

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

WRIT PETITION NO. 6702 OF 2022

Mugaji Venkatrao Jadhav
Age : 47 years, Occu. : Business
(Shop of Fair Price Holder),
R/o. : Degapm (Bk), Tal. Ardhapur,
Dist. Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary
Food Supplier and Consumer Department,
Mantralaya, Mumbai – 32
2. The Deputy Supply Commissioner
Aurangabad Division, Aurangabad
Tal. & Dist. Nanded
3. District Supply Officer, Nanded,
Tal. & Dist. Nanded
4. The Tahasildar, Ardhapur,
Tal. Ardhapur, Dist. Nanded
5. Maruti Shamrao Tidke
Since deceased through L.Rs.
Sambhaji Marutirao Tidke
Age : 50 years, Occu. : Agri.
R/o. Degaon (Bk), Ardhapur
Tal. Ardhapur, Dist. Nanded

.. Respondents

Mr. P. R. Katneshwarkar, Advocate h/f Mr. Ashish B. Shinde, Advocate
for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 to 4.

Mr. Shahaji B. Ghatol Patil, Advocate for Respondent No. 5.

**WITH
CIVIL APPLICATION NO. 11299 OF 2022
IN
WRIT PETITION NO. 6702 OF 2022**

Maruti Shamrao Tidke
Since deceased through L.Rs.
Sambhaji Marutirao Tidke

.. Applicant

Versus

The State of Maharashtra and others

.. Respondents

Mr. Shahaji B. Ghatol Patil, Advocate for the Applicant.
Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 to 4.
Mr. P. R. Katneshwarkar, Advocate h/f Mr. Ashish B. Shinde, Advocate for Respondent No. 5.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 25th July, 2023.

Date on which order pronounced : 04th October, 2023.

ORDER :-

. The present petition is arising out of the judgment and order passed by the Hon'ble Minister, Government of Maharashtra dated 25.01.2022 allowing the review filed by respondent No. 5 and setting aside the judgments and orders dated 22.02.2018 passed by the District Supply Officer (DSO), Nanded, dated 26.08.2018 passed by the Deputy Commissioner (Supply), Aurangabad and dated 17.07.2019 passed by the State. It is directed to restore the license to run fair price shop in favour of respondent No. 5 if the license is not cancelled and if no fresh

proclamation issued for award of fair price shop license by forfeiting the deposit of respondent No. 5. The story in short is that the petitioner is the license holder of fair price shop at Degaon (Bk), Taluka Ardhapur, District Nanded. The respondent Nos. 1 to 4 are the State and its authorities. The respondent No. 5 had filed application before the State for renewal of license of fair price shop in whose favour now the order is passed in review by setting aside earlier order passed in revision by the Hon'ble Minister.

2. The facts in short are that, the deceased Maruti shown as respondent No. 5 herein was running a fair price shop till 1998 till he surrendered his license and thereafter he never applied for license till 2002 and no license was issued to any other person also.

3. The Grampanchayat Degaon (Bk) passed a resolution on 15.09.2001 and sent the same to the District Supply Officer (DSO) requesting to grant license to the petitioner to start fair price shop in village Degaon (Bk). The DSO issued paper proclamation calling for applications for license to run fair price shop from the persons belonging to open category on 30.04.2002. In response to the advertisement the only application of the petitioner was received. After scrutinizing the application, the DSO granted license to the petitioner by order dated 16.07.2002. The said license is renewed from time to

time. Since 2002 till 2017 the shop was being run smoothly. Suddenly, in the year 2017 the respondent No. 5 – deceased Maruti filed an application for renewal of his license on 02.08.2017. The Deputy Commissioner, Aurangabad on the basis of application directed to carry out the enquiry. On enquiry, the request of the respondent No. 5 came to be rejected. The respondent No. 5 – deceased Maruti thereafter filed an appeal before the Deputy Commissioner, Aurangabad. The Deputy Commissioner also rejected the application/appeal by order dated 26.08.2018. The deceased Maruti challenged the decision of the Deputy Commissioner by filing revision before the Hon'ble Minister. The Hon'ble Minister by order dated 17.07.2019 rejected the revision. Against the order of rejection, the respondent No. 5 filed a review application and the same came to be allowed. The order of Hon'ble Minister is now under challenge.

4. Considering these facts, learned advocate for the petitioner vehemently submitted that, the original license till the year 1998 was in the name of deceased Maruti. The same is not transferable or inheritable. Thus, the son of Maruti i.e. Sambhaji cannot get the license. After surrendering the license in the year 1998, deceased Maruti sought renewal of the license after 19 years and therefore the application was rightly rejected by the authorities. When all the

authorities rejected the application there was no scope for the Hon'ble Minister to entertain the review application that too after more than a year after dismissal of the revision. Hence, his submission is that no review was maintainable under the Maharashtra Land Revenue Code.

5. Learned advocate for respondent No. 5 submits that the present petitioner has no locus standi to challenge the order in favour of respondent. The petitioner is allottee of shop No. 1 whereas, the respondent No. 5 is allotted shop No. 2 and thus, both the shops are different and for this reason also the petitioner has no locus to challenge the order. He submits that in view of clause 24 (2) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, the State has the power to review the judgment if it comes to conclusion that there is an error apparent on the face of record. It is the submission that, deceased Maruti had never given resignation of the shop. The observation of the authorities to that effect is erroneous. His further submission is that, no proper enquiry was conducted by the authorities.

6. Learned A.G.P. submits that, the Hon'ble Minister has rightly considered the matter and has passed the order. The Government has the power to transfer the shop to the legal heir by adopting certain procedure. Learned A.G.P. supports the order of the Government.

7. Considering the arguments of both the sides, this Court has to consider the order under challenge passed in review. The question necessarily needs to be considered is as to whether the Hon'ble Minister has the power to review the order that took after period of more than one year without any application for condonation of delay. Further question as to whether the Hon'ble Minister is right in passing the impugned order.

8. On going through the orders passed by the authorities on the basis of record this Court finds that, the DSO by letter dated 21.02.2018 communicated that Maruti had filed an application after 19 years for renewal. He therefore communicated that it is not within the jurisdiction of DSO to grant renewal of license. It was clearly stated that, now the license is given to the present petitioner. Thus, there is no substance in the submission that the ration shops are different of the petitioner and of the respondent No. 5.

9. From the order passed by the Additional Collector (Supply), Aurangabad, it is seen that, the order was passed rejecting the application for condonation of delay. Even the Hon'ble Minister by order dated 17.07.2019 had clearly held against respondent No. 5 holding that there is no proper explanation given for making the application after such delay.

10. As regards submission of respondent No. 5 that the Hon'ble Minister has the power to entertain the review is concerned, this Court finds that the provision shown by the respondent would not be applicable in view of Clause 24 (2) which reads as under :

24. Power to call for and examine records of proceedings and revise orders.

(1)

(2) Government may on an application made or *suo motu* at any time before the expiry of one year from the date of any order passed by it in revision under this clause may review such order if it is satisfied about the reasons to do so on any of the following grounds, namely :-

- (i) Discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was passed or order was made; or
- (ii) Some mistake or error apparent on the face of the record; or
- (iii) for any other sufficient reason.

And upon such review if it shall appear to the State Government that such order should be modified, annulled or conformed, it may pass such order it deem fit.

11. Even reading the said clause it is seen that, the Government may review the order before expiry of one year from the date of order under review and on the grounds mentioned in clauses (i), (ii) and (iii). In

this case, it is seen that there is no error apparent on record is pointed out, nor is discussed by the Hon'ble Minister. The application for review was filed after more than a year of the order passed in the revision. There was no discovery of any new and important material or evidence which was not within the knowledge of the petitioner. No error apparent on the face of record is discussed and thus there was no scope for filing review application. For this reason no review was maintainable. There is also no application for condonation of delay.

12. From the impugned order this Court finds that, there is nothing to show that the review application was rightly entertained. The only reason assigned for entertaining review is that there is no record to show that, deceased Maruti had surrendered the license in his name. From the order it is seen that, no clear position was placed before the Hon'ble Minister about the current status of the license of the fair price shop and therefore, twice the wording appears that "if license is not cancelled and if no other fair price shop is running" in the order. Thus, before the Hon'ble Minister no clear record was placed and still the order is passed. However, the Hon'ble Minister has not discussed any error apparent on the face of record. From reading of the judgment it is seen that, he has considered even the material which was not earlier before the Hon'ble Minister. One more factor needs to be considered is

that though the present petitioner is the affected person still he was not a party before the Hon'ble Minster. Thus, no order could have been passed affecting the right of the petitioner without hearing the petitioner and without making him a party to the proceedings. This Court finds that, a case is made out by the petitioner to allow the petition. Therefore, the following order is passed.

13. The writ petition is allowed in terms of prayer clause (A).

14. The writ petition is disposed off accordingly.

15. In view of disposal of writ petition, nothing survives in the civil application. The civil application No. 11299 of 2022 also stands disposed off.

(KISHORE C. SANT, J.)

PS.B.