

**946IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1194 OF 1999

Tatyarao Sampatrao Ragade,
Age 30 years, Occupation: Business,
Resident of Sipora Bajar, Taluka
Bhokardan, Dist. Jalna.

... Petitioner

Versus

1. The State of Maharashtra
 2. The State Minister for Civil Supplies,
State of Maharashtra, Mantralaya,
Extension Mumbai 400 032.
 3. The Deputy Commissioner,
Supply, Commissioner Office,
Aurangabad
 4. The Sub Divisional Officer,
Jalna
 5. Gulam Sadik s/o Gulam Rasul,
Resident of Sipora Bajar,
Taluka Bhokardan,
Dist. Jalna.
- ... Respondents

...
Advocate for Petitioner : Mr. V. D. Hon, Senior Advocate
AGP for Respondents – State : Mr. Y. G. Gujrathi
Advocate for Respondent No.5 : Mr. H. I. Pathan
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd AUGUST, 2022

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.

2. By this petition, filed under Article 226 of the Constitution of India, the petitioner challenges judgment and order dated 29/01/1999, passed by the Hon'ble Minister for Food and Civil Supplies, State of Maharashtra, Mantralaya, Mumbai.

3. Father of respondent No.5 namely Gulam Rasul Dadamiya Shaikh was allotted license to run fair price shop in village Sipora Bajar, Taluka Bhokardan. He expired on 25/12/1994. Due to his death, by order dated 18/02/1995, license issued in his name was cancelled by respondent No.4 Sub Divisional Officer, Jalna.

4. Respondent No.4 Sub Divisional Officer issued a proclamation on 01/03/1995 calling upon the villagers of Sipora Bajar to apply for license for running fair price shop in that village. The petitioner as well as respondent No.5 and other villagers applied for the same. By order dated 25/09/1995, respondent No.4 granted license of fair price shop in favour of the petitioner.

5. Respondent No.5 challenged the order passed by respondent No.4 of allotment of licence in favour of petitioner by filing Case No.95/SB/Revision/172, before respondent No.3 Deputy Commissioner (Supply), Aurangabad, under Section 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution)

Order, 1975. The Deputy Commissioner, after hearing the parties, rejected the revision. Respondent No.5, thereafter, approached respondent No.2 Hon'ble State Minister for Food and Civil Supplies, challenging both the orders. The Hon'ble Minister allowed the revision filed by respondent No.5.

6. Petitioner challenged the order passed by Hon'ble Minister by filing Writ Petition No.4797/1998, which was allowed, thereby setting aside the order passed by Hon'ble Minister and the matter was remanded back to the Hon'ble Minister for deciding the same afresh. By order dated 29/01/1999, the Hon'ble Minister confirmed the earlier decision rendered by him. This order is impugned in the present petition.

7. Having heard the learned advocate for petitioner, learned advocate for respondent No.5 and the learned Assistant Government Pleader for respondents – State and after perusing the memo of writ petition, annexures filed thereto and affidavit-in-replies filed by respondent No.5, respondent Nos. 1, 2 and 3 and the District Supply Officer, Collectorate, Jalna, this Court is of the view that the impugned order passed by Hon'ble State Minister cannot be sustained.

8. The Deputy Commissioner/respondent No.3 has

rejected the revision filed by respondent No.5, by making following observations:-

"On going through the parawise remarks submitted by the Sub Divisional Officer, Jalna, I found that the four sons of deceased Gulam Rasool including revision petitioner applied for the said shop. He further pointed out that he was not fit financially and administratively to run the fair price shop. Therefore, he hold him not suitable and competent for allotment of a fair price shop and sanctioned it to Shri Tatyrao Sampatrao Ragde who belong to backward class, educationally well qualified and having sufficient financial support to run the said fair price shop. Therefore, the Sub Divisional Officer, Jalna, submitted that he has considered all the aspects ad laid down in Government guidelines dated 12-11-1991 and accorded sanction to respondent No.2."

9. The Deputy Commissioner, therefore, after going through the record and reply filed by Sub Divisional Officer has observed that through son or wife, after deceased, fair price shop keeper is having first preference over others, it is not absolute but subject to the condition of suitability and competence. The Deputy Commissioner has recorded finding of fact that Sub Divisional Officer has properly considered these two aspects and has rejected the claim, which, in his opinion, is proper and reasonable. The Deputy Commissioner has further noted that respondent No.2 (petitioner herein) is more qualified, suitable and competent because he belongs to Schedule Caste category, he is educationally

qualified and suitable and is financially and administratively competent. Therefore, he upheld the order of Sub Divisional Officer of allotting license of fair price shop in favour of petitioner.

10. In the impugned order, respondent No.2 has given undue importance to the priority list given in Government Resolution dated 12/11/1991. While doing so, important aspect of suitability and competence of respondent No.5 is totally ignored. The factor of suitability and competence is not at all discussed by respondent No.2 in the impugned order. Non application of mind on the part of respondent No.2 is, therefore, writ large on the face of record. The impugned order, therefore, cannot be sustained as without there being any valid reason, respondent No.2 has interfered in concurrent findings of fact recorded by the two authorities below.

11. It cannot be disputed that as per the Government Resolution dated 12/11/1991, petitioner stands at Serial No.1 in priority list. Petitioner belongs to Schedule Caste category. He is a graduate, having 'Bachelor of Arts' degree. The Sub Divisional Officer has found him more suitable and competent than respondent No.5, and therefore, license to run fair price shop is rightly allotted in favour of petitioner. Since respondent No.2 has ignored the relevant aspects and has misread and misinterpreted

Government Resolution dated 12/11/1991, the impugned order cannot be sustained.

12. In the result, the writ petition is allowed in terms of prayer clause 'B'. Impugned order dated 29/01/1999, passed by the Hon'ble Minister for Food and Civil Supplies, State of Maharashtra, Mantralaya, Mumbai, is hereby quashed and set aside.

13. Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)