

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

WRIT PETITION NO. 13440 OF 2019

Shaikh Ahmed Ali s/o Ali Hyder,
Age : 79 years, Occu. : Business,
R/o. : Shevdi, (BA), Tq. Loha,
Dist. Nanded,
Through its Power of Attorney Holder,
Shaikh Mehraj s/o Shaikh Ahmed Ali ,
Age : 33 years, Occu. : Business,
R/o. : as above

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Food, Civil Supplies and Consumer
Protection Department
Mantralaya, Mumbai – 32.
2. District Supply Officer, Nanded,
Collector Office, Nanded,
Dist. Nanded.
3. The Tahsildar Loha,
Tq. Loha, Dist. Nanded.
4. Baburao s/o Ramrao Phulzulke,
Age : 64 years, Occu. : Agriculture,
R/o. Village Shevdi, Tq. Loha,
Dist. Nanded.

.. Respondents

Mr. S. S. Kazi, Advocate for the Petitioner.
Mr. K. N. Lokhande, AGP for Respondent Nos. 1 to 3.
Mr. B. L. Sagar Killarikar, Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 05th July, 2023.

Date on which order pronounced : 03rd August, 2023.

ORDER :-

. Heard. By consent of the parties taken up for final disposal.

2. Without going much into the details of the facts this petition can be decided on the limited legal point that is raised in the petition as to whether the learned District Supply Officer (D.S.O.) while deciding the matter before him in this case under the Essential Commodities Act has to reviewed his own order or whether the said order was a fresh order passed by considering fresh material ?

3. The petitioner who was running a fair price shop has come to this Court by way of this petition challenging an order dated 13.09.2019 passed by the Hon'ble Minister, Food, Civil Supplies and Consumer Protection Department in Review Petition No. VAM-1116/Matter No. 233/NP-21. The Hon'ble Minister by way of impugned order reviewed his own order and rejected the revision application that was filed by the petitioner and confirmed the orders passed by the learned Deputy Commissioner (Supply), Aurangabad dated 16.11.2016 and learned District Supply Officer, Nanded dated 13.06.2016. This order was challenged before this Court by filing Writ Petition No. 14607/2017. This Court has remanded the matter in earlier round of litigation.

4. Learned advocate for the petitioner submits that, the learned District Supply Officer i.e. D.S.O. had passed an order reviewing his earlier order and that was confirmed by the higher authorities. The submission of the petitioner is that, it is only the State Government which has the power to review its own orders by clause 24 – (2) of the Maharashtra Scheduled Commodities (Regulation and Distribution) order 1975. He thus submits that, the learned SDO does not have the power to review his own order. The order passed by the learned SDO therefore ought to have been quashed and set aside by the Hon'ble Minister. Though earlier the Hon'ble Minister had allowed the revision of the petitioner, however, on review the Hon'ble Minister thereafter reviewed his own order.

5. Learned advocate for respondent No. 4 vehemently submits that, the learned S.D.O. had passed only fresh order in view of fresh material and fresh report that was produced before him. The order passed by the S.D.O. was in the nature of administrative order and was not in the nature of review. He thus submits that, the Hon'ble Minister has rightly passed an order by considering the order of learned S.D.O. and higher authorities. On merits, he submits that, since 2004-05 there are serious complaints against the petitioner. Though the villagers started making the complaints and though the orders were passed against the

petitioner, the petitioner is successfully litigating before the authorities. The matter was remanded on many occasions and yet the dispute is not finally decided for long period of 13-14 years.

6. Learned A.G.P. has also by filing affidavit in reply supported the order passed by the Hon'ble Minister. The Hon'ble Minister has decided the matter by keeping in view the directions issued by this Court in Writ Petition No. 14607/2017 vide order dated 23.01.2019. It is submitted by learned A.G.P. that, the order dated 13.06.2016 passed by earlier authority was rightly restored. The authority was empowered to conduct enquiry and to decide the complaint application. All the parties to the dispute were given sufficient opportunity of hearing. The card holders in the village are the main stakeholders in the matter of grant of license of fair price shop. It was found that, on the basis of statements of card holders the petitioner had committed fraud and had indulged in corrupt practices while running the fair price shop. The activities of petitioner were found in contravention with the provisions of the Essential Commodities Act and the rules thereunder. He thus submits that, there is no illegality committed by the Hon'ble Minister in deciding the revision application.

7. Considering all these submissions and the facts of this case, this Court finds that, after many rounds of litigation ultimately the matter

was concluded by the Hon'ble Minister by the impugned order and the revision came to be rejected. Looking to the reasoning in the judgment of the Hon'ble Minister, this Court finds that, no illegality is committed by the Hon'ble Minister while dismissing the revision as the order passed by the learned D.S.O. was not in the nature of review, but it was after holding fresh enquiry. In the fresh enquiry the record of the year 2004-2006 was shown to the card holders. It was found that, in the record of showing distribution of the scheduled commodities the signatures were found to be bogus. Many of the card holders denied their signatures on the record showing receipt of food grain/scheduled commodities. This Court finds that, in the facts of the case and considering the reasoning assigned by the Hon'ble Minister, no illegality is found in the order passed by the Hon'ble Minister. The petition is thus devoid of merits and deserves to be dismissed.

8. The writ petition is disposed off accordingly.

(KISHORE C. SANT, J.)

PS.B.