

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

**WRIT PETITION NO. 5092 OF 2022
WITH
CIVIL APPLICATION NO. 10264 OF 2022**

1. Yogesh s/o. Sambhaji Guthe, .. Petitioners
Age. 26 years, Occ. Agri.,
R/o. Kandari, Tq. Badnapur,
Dist. Jalna.
2. Babasaheb s/o. Uttam Dhakane,
Age. 41 years, Occ. Agri.,
R/o. As above.
3. Meenabai w/o. Baban @ Gajanan Dhakane,
Age. 37 years, Occ. Household,
R/o. As above.
4. Sumitra w/o. Ramesh Dhakane,
Age. 51 years, Occ. Household,
R/o. As above.

Versus

1. The State of Maharashtra .. Respondents
Through the Hon'ble Minister,
For Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai – 32.
2. The Deputy Commissioner (Supply)
Aurangabad Division,
Aurangabad.
3. The District Supply Officer,
Jalna, Tq. & Dist. Jalna.

4. The Tahsildar,
Badnapur, Tq. Badnapur,
Dist. Jalna.
5. Surekha Mukund Dabhade,
Age. 41 years, Occ. Business,
R/o. Kandari, Tq. Badnapur,
Dist. Jalna.

Mr.Rahul R. Karpe, Advocate for the petitioners.

Mrs.D.S. Jape, AGP for the respondent/State.

Mr. P.P. More h/f. Mr. S.P. Sonawane, Advocate for respondent No.5.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	01.08.2023
PRONOUNCED ON	:	07.10.2023

J U D G M E N T :-

01. Rule. Rule made returnable forthwith and heard by consent of the parties.

02. The petitioners – card-holders of a fair price shop from village Kandari, Tq. Badnapur, Dist. Jalna have approached this Court challenging the order passed by the learned Minister (Civil Supplies and Consumer Protection) dated 12.04.2022, thereby the orders passed by the Dy. Commissioner (Supply) dated 21.10.2016 and District Supply Officer, Jalna (for short “the DSO”) dated 20.05.2016 against respondent No.5 came to be

set aside. Respondent No.5 is directed to pay Rs.5000/- towards fine and on deposit of said amount the fair price shop is restored in his favour. He is further directed to give an undertaking that in-case she commits misconduct, she would be liable for the action as per law. The District Supply Officer is further directed to visit 10% of the card holders of the shop and make inquiry and take necessary action as per law.

03. The facts in short are that the petitioners happen to be card holders of the fair price shop run by respondent No.5. The villagers made representation to the Tahsildar that the shop is not being run properly. No food grains are distributed. The husband of the shop-keeper misbehaves with the ladies by using filthy language. An inquiry, therefore, was initiated. After the inquiry the allegations were found to be correct. On the basis of the inquiry report and the statements of the card holders, the District Supply Officer by order dated 20.05.2016 cancelled the licence in favour of respondent No.5. In a revision filed by respondent No.5, the Dy. Commissioner (Supply) passed an order and rejected the revision by order dated 21.10.2016. The respondent No.5, therefore, approached the learned Minister. The learned Minister, however, allowed the revision by order dated

12.04.2022. The petitioners are now before this Court against the order passed by the learned Minister.

04. The learned Advocate Mr. Karpe for the petitioners vehemently argued that serious allegations were levelled against respondent No.5 and complaint was made. There are various statements recorded pursuant to the inquiry started on the basis of the representation containing the allegations. The authorities found substance in the complaint and therefore licence was cancelled. The order passed by the DSO also came to be confirmed by the Dy. Commissioner (Supply). When such was the case, there was no reason for the learned Minister to pass an order restoring licence in favour of respondent No.5. He submits that in the revision the scope was limited. The learned Minister has not come to a conclusion that the allegations levelled against the respondents are false or that the inquiry was not properly conducted. The order is passed only on the basis of sympathy as seen from the order. The learned Minister was not thus justified to allow the revision merely by taking sympathetic view.

05. The learned Advocate Mr. More for respondent No.5 vehemently

opposed the petition, stating that the inquiry itself was on the basis of complaint made by the card holders, who belong to other political group. The allegations were totally false. The statements recorded are only of the persons who are against respondent No.5. On some statements the signatures are also fabricated. Looking at the allegations, he submits that those are not serious calling for drastic action of cancellation of licence. The statements are almost cyclostyled. He submits that the learned Minister has rightly passed the order. The learned Minister considered that 5-6 persons from opposite group, entered the shop in drunken condition and demanded 5 Qtl. of rice and 5 Qtl. of wheat. They also forcibly took away record from the shop.

06. The learned AGP supported the order stating that the learned Minister though has restored the licence, however, has kept it open for the Authorities to conduct fresh inquiry and to take action, if necessary. The learned Minister has also taken care to take an undertaking from respondent No.5 and has ensured that respondent No.5 does not indulge into any such activities in future. He, thus, submits that there is no reason to interfere with the order passed by the learned Minister.

07. The learned Advocate for the petitioners in rebuttal submits that the discussion of the learned Minister that 5-6 persons entered the shop in drunken condition has not come on record at all. The learned Minister cannot supplement the reason later-on and the same is not permissible under the revisional jurisdiction.

08. Considering the arguments, this Court had called for record and proceedings. However, same was not received inspite of reminders by this Court by order dated 25.04.2023 and 04.07.2023. However, still no record was produced and therefore this Court is constrained to proceed on the copies which are annexed to the petition. It is seen that by representation dated 25.04.2016, the villagers had raised grievances against respondent No.5. The allegations are that the shop keeper is charging more amount for the food-grains, than fixed by the Government. The licence though is in the name of respondent No.5, however, same is run by her husband. He abuses the consumers in filthy language. The rate card is not displayed on board and on these allegations action was prayed for. Said representation was signed by more than 100 persons. The Tahsildar, therefore, directed the Assistant Tahsildar to submit a report by conducting inquiry by personally visiting the

shop and by recording the statement of the villagers. It is seen that the report was submitted along with panchanama and statements of various persons. The statements show that the complaints were about charging more amount than the rate fixed. No receipts are passed. The Tahsildar also prepared the report and submitted the same to the DSO on 27.04.2016 recording his conclusion as (1) record was not made available for inspection; (2) distribution of food-grains is not regular; (3) rate card and stock available are not displayed; (4) no board containing the names of vigilance committee members; (5) over-pricing for food-grains, sugar and kerosene; (6) using arrogant language and abusing card-holders; (7) collected amount of Rs.500/- from the villagers for new card; (8) selling food-grains at the rate of Rs.700/- per bag in the night and (9) though intimation was given for inspection, the shop was closed.

09. On receipt of reply, notice was given by the DSO calling for explanation along with original record. However, same was not done by the respondent No.5. The DSO, therefore passed the order cancelling the licence.

10. The Dy. Commissioner recorded that respondent No.5 is not

residing at Jalna and no service of notice could initially be served as it is reported that respondent No.5 resides at Aurangabad and the same is recorded in the report of service of notice. It is further observed that inspite of notice and inspite of giving opportunity of hearing, respondent No.5 has not submitted explanation before the DSO nor produced record and confirmed the order passed by the DSO.

11. This Court finds that the learned Minister has not come to any conclusion that the proper procedure was not followed or that the orders passed by the DSO and the Dy. Commissioner are not correct. From the order it is seen that the order is passed on some extraneous consideration; that the complaint against respondent No.5 is false; 5-6 persons had been to the shop in drunken condition and made demand of 5 qtl of rice and wheat and also took away the record with them. This Court finds that there is no factual foundation to these allegations. Had it been the case, it was open for respondent No.5 to submit such explanation before the learned DSO. But no such attempt is even made. There is no reason coming on record to show that the complaints are false except denial that too not before the DSO, but only in revision and before the learned Minister. I, therefore, find substance in the

arguments of learned Advocate Mr. Karpe that so called allegations of persons coming in the shop in drunken condition does not find any support from the record. In the affidavit-in-reply respondent No.5 has only denied the allegations, however, has not produced on record that he has made any complaint about the said incident with the authorities.

12. The learned Advocate for the petitioners relied upon judgment of this Court in Writ Petition No.2701 of 2015 dated 23.08.2017 in the case of Rajendra Devidas Kate Vs. The State of Maharashtra, wherein this Court in similar circumstances had allowed the petition. In that case there were allegations made against the licence holders on the basis of those allegations inquiry was conducted and licence was cancelled. The learned Minister, however, only assigning one reason that though there are offences against the licence holder, said are not proved. It is further observed by the learned Minister that the licensee deserves an opportunity to conduct business and licence was restored. This Court by relying upon judgment in the case of Shashikant Chandrabhan Ghadge Vs. State of Maharashtra and Others, 2013(4) Mh.L.J.460 held that the learned Minister could not have restored the licence. The Court in that case also relied upon judgment in the case of

Savitri Chandrakesh Pal Vs. State of Maharashtra and Others, reported in (2004) Mh.L.J.406.

13. This Court finds that when there was no material before the learned Minister in respect of the alleged incident of entering 5-6 persons in drunken condition, he could not have allowed the revision only on that count. While passing the orders in such matters, it is expected to keep in mind the interest of public at large and not of individual specially when such person has not even bothered to appear before the authority and putforth his say. This Court finds that the order passed by the learned Minister is without any material and for extraneous consideration, which could not be upheld. Showing misplaced sympathy certainly affects other persons. In this case, the sufferers are the card holders, who require food-grains and necessary civil supplies from the fair price shop as per rules and regulations. The people necessarily come from downtrodden classes and their cases should be seen with sensitivity. Restoring the licence would shake confidence of people in the system.

14. For all the above reasons, this Court finds that the impugned

order deserves to be quashed and set aside by restoring the order passed by the learned DSO and as confirmed by the Dy. Commissioner (Supply).

15. The writ petition is allowed in terms of prayer clause (B). Rule made absolute accordingly.

16. Connected civil application stands disposed off.

[KISHORE C. SANT, J.]