

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

WRIT PETITION NO. 3223 OF 2021

Maqbul Ismail Shaikh,
Age : 60, Occu. Business,
R/at-Gandhora, Tal-Tuljapur,
Dist. Osmanabad

...Petitioner

Versus

1. The State of Maharashtra
Through Hon'ble Minister
Food and Civil Supply & Consumer,
Protection, Mantralaya, Mumbai.
2. Deputy Commissioner (Supply),
Aurangabad Division, Aurangabad.
3. The District Supply Officer,
Osmanabad.
4. The Tahsildar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.
5. Prabhakar Shripati Bhosale,
Age : 51 years, Occu. Agriculture,
R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.
6. Hanumant Pandurang Jadhav,
Age : Adult, Occu. Agriculture,
R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.
7. Jeevan Vishnu Patil,
Age : Adult, Occu. Agriculture,
R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.
8. Gaurabai Rathod,
Age : Adult, Occu. Agriculture,

R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.

9. Krushnat Jambhale,
Age : Adult, Occu. Agriculture,
R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.
(Deleted as per leave granted by
Court's order dtd. 04.12.2021).

10. Vishnu Narsinh Patil,
Age : Adult, Occu. Agriculture,
R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.

11. Santram Appa Kumbhar,
Age : Adult, Occu. Agriculture,
R/at-Gandhora, Tq. Tuljapur,
Dist. Osmanabad.

...Respondents

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Shri. V. M. Maney, Advocate for the petitioner

Shri. P. G. Borade, AGP for respondent nos. 1 to 4

Shri. V. D. Salunke, Advocate for respondent nos. 5 to 8 and 10 to 11

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CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 17TH, 2022

ORAL JUDGMENT : -

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

2. Heard learned Counsel Shri. V. M. Maney for the petitioner, learned AGP Shri. P. G. Borade for respondent nos. 1 to 4 and Shri. V. D. Salunke, learned Counsel for respondent nos. 5 to 8 and 10 to 11.

3. The petitioner, who was given an authorization to run the Fair Price Shop at Mouje Gandhora, Tq. Tuljapur, Dist. Osmanabad, was issued a show-cause notice dated 17.04.2020 by the District Supply Officer, Osmanabad. This show-cause notice was issued in the backdrop of the report of the inquiry submitted by the Tahsildar in relation to the distribution of foodgrains in the Fair Price Shop of the petitioner dated 15.04.2020. On perusal of the said report, several deficiencies of grave nature are noticed which include allocation of less quantity food grains than entitlement, non-issuance of receipt of delivery of food grains, non-distribution of food grains as per the admissible units, charging the food grains as per whims and fancy, using rough language, etc.

. An explanation was sought from him which was offered by the petitioner within a period stipulated where he denied the accusations levelled against him. He specifically represented his case by taking a defence that the report on which the reliance is placed is prepared by the Circle Officer in his absence and without affording any opportunity to him to place his stand but on recording statements of some selected persons and at their instance. In reply, he denied each and every allegation levelled against him.

4. Not satisfied with the explanation offered, the District Supply Officer on 19.04.2020 suspended the authorization of the petitioner in terms of the Government Resolution dated 12.11.1991 with further direction being issued to the Tahsildar to conduct a detailed inquiry by recording the statement of the beneficiaries, who are attached to the Fair Price Shop of the petitioner and to submit his report in four weeks.

. This constrained the petitioner to approach the Deputy Commissioner, by alleging breach of principles of natural justice and the Dy. Commissioner (Supply), Aurangabad, found substance in the contention advanced on behalf of the petitioner, when it was specifically argued that the report of the Talathi and the Circle Officer is not made available to him and the inquiry is not in terms of Government Resolution dated 12.11.1991, which contemplate the inquiry to be conducted by the Naib Tahsildar and Officer of the equivalent rank. It was also argued that the inquiry was conducted behind his back without actually visiting the Fair Price Shop and the proceedings are prepared in the office of the Gram Panchayat. Another grievance is that the copy of the inquiry report is not granted to him nor an opportunity of personal hearing was afforded to him and, therefore, it cannot be said that the accusations levelled against him are proved.

5. On perusal of the record and proceedings, the Deputy Commissioner, Aurangabad, found substance in the contention advanced on behalf of the petitioner and arrived at a conclusion that an opportunity of hearing ought to have been afforded to the Fair Price Shop owner and since he was not supplied with the inquiry report, which formed the basis of the accusations levelled against him, there was a clear violation of principles of natural justice. A reference was also made to the Appendix 'B' of the Government Resolution dated 12.11.1991, which contemplated a fair opportunity being afforded to the Fair Price Shop owner before initiating any adverse action. Further, the Appendix 'C' & 'D' is also referred to by the Commissioner in arriving at a conclusion that the action initiated is in violation of principles of natural justice and, therefore, it cannot be sustained.

. Necessarily, the order dated 19.04.2020 passed by the District Supply Officer, Osmanabad, was cancelled.

6. Being aggrieved, the complainants preferred a Revision before the Hon'ble Minister, who, by his order dated 22.01.2021, set aside the order passed by the Deputy Commissioner (Supply), Aurangabad and restored the order of the District Supply Officer,

Osmanabad and directed cancellation of authorization of the petitioner, by directing that the beneficiaries shall be attached to some other Fair Price Shop.

7. On perusal of the impugned order and the reason thereof, the learned Counsel is perfectly justified in arguing that the Hon'ble Minister has exceeded his power since he was only confronted with the order passed by the Dy. Commissioner (Supply) dated 18.06.2020, which restored the license/authorization of the petitioner, in the backdrop of it being suspended under the orders of the District Supply Officer, Osmanabad.

. Reading of the impugned order, passed by the Hon'ble Minister would reveal that except recording a finding to the effect that the allegations levelled against the petitioner are grave and serious in nature and such a person shall not be permitted to continue with the authorization, the Hon'ble Minister has utterly failed to consider the violation of principles of natural justice on which the Deputy Commissioner (Supply), Aurangabad, had laid his emphasis and had quashed and set aside the order passed by the District Supply Officer, Osmanabad.

8. The basic principle that requires to be kept in view, is that,

any order or decision in matters involving civil consequences, has to be made consistently with rules of Natural Justice. Every authority, *quasi* judicial or administrative, should act fairly, reasonably and in a just manner, i.e. in accordance with Principles of Natural Justice, when result of the exercise of power is likely to affect any person with civil consequences and any order passed in utter violation of Principles of Natural Justice is null and void, without adherence to which justice would be travesty. The purpose of following principles of natural justice is prevention of miscarriage of justice and it operate as check on freedom of administrative action, violation of Rules of Natural Justice result in arbitrariness and violative of Article 14 and no action which is arbitrary can be sustained and particularly when the decision maker is the State Government and it's official. The Hon'ble Minister has miserably failed to consider the said aspect and assuming that the accusations faced by the petitioner are serious in nature, since the Government has prescribed the mechanism by issuing the Government Resolution and set out the manner in which an action can be initiated in the backdrop of the accusations/allegations levelled against the Fair Price Shop owner by categorizing the action into different categories and when the serious charges are established, the action of cancellation of the authorization/license is permitted to be undertaken, justified the

action of District Supply Officer. Before action against the petitioner could be completed, the report of the Tahsildar was called for and his license was suspended and this gave rise to a Revision being filed before the Deputy Commissioner and subsequently before the Hon'ble Minister. The Hon'ble Minister, on the other hand, directed cancellation of his authorization/license which admittedly cannot be done without following the procedure prescribed in Government Resolution dated 12.11.1991, which still hold good and provide for mechanism to be adopted before taking the action against the Fair Price Shop owner.

9. In the backdrop of the aforesaid facts, the impugned order cannot be sustained and is quashed and set aside by restoring back the position as directed to be maintained by the Deputy Commissioner (Supply), Aurangabad, to the extent that the suspension of the authorization stand revoked but the inquiry which is contemplated by the order of the District Supply Officer to be conducted by Tahsildar, Tuljapur and report to be submitted within a period of four days, shall be complied with and upon the copy of the inquiry report being made available to the petitioner and after adhering to the principles of natural justice i.e. by affording an opportunity of hearing to him, the further action can be initiated.

. With this liberty being kept open for the respondents to proceed with the inquiry as contemplated under the Government Resolution dated 12.11.1991, before initiation of action on his license/authorization, the Fair Price Shop is directed to be restored to the petitioner, pending the said inquiry.

10. In the wake of the above, the writ petition is allowed. Rule is made absolute.

[BHARATI H. DANGRE]
JUDGE