation and to conclude the process of fresh allotment of Fair Price Shop in village Marfala, Taluka Georai, District Beed as expeditiously as possible and in any event within three months. It is clarified that both the petitioner Society and respondent No.6 shall be at liberty to participate in the fresh process and their claims shall be considered on merit without being influenced by any observation in any order passed in the litigation.

22. Concededly, it is respondent No.6 who is running the Fair Price Shop as on today. The said arrangement shall continue till fresh allotment is done.

23. Rule is made absolute in aforesaid terms.

(ROHIT B. DEO, J.)

VD_Dhirde