

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7787 OF 2021

Village Panchayat, Shivnakwadi ... **Petitioner**
V/s.
State of Maharashtra & Ors. ... **Respondents**

Mr. Dhairyasheel V. Sutar, Advocate for the Petitioner.

Ms. Vaishali S. Nimbalkar, AGP for the Respondent Nos. 1 to 4/State.

Mr. P. G. Jagdale, Advocate for the Respondent No.5.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 22, 2021

PC :

1 Heard learned Counsel for the parties.

2 Respondent No.5 was holding a fair price shop licence for shop No.15 at Shirol, Shivnakwadi, Taluka Shirol, District Kolhapur. On a complaint allegedly made by 165 villagers, by an order dated 20th April 2020, the District Supply Officer, Kolhapur cancelled his licence.

3 Respondent No.5 being aggrieved by such cancellation approached the first Revisional Authority namely the Deputy Commissioner (Supply), Pune Division under the provisions of Section 24 of the Maharashtra Scheduled

Commodities (Regulation of Distribution) Order, 1975. By an order dated 29th January 2021, the Deputy Commissioner rejected the revision application filed by respondent No.5. Against this order passed by the Deputy Commissioner, respondent No.5 filed a second revision application before the Hon'ble Minister (Food, Civil Supply, Consumer Protection). By the impugned order dated 6th October 2021, the Hon'ble Minister has set aside the orders passed by the District Supply Officer and the first Revisional Authority.

4 The principal premise on which the impugned order has been passed by the Hon'ble Minister is on the ground that the enquiry on the basis of which the District Supply Officer passed an order cancelling the respondent No.5's licence itself was in gross breach of the principle of natural justice. Firstly, the inspection of the ration shop in question was not properly undertaken by the petitioner. Secondly, and more importantly, statement of the villagers, who are stated to be 165 in numbers were recorded behind the back of respondent No.5.

5 The Hon'ble Minister, however, has thought it appropriate to balance the concerns of both the parties. Perusal of the operative portion of the order as also the reasons as set out in paragraph 7 clearly indicate that an opportunity is made available to respondent No.5 to conduct the fair price

shop so that there is no occasion to the customers/ration card holders to have any grievance, on the conduct of the fair price shop. It is observed that such conduct of respondent No.5 would be observed by the District Supply Officer, as directed by the Hon'ble Minister and for such purpose, the licence of respondent No.5 be restored. The District Supply Officer was directed to inspect the registers to be made available to him by respondent No.5 and also while keeping a surveillance on the conduct of such fair price shop, the District Supply Officer would record statements of 25% ration card holders in presence of respondent No.5 and if there is any adverse material found, in that case he would proceed to cancel the licence. Such conditions have been set out in paragraph 7 and the operative portion of the order. Thus the impugned order is a conditional order.

6 The grievance as urged by the petitioners is to the effect that the impugned order passed by the Hon'ble Minister is illegal, firstly, on the ground that the scope of the proceedings before the Hon'ble Minister was of a limited nature namely that the Hon'ble Minister could not have passed the impugned order when there was sufficient material on record making out grounds for cancellation of the fair price shop licence of respondent No.5. It is hence submitted that considering the orders of the District Supply Officer and first revisional authority, the Hon'ble Minister ought not to have made any interference in the concurrent orders as passed by the authorities below.

The second contention as urged on behalf of the petitioners is that it was a common complaint of not a small numbers of ration card holders but of about 165 villagers in their mutual interest. Thus, the licence of respondent No.5 could not have been restored. In support of this contention, learned Counsel for the petitioner relied on the judgment of learned Single Judge of this Court in the case of *Dattatraya Marotrao Sakhare Versus Hon'ble Minister, Food and Civil Supply Department, Maharashtra & Ors.*¹

7 On the other hand, learned Counsel for respondent No.5 in supporting the impugned order would submit that there are clear findings of the Hon'ble Minister that the entire enquiry as held against respondent No.5 was made in gross violation of the principle of natural justice. He further submits that for such reason it is rightly observed by the Hon'ble Minister that the findings as recorded by the District Supply officer and as confirmed by the revisional authority, are without merit, hence, such findings were rightly set aside by the Hon'ble Minister in balancing the interest of the parties.

8 Having perused the impugned order, in my opinion, this petition ought not to be entertained firstly for the reason that once it is an established position on record that an enquiry which was conducted by the District Supply Officer against respondent No.5 was in gross negligence of the principles of natural justice and/or no fair opportunity was granted to

¹ 2013 (2) ALL MR 305.

respondent No.5 to defend such action which would have civil consequence, any decision taken on the basis of such enquiry cannot be held to be legal. Such enquiry was conducted on the purported ground that inconvenience was being caused to the public also cannot stand the test of law when the enquiry was conducted in breach of the principles of natural justice. Such enquiry would certainly stand vitiated.

9 However, unfortunately, the order passed by the District Supply Officer on the collective complaints made by 165 villagers was confirmed by the revisional authority which has been rightly upset by the impugned order passed by the Hon'ble Minister. The Hon'ble Minister has rightly considered the entire grievance of respondent No.5, who appreciated that the inquiry against respondent No.5 for cancellation of licence was undertaken in an illegal manner, in which an opportunity to defend the allegations so made by the villagers was not accorded to respondent No.5. The Hon'ble Minister, however, thought it appropriate that in these circumstances, a blanket restoration of the licence ought not be granted, hence, the Hon'ble Minister has granted a conditional restoration of respondent No.5's licence by imposing a condition that the performance of respondent No.5 shall be subjected to observance for the period of three months in which District Supply Officer shall record statements of ration card holders and made observations in regard to the conduct of the fair price shop of respondent

No.5. Thus, the restoration of the respondent No.5's licence is not unconditional. No infirmity can be found in such reasonable and guarded approach of the Hon'ble Minister.

10 Now coming to the decision as referred on behalf of the petitioner in **Dattatraya Marotrao Sakhare's** case (*supra*), in my opinion, the decision would not assist the petitioner in the present facts as the case of the petitioner therein was not of any violation of the principles of natural justice. It is well settled that breach of natural justice can be cured at any stage of the proceedings.

11 For the above reasons, there is no illegality or any perversity in the findings as recorded by the Hon'ble Minister. In fact, it is in the interest of the justice that as to what has been ordered by the impugned order ought to be permitted to operate and when any adverse circumstance is found against respondent No.5, in that event, the order of cancellation would become operative. As ordered by the Hon'ble Minister, the licence is now required to be restored. Let the same be restored. Let the mechanism as set out in the impugned order passed by the Hon'ble Minister be made operational.

12 The writ petition accordingly fails and stands rejected. No costs.

(G. S. KULKARNI, J.)