

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

WRIT PETITION NO.13126 OF 2018

Ahilyabai Holkar Mahila Self help group,
Hingani Tq. Paithan Dist. Aurangabad,
Through its authorized person/Member
Surekha w/o Satish Shinde,
Age: 32 years, Occu. Agri,
R/o Hingani, Tq. Paithan,
Dist. Aurangabad.

... Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Food, Civil Supply and Consumer
Protection Department, Mantralaya,
Mumbai-32.
2. The Deputy Commissioner (Supply)
Aurangabad Division, Aurangabad.
3. The District Supply Officer
Aurangabad.
4. Savitribai Fule Mahila Bachat Gat Group,
Hingani Tq. Paithan Dist. Aurangabad,
Through its President,
Sow. Chayabai Vilas Narade,
Age Major Occu. Agri
R/o Hingani Tq. Paithan,
Dist. Aurangabad.

... Respondents

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Advocate for Petitioner : Mr. P. S. Dighe h/f Mr. K. D. Jadhav
AGP for Respondent Nos. 1 to 3 – State : Mr. Y. G. Gujrathi
Advocate for Respondent No.4 : Mrs. M. A. Kulkarni

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CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 02nd FEBRUARY, 2022
PRONOUNCED ON : 10th FEBRUARY, 2022**

JUDGMENT :

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

2. This petition challenges order dated 30-07-2018 passed by the Hon'ble State Minister for Food, Civil Supply and Consumer Protection, Mantralaya, Mumbai, in case No. वैअम-१९९८/प्रक्र/२०/ना.पु.-२१.

3. The petitioner is a Self Help Group formed by women who are below poverty line (BPL), on 31-07-2008 and it's registration number is 2008/ MH/AU/PAITHAN/86871. Respondent No.3 issued a proclamation on 03-12-2012, inviting applications for running fair price shop at Hingani, Tal. Paithan, District Aurangabad. Total 09 self groups, including the petitioner and respondent No.4, applied pursuant to the proclamation. Since respondent No.4 was registered on 29-11-2003 and the petitioner was registered on 31-07-2008, in view of the priority list given in the Government Resolution dated 27-02-2009, the Committee recommended name of respondent No.4. Accordingly name of respondent No.4 was forwarded for approval of the special Gram Sabha. In the special Gram Sabha held on 30-10-2014, name of respondent No.4 was recommended for allotment of fair price shop.

The petitioner being aggrieved by the resolution passed in

the special Gram Sabha dated 30-10-2014, challenged the said recommendation by filing Revision No.211/2014 before respondent No.2. After the notices were issued in the said revision and though respondent No.3 was aware of the pendency of revision, by order dated 07-11-2014 respondent No.3 issued licence of fair price shop in favour of respondent No.4. The petitioner challenged the said order by amending the revision.

4. After hearing the parties, respondent No.2 partly allowed the revision and set aside the order dated 07-11-2014 passed by respondent No.3 in favour of respondent No.4 and direction was given to respondent No.3 to verify original documents of petitioner and respondent No.4 and then pass appropriate orders by taking into consideration the provisions in Government Resolution dated 03-11-2007.

5. Respondent No.4 challenged the order dated 07-01-2017 passed by respondent No.2, by filing revision before the Hon'ble State Minister for Food, Civil Supply and Consumer Protection. The Hon'ble Minister allowed the said revision by setting aside the order passed by respondent No.2 and restored the order passed by respondent No.3. Hence, the present petition.

6. Heard the learned advocate for petitioner, the learned advocate for respondent No.4 and the learned Assistant Government Pleader for respondent Nos. 1 to 3 – State.

7. The learned advocate for petitioner submits that the petitioner was not given opportunity of hearing by the Hon'ble Minister. The matter was before the Hon'ble Minister on 07-11-2017. On that day, the advocate representing petitioner submitted an application seeking time to file written notes of arguments, as he had not received copies of appeal memo and annexures. However, without giving opportunity of hearing to the petitioner the matter was closed on 07-11-2017 and the impugned order is passed on 30-07-2018 i.e. after lapse of almost 08 months' period. He further submits that the impugned order is unreasoned order as no reasons are assigned while allowing the revision filed by respondent No.4. The observations of the Honb'le Minister are contrary to the record. Therefore, the impugned order is unsustainable and deserves to be quashed and set aside. He submits that respondent No.4 along with the application for running fair price shop, has filed fabricated documents showing that respondent No.4 is running self help group from the year 2003. As per the documents submitted by respondent No.4 along with the application, it is clear that only one member of respondent No.4 group is BPL card holder. He submits that

respondent No.4 was given priority only on the ground that it is registered in the year 2003. By pointing out information received by the petitioner under Right to Information Act, he submits that respondent No.4 is registered in the year 2017-2018. Also, by pointing out the resolution passed in the special meeting recommending name of respondent No.4, he submits that only 13 women, including the Chairman of respondent No.4, have signed the said resolution. He further pointed out application filed by 32 women from the same village complaining that no such Gram Sabha was held. These aspects are ignored by the Hon'ble Minister while passing the impugned order. Respondent No.2 by a reasoned order had remanded the matter back to respondent No.3 for consideration of the original documents of petitioner and respondent No.4 and to pass appropriate order after taking into consideration the provisions of Government Resolution dated 03-11-2007. Hence, the order passed by respondent No.2 was not liable to be interfered by the Hon'ble Minister. He, therefore, prays for setting aside the impugned order, by allowing the present writ petition. In support of his submissions, he relied in *Anil Rai Vs. State of Bihar*, reported in *(2001) 7 SCC 2018* and *Devang Rasiklal Vora Vs. Union of India (UOI)*, reported in *2004(2) Mh.L.J. 208*.

8. On the other hand, the learned advocate for respondent

No.4 submits that it is not necessary that Bachat Gat should be registered. Respondent No.4 is established in the year 2003 and the licence was rightly granted in favour of respondent No.4, by following proper procedure. According to her, registration of Bachat Gat is not pre-requisite condition for allotment of licence of fair price shop. She further submits that respondent No.4 is presently running the fair price shop. She supports the impugned order passed by the Hon'ble Minister.

9. The learned Assistant Government Pleader adopted the arguments of respondent No.4 and supported the impugned order.

10. The impugned order is unsustainable for more than one reason. It is clear from record that respondent No.3, after scrutiny of the applications received from the self help groups, selected respondent No.4 at Sr. No.1 on the ground that the petitioner is registered on 31-07-2008, where as respondent No.4 is registered on 29-11-2003, therefore, it is senior than the petitioner, and forwarded the name of respondent No.4 to the Tahsildar for recommendation in special Gram Sabha of Women. After the special Gram Sabha of Women recommended name of respondent No.4, respondent No.3, by order dated 07-11-2014, issued fair price shop licence to respondent No.4. It is a matter of record that as per the information received by the

petitioner under Right to Information Act, in the year 2016 the Panchayat Samiti, Paithan. information petitioner that no record is available about respondent No.4 in their office. In the year 2018, under Right to Information Act, the petitioner was informed by the Panchayat Samiti, Paithan, that respondent No.4 was registered in the year 2017-2018. It is, thus, clear that respondent No.4 was not registered in the year 2003. Admittedly, priority was given to respondent No.4 as it was registered in the year 2003. The allotment of licence of the fair price shop to respondent No.4 on the ground of seniority was, therefore, not appropriate.

Respondent No.2 was, therefore, justified in taking into consideration all these aspects and setting aside the order of allotment in favour of respondent No.4 and remanding the matter back to respondent No.3 for consideration on merits. The Hon'ble Minister, without considering these relevant aspects, by an un-reasoned order has allowed the revision filed by respondent No.4. The impugned order is, therefore, vitiated on the ground of non application of mind.

11. The impugned order is also unsustainable as the observations of the Hon'ble Minister in the impugned order are contrary to the record. The audit report of respondent No.4, which is placed on record, reveals interpolation of the date of establishment of respondent

No.4. However, in the impugned order it is observed that there is no such interpolation. On this ground alone the revision is allowed by setting aside the reasoned order passed by respondent No.2. Since the impugned order is contrary to the record and a non speaking order, the same is unsustainable.

12. Apart from the above, the appeal filed by respondent No.4 before the Hon'ble Minister was closed for judgment on 07-11-2017. On that date the learned advocate for petitioner filed application contending that the copies of appeal memo and annexures are not received by him and sought time to file written notes of arguments. However, the matter was closed without considering this application. It is, therefore, clear that the opportunity of hearing was not given to the petitioner and on that ground also the impugned order is liable to be quashed and set aside.

13. The matter was closed for orders by the Hon'ble Minister on 07-11-2017 and the impugned order is passed on 30-07-2018 i.e. after lapse of almost 08 months' period. In view of the ration in *Anil Rai* (supra) and *Savitri Chandrakesh Pal Vs. State of Maharashtra and Others, (Coram: V. C. Daga, J.)* reported in *2009(4) Mh.L.J. 406*, wherein this Court has laid down guidelines to the quasi judicial

authorities and tribunals, one of the guidelines is that after the matter is heard, the authority should pass the speaking order within a period of four to eight weeks.

14. For the aforestated reasons, the impugned order is unsustainable and the same is liable to be quashed and set aside.

15. In the result, the writ petition is allowed in terms of prayer clause 'C'. The impugned order dated 30-07-2018 passed by the Hon'ble State Minister for Food, Civil Supply and Consumer Protection, Mantralaya, Mumbai, in case No. वैअम-१९९८/प्रक्र/२०/ना.पु.-२१ is hereby quashed and set aside.

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

(NITIN B. SURYAWANSHI, J.)