

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

WRIT PETITION NO.4622 OF 2019

Roshan Sawaym Sahayata Mahila Bachat
Gat through its President
Tajin Juber Ahamadkhan
R/o Paratwada, Tq. Achalpur,
Dist. Amravati. **PETITIONER**

...V E R S U S...

1. The State of Maharashtra through
Hon'ble Minister for Food and Civil
Supplies Department, Mantralaya,
Mumbai-32.
2. The Deputy Commissioner (Supplies)
Amravati Division, Amravati.
3. The District Supply officer,
Amravati, Tq. & Dist. Amravati.
4. Jitendra Durgadatta Kaloya
Aged about Major, Occu: Business,
R/o Paratwada, Tq. Achalpur,
Dist. Amravati. **RESPONDENTS**

Mr. Anand Deshpande, Advocate for Petitioner.
Mr. K. L. Dharmadhikari, AGP for Respondents 1 to 3/State.
Mr. S. M. Vaishnav, Advocate for Respondent 4.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th JANUARY, 2022.**

ORAL JUDGMENT:

Heard Mr. Anand Deshpande, the learned counsel for

the petitioner, Mr. K. L. Dharmadhikari, the learned Assistant Government Pleader for the respondents 1 to 3/State and Mr. S. M. Vaishnav, the learned counsel for the respondent 4.

2. The petitioner is a self help group of women and claims to have a preferential right to allotment of fair-price shop authorization.

3. The petitioner is aggrieved by the allotment of the fair-price shop authorization concerned in favour of respondent 4.

4. The short submission of the learned counsel for the petitioner Mr. Anand Deshpande is that the authority committed a grave error in applying Government Resolution dated 11.06.2015 and holding that the respondent 4, as the adopted son of the original authorization holder Mrs. Gitabai, is entitled to the fair-price shop authorization. Mr. Anand Deshpande would invite my attention to paragraph 3 of the Government Resolution which articulates that matters which are closed, shall not be reopened, to buttress the submission that in view of the first rejection of the application preferred by the respondent 4 by order dated 14.03.2014 rendered by the respondent 3 – District Supply Officer,

the petitioner was not entitled to the benefit of Government Resolution dated 11.06.2015. Mr. Anand Deshpande would further submit, that in view of the earlier policy, self help groups had a preferential right to fair-price shop authorization.

5. In rebuttal, Mr. Vaishnav who appears on behalf of the respondent 4, would submit that irrefutably the respondent 4 is the adopted son of Mrs. Gitabai. Paragraph 3 which mandates that concluded matters shall not be reopened would not apply, since the order of rejection had not attained finality, and as a fact was set aside and matter remanded, vide order dated 30.04.2016 rendered by the revisional authority.

6. Certain facts and events would have to be noticed in order to appreciate the rival contentions.

7. Respondent 4 applied for allotment of the fair-price shop authorization, on the premise that he is the adopted son of the original authorization holder Mrs. Gitabai, which application came to be rejected by the respondent 3 vide order dated 14.03.2014. The respondent 4 preferred revision challenging the order of rejection, which came to be partly allowed vide order

dated 30.04.2016. The revisional authority remanded the matter to the respondent 3 for fresh consideration in view of the Government Resolution dated 11.06.2015. On remand, the respondent 3 again rejected the application preferred by the respondent 4, vide order dated 11.06.2018.

8. In the interregnum, it appears that a proclamation was issued on 14.03.2016 inviting application for allotment of the fair-price shop authorization. It is not clear from record, and no explanation is forthcoming, how the authority concerned could have issued the proclamation while the competent authority was in seisin of the claim of the respondent 4. Be that as it may, the fair-price authorization was allotted to the petitioner on 09.07.2018. Respondent 4 preferred an appeal which came to be allowed by the respondent 2 vide order dated 09.10.2018 and the revision preferred by the petitioner came to be dismissed by order dated 02.05.2019.

9. Having duly considered the submissions, I see no error in the reasons recorded by the appellate authority and then by the State Government in revision. I am not inclined to agree with Mr. Anand Deshpande in the submission that the benefit of

Government Resolution dated 11.06.2015 was not available to the respondent 4. Irrefutably, the revision preferred by the respondent 4 challenging the order of rejection dated 14.03.2014 was pending when the Government Resolution was issued. The revisional authority, as a fact, remanded the matter to the respondent 3 – District Supply Officer to decide the claim of the respondent 4 afresh on the basis of the Government Resolution. While the respondent 3 – District Supply Officer rejected the claim of the respondent 4 again, the appellate and the revisional authorities have held the respondent 4 entitled to the fair-price authorization as the adopted son of the original licensee Mrs. Gitabai. I am satisfied, that the respondent 4 was indeed entitled to the benefit of the Government Resolution dated 11.06.2015, which expanded the category of beneficiaries to include the adopted son, since the claim of the petitioner was alive and pending and the rejection had not attained finality. The other aspect of the matter is that the petitioner claims to have succeeded in a process which is apparently illegal. The petitioner responded, and succeeded in securing the allotment, in response to the proclamation which could not have been issued, and which at any rate ought not to have been issued, since the competent authority was in seisin of the claim of the respondent 4 to the authorization in question.

10. In the totality of the circumstances, I see no reason to interfere with the allotment of the fair-price shop authorization in favour of the respondent 4, in exercise of writ jurisdiction. The petition is dismissed. No order as to costs.

JUDGE

NSN