

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

Writ Petition No. 5704 of 2019

Shravani Bahuudeshiya Sanstha

Vs.

The Hon'ble Minister of State, Food, Civil Supply Consumer Protection and
others

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

Court's or Judge's orders

Mr. S.D. Chopde, Advocate for the petitioner
Ms. T.H. Khan, AGP for the respondents No.1 to 3
Mr. A.M. Tirukh, Advocate for the respondent No.4.

CORAM : MANISH PITALE, J.

RESERVED ON : 22.06.2021

PRONOUNCED ON: 25.06.2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The petitioner states that it is a Multipurpose Co-operative Society and Trust, which was allotted fair price shop at village Sangwa, Tah. Shegaon, District Buldhana, but, by the impugned order dated 29/07/2019, the respondent No.1 had wrongly allowed a Revision Application filed by the respondent No.4 - Society and cancelled the allotment of the fair price shop to the petitioner. By the said order, the allotment of the fair price shop in favour of respondent No.4 was restored.

3. A proclamation was issued by the respondent No. 3 – District Supply Officer for an allotment of the said fair price shop. The petitioner and respondent No.4 – Societies along with others applied for allotment of the same. On 03/09/2018, the Secretary of Grampanchayat Sangwa, issued a letter of recommendation for allotment of the fair price shop to the respondent No.4 and the said letter was addressed to respondent No.3. On 04/09/2018, the respondent No.3 issued order of allotment of the fair price shop in favour of respondent No.4. On 06/09/2018, the Secretary of the said Grampanchayat issued another letter to the respondent No.3 cancelling the aforesaid recommendation letter dated 03/09/2018, on the basis that it was issued inadvertently and that as per procedural requirement, meeting of Gramsabha was not called for considering the applications made for allotment of the fair price shop.

4. A meeting of the Gramsabha was held on 10/09/2018, wherein applications of the petitioner and respondent No.4 along with other Societies were considered. It was recorded that the respondent No.4 was not present in the meeting and, therefore, its application was not considered and that by show of hands the petitioner – Society was selected for recommendation for allotment of the fair price shop.

5. The petitioner filed a Revision Application, challenging the aforesaid order of allotment dated

04/09/2018, issued in favour of respondent No.4. The said Revision Application was filed before the Deputy Commissioner (Supply), Amravati Division i.e. respondent No.2. The petitioner contended that proper procedure was not followed in the present case and that in the absence of recommendation of the Gramsabha, a letter of recommendation was surreptitiously obtained by the respondent No.4 from the Secretary of the Gramsabha and that on the basis of such a recommendation letter, the order dated 04/09/2018 of allotment of fair price shop was wrongly passed by respondent No.3 in favour of respondent No.4. The respondent No.4 was made party in the revision proceedings. After hearing the parties, on 26/03/2019, the respondent No.2 partly allowed the Revision Application and set aside the order of allotment dated 04/09/2018, issued in favour of respondent No.4. The respondent No.3 – District Supply Officer was directed to pass a fresh order by taking into consideration the recommendation made by the Gramsabha on 10/09/2018, or to seek another recommendation from the Gramsabha.

6. Consequent upon the Revision Application being allowed in the aforesaid manner, on 01/04/2019, the respondent No.3 passed an order allotting the fair price shop in favour of the petitioner. Aggrieved by the said orders, the respondent No.4 approached the respondent No.1 by filing a Revision Application. By the impugned order dated 29/07/2019, the respondent No.1 partly allowed the

Revision Application, thereby setting aside order dated 26/03/2019, passed by respondent No.2 and directed restoration of the order dated 04/09/2018, passed by the District Supply Officer in favour of respondent No.4. The present Writ Petition was filed challenging the said order, wherein notice was issued and interim order was granted on 16/08/2019, directing stay to the impugned order. On this basis, the petitioner has been running the said fair price shop during the pendency of the Writ Petition.

7. Mr. S.D. Chopde, learned counsel appearing for the petitioner submitted that the order passed by the respondent No.1 was erroneous and that it deserved to be set aside. It was submitted that the respondent No.1 completely failed to appreciate the procedure laid down in Government Resolution dated 06/07/2017, issued by the State of Maharashtra for allotment of fair price shops. By inviting attention to the contents of the said Government Resolution, the learned counsel appearing for the petitioner submitted that the respondent No.1 committed a grave error in holding that the respondent No.4 was entitled to allotment of the fair price shop when admittedly the petitioner – Society has come into existence much earlier than the respondent No.4 – Society. It was submitted that as per the said Government Resolution, preference was to be given to the Society, which was senior and that when the Gramsabha in its meeting dated 10/09/2018, had positively made recommendation in favour of the petitioner in terms of

the said Government Resolution, there was no reason for the respondent No.1 to have held in favour of respondent No.4. The learned counsel for the petitioner further submitted that the audit reports of the respondent No.4 -Society demonstrated that it had hardly any bank balance in its account from the years 2004 till 2018 and that it was a dead Society. This aspect was also ignored by the respondent No.1 while passing the impugned order. On this basis, it was submitted that the impugned order deserved to be set aside and the allotment of the fair price shop in favour of the petitioner in terms of the orders passed by the respondents No.2 and 3 deserved to be continued.

8. On the other hand, Mr. A.M. Tirukh, the learned counsel appearing for the respondent No.4 submitted that the impugned order passed by respondent No.1 was justified and that if the requirements specified in the Government Resolution dated 06/07/2017, were appreciated in the correct perspective, the allotment of the fair price shop in favour of respondent No.4 could not be interfered with. It was submitted that the clauses of the Government Resolution would show that recommendation by the Gramsabha was not a mandatory requirement and that the Committee constituted in terms of the said Government Resolution was required to select the most eligible applicant for allotment of the fair price shop. It was further submitted that the proceedings of the meeting of Gramsabha dated 10/09/2018, would show that

merely because the representative of respondent No.4 was not present on the said date, its application was rejected. There was no consideration of *inter-se* merit of the applications when the Gramsabha meeting recommended in favour of the petitioner. This clearly demonstrated violation of principles of natural justice, apart from violation of requirements of the said Government Resolution. It was further submitted that both the petitioner and respondent No.4 were admittedly Societies and none of them was a *Bachat Gat*. Yet, the respondent No.2 in its order dated 26/03/2019, proceeded on the basis that the petitioner was a *Bachat Gat* and that it deserved to get preference over the respondent No.4 – Society in terms of the said Government Resolution. It was further submitted that the only requirement under the terms of the said Government Resolution could be that the applicant should have audited accounts, which the respondent No.4 satisfied, while in the impugned order itself, the respondent No.1 noted that the petitioner had not submitted audited reports at all. On this basis, it was submitted that the impugned order did not deserve any interference.

9. Ms. T.H. Khan, learned A.G.P. appeared on behalf of respondents No.1 to 3.

10. In view of the contentions raised on behalf of the learned counsel for the rival parties, it would be appropriate to consider the requirements of the Government Resolution dated 06/07/2017, issued by

the State laying down the procedure for allotment of fair price shops. In the said Government Resolution, it is specified as to the manner in which various applicants and entities could be given preference for allotment of the fair price shops. In this clause, the Government Resolution has given highest preference to Grampanchayats and then to registered *Bachat Gats* and thereafter to registered societies like the petitioner and respondent No.4. It is further specified that a Committee shall be constituted for selecting applicants for allotment of fair price shops as per the procedure laid down in the Government Resolution. It is stated that the applicants / entities, who are senior, efficient and active, having transparent functioning as also material to show about regular auditing, would be given preference. It is also laid down that before allotment of fair price shop the concerned Officer shall send proposals of the applicants to Gramsabha for recommendation and that such recommendation shall be taken into consideration before passing any final order.

11. In the present case, the documents on record indicate that when the order dated 04/09/2018, allotting fair price shop to the respondent No.4 was issued, opinion / recommendation of the Gramsabha was not obtained. The Secretary of the Grampanchayat had issued a letter of recommendation in favour of respondent no.4 and the respondent No.3 – District Supply Officer, immediately on the next day issued the order of allotment on 04/09/2018. In fact, on

06/09/2018, the Secretary of the Grampanchayat sent a letter to respondent No.3 cancelling the letter of recommendation dated 03/09/2018, given in favour of the respondent No.4 stating that the same had been issued inadvertently, in the absence of meeting of Gramsabha.

12. A perusal of the proceedings conducted in the meeting of the Gramsabha dated 10/09/2018, would show that while the applications of five applicants, including the petitioner and respondent No.4 were considered, recommendation for allotment in favour of the petitioner was made without any discussion on the *inter-se* merit of the applicants. It was merely recorded that since representative of the respondent no. 4 was not present, the said respondent could not be given recommendation for allotment of the fair price shop.

13. In the order dated 26/03/2019, the respondent No.2 took note of the fact that the Secretary of Grampanchayat had withdrawn the letter of recommendation issued on 03/09/2018 in favour of the respondent No.4. It was also recorded that Gramsabha had recommended the petitioner for allotment of the fair price shop and on this basis the order of allotment dated 04/09/2018, issued in favour of respondent No.4 was set aside. It was directed that the respondent No.3 would pass a fresh order taking into account the recommendation of the Gramsabha dated 10/09/2018. It was on this basis that on

01/04/2019, the respondent No.3 passed order of allotment in favour of petitioner. But, a perusal of the said order dated 26/03/2019, that in paragraph No.6, the respondent No.2 proceeded on the basis that the petitioner was a *Bachat Gat*, while the respondent No. 4 was a Society. It appears that the respondent No.2 proceeded on this factually incorrect basis while passing the said order. The manner in which the Gramsabha meeting dated 10/09/2018 was conducted was not considered in detail and the said order was passed against respondent No.4.

14. A perusal of the impugned order dated 29/07/2019, would show that even the respondent No.1 did not fully appreciate the requirements of the Government Resolution dated 06/07/2017. In the impugned order, much emphasis was placed on the respondent No.4 – Society having coming to existence in the year 2003, while the petitioner Society was established much later in the year 2017. The respondent No.1 further recorded that the proceedings of the meeting of the Gramsabha, as also that the order passed by the respondent No.2 appeared to be erroneous and on this basis restored the order dated 04/09/2018, passed in favour of respondent No.4.

15. This Court is of the opinion that neither respondent No.2 nor respondent No.1 properly appreciated the requirements of the Government Resolution dated 06/07/2017. It was not properly appreciated that the said requirements had to be

followed scrupulously to ensure that the most eligible applicant is allotted the fair price shop. While the respondent No.2 made factual errors, the respondent No.1 has looked at the available material in a one sided manner. The *inter-se* merit of the petitioner and respondent No.4 was neither taken into consideration by the Committee contemplated under the said Government Resolution nor did the Gramsabha properly conduct its meeting to ascertain as to which applicant deserved a favourable recommendation. The entire proceedings from the initial order dated 04/09/2018, issued by the respondent No.3 upto the impugned order dated 29/07/2019, issued by the respondent No.1 stand vitiated due to inappropriate appreciation of the material on record and failure to apply the Government Resolution dated 06/07/2017, in the proper perspective.

16. As a consequence, this Court is of the opinion that the impugned order deserves to be set aside and a fresh process needs to be undertaken by the respondent – authorities strictly in terms of the aforesaid Government Resolution dated 06/07/2017, for allotment of fair price shop at village Sangwa. The orders passed by the respondents No.1 to 3 in favour of the petitioner and respondent No.4 all shall stand set aside. The respondent No.3 is directed to issue a fresh proclamation in terms of the Government Resolution dated 06/07/2017, inviting applications for allotment of the fair price shop at village Sangwa. The petitioner as well as the respondent No.4 will be at liberty to

participate in such fresh proceedings to be initiated by the respondent No.3. It is directed that the respondent No.3 shall take appropriate steps in terms of the order of this Court within four weeks from today.

17. In order to avoid any inconvenience to the ration card holders attached to the said fair price shop at village Sawanga during the period when the fresh process is undertaken and till allotment of the said fair price shop to the successful applicant, the said ration card holders / consumers shall be attached by the respondent No.3 to the nearest functioning fair price shop.

18. The Writ Petition is disposed of in above terms.

JUDGE

MP Deshpande