

3. Facts of the case are that Petitioner has been allotted Fair Price Shop at village Tanhali, Tal. Pandharpur Dist. Solapur and he is also issued license of Kerosene distribution since 2001. Respondent No.7 and 8 filed a complaint on 26 December 2014 alleging that the Petitioner had illegally shifted Fair Price Shop outside the village without taking permission of the Competent Authority. It was also contended that the shop was unclean, and rates of the Kerosene were not displayed. Petitioner was also accused of supplying food grains in lesser quantity to the customers by charging extra amount. Similar complaint was also filed in respect of Kerosene license issued to the Petitioner. The complaint in respect of Fair Price Shop was forwarded to Inspector-Pandharpur who conducted inspection and found certain discrepancies. Based on the observations made in the Inspection Report, the District Supply Officer, Solapur passed order dated 04 March 2015 suspending Petitioner's license of Fair Price Shop. Similarly in respect of Kerosene license, Tehsildar Pandharpur conducted site inspection on 26 February 2015 and observed certain discrepancies. The District Supply Officer passed order dated 03 March 2015 suspending the Kerosene license of Petitioner.

4. Aggrieved by the orders passed by the District Supply Officer, Petitioner filed Revision Application Nos.5 of 2015 and 06 of 2016 before Deputy Collector (Supply) Pune. The Deputy Collector (Supply) was pleased to stay the order passed by the District Supply Officer during pendency of the Revision Application. Thereafter the

Deputy Collector (Supply) Pune passed order dated 23 September 2015 partly allowing the Revision Application No.6 of 2015 and set aside the order passed by the District Supply Officer Solapur and remanded proceeding to District Supply Officer for issuance of fresh show cause notice. The stay order earlier granted was directed to be continued. Similarly, in Revision Application No.5 of 2015 relating to Kerosene license, the Revision was partly allowed, setting aside the order of the District Supply Officer and remanding the proceedings for fresh decision by the District Supply Officer.

5. Accordingly, the Supply Inspecting Officer conducted inspection of the shop on 20 February 2015 and submitted report. On the basis of that report, Notices dated 26 November 2015 and 05 November 2016 were issued to Petitioner calling upon him to explain as to why his license of Fair Price Shop and Kerosene should not be cancelled. After hearing Petitioner, the District Supply Officer passed orders on 26 February 2016 and 18 February 2016 cancelling the licences of Fair Price Shop and Kerosene.

6. Petitioner filed Revision Application No.8 of 2016 and 9 of 2016 before the Deputy Collector (Supply). The revisions were however rejected by the order dated 16 May 2017.

7. Petitioner thereafter preferred revision before the Minister-Food, Civil Supply and Consumer Protection. The Minister was pleased to pass common order dated 09 January 2018 setting aside the order

passed by the District Supply Officer and Deputy Collector (Supply). Costs of Rs.10000/- each were imposed in both the proceedings against Petitioner. The District Supply Officer, Solapur was directed to conduct enquiry as to whether Petitioner supplied food grains and Kerosene to the card holders as per prescribed rates and in the event it being found that Petitioner committed misappropriation of food grains or Kerosene, value thereof be recovered from him as per market rate. Upon payment of penalty and security deposit by the Petitioner in government treasury, the Fair Price Shop and Kerosene licenses were directed to be restored on the condition of shifting the same at the original place.

8. Petitioner accordingly paid penalty amount of Rs.10000/- in each case as well as fresh security deposit of Rs.3000/- and Rs.1000/- and his licenses were restored vide order dated 09 April 2018.

9. It appears that Respondent Nos.7 and 8 filed Review Petition before the Minister seeking review of the order dated 09 April 2018. After hearing both the sides, the Minister proceeded to review his order by setting aside his earlier order dated 09 January 2018 as well as orders dated 18 February 2016 and 15 May 2017 of District Supply Officer and District Collector (Supply) and remanded the proceedings to Deputy Collector for fresh enquiry. Petitioner is aggrieved by the order dated 26 October 2018 and has filed the present petition.

10. Mr. Lengare, the learned counsel appearing for the Petitioner would submit that it was impermissible for the Minister to review his

own decision without any change of circumstances. He would submit that the Minister is not conferred with the power of review. That under the garb of hearing a Review Petition, the Minister has passed adverse order against Petitioner as if he was hearing a Revision against order passed by the Deputy Collector. That the Review Petition filed by Respondent did not fit into any of the 3 recognized grounds for Review and there was neither any error apparent on the face of records in Minister's earlier order dated 09 January 2018 nor any new fact was brought to the notice of the Minister by Respondent No.7 and 8. He would therefore submit that no ground existed for the Minister to review the order. He would pray for setting aside the orders dated 26 October 2018 passed by the Minister. Relying on Policy issued vide Government Resolution dated 11 November 1991 Mr. Lengare would contend that imposition of penalty was permissible for condoning the lapses.

11. *Per contra* Mr. Patil, the learned counsel appearing for Respondent Nos. 7 and 8 would oppose the petition and support the order passed by the Minister on 26 October 2018. He would invite my attention to Rule 16 of the Maharashtra Essential Commodities Retail Dealers License Rules, 1979 to demonstrate power of review vested in the State Government. He would further submit that the Government is entitled to exercise power of review 'for any other sufficient reasons'. That the earlier orders passed by the Minister on 9 January 2018 were *ex facie* illegal where the Minister could not have condoned the lapses on the part of Petitioner by imposing meager penalty of Rs.10,000/-. That

Respondent Nos.7 and 8, being card holders, had a *locus standi* to file Review Petition before the Minister. In support of his contention, he would rely upon Judgment of the Apex Court in **Ramprasad Ramchandra Chavan**, 2010 (4) 4 Mh.L.J. 82 and **Shivaji Tulshiram Thakre Vs. State of Maharashtra**, 2012 (4) Mh.L.J. 453.

12. I have also heard Mr. Pujari, Ld. AGP for state. He would support the impugned orders passed by the Minister.

13. After hearing learned counsels appearing for parties, the short issue that arises for my consideration is that whether the Minister could have reviewed his own orders passed on 09 January 2018. The power of review vested in the State Government is traceable to Rule 16 of the Essential Commodities Rules, which reads thus :-

16. Review or revision.

(1) (a) Government may, at any time before, the expiry of two years from the date of any order passed by the licensing authority or any other competent authority under this Order, call for the records of the proceedings underlying such order for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceedings and if it shall appear to the State Government that such order or proceedings should be modified, annulled or -confirmed, it may pass such order as it deems it:

Provided that an Order shall be made under this clause unless the person who is likely to be aggrieved thereby has been given a reasonable opportunity of stating his case;

(b) Government may on an application made or *suo motu* at any time before the expiry of two years 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:-

(1) 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

(2) Some mistake or error apparent on the face of the record; Or

(3) 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.

(c) Order passed in review shall on no account be re-reviewed.]

(2) Pending the disposal of the review or revision proceedings under this clause, the State Government may direct that the order passed by the licensing authority or other competent authority shall not take effect until an Order is passed by it.

14. Thus, under Rule 16, the Government is vested with twin powers of revision as well as review. While exercising the power of revision, State Government can call for the records of the proceedings in respect of any order passed by the licensing authority or any other competent authority and after examining correctness of that order, either confirm or annul said order. Thus the power of revision is to be exercised against order passed by an inferior authority. It thus appears that earlier orders passed by the Minister on 09 January 2018 determining correctness of orders passed by District Supply Officer and Deputy Collector (Supply) were passed in exercise of power of revision under Rule 16 (1)(a) of the licensing order 1979.

15. In addition to power of revision of orders passed by inferior authorities, the Government is also vested with power to review its own orders under clause (b) of Sub-Rule 1 of Rule 16. However, the review can be exercised only on 03 grounds (i) discovery of new facts or (ii) some error apparent on the face of record and (iii) for such sufficient reasons.

16. While deciding a review application, a court or authority does not sit in appeal over its decision. Rehearing of the proceedings is impermissible. It is now well settled law that the expression for '*any other sufficient reason*' means a reason which is analogous to discovery of new material or error apparent on the face of record. Reference in this regard can be made to the judgment of the Apex Court in ***Lily Thomas v. Union of India***, (2000) 6 SCC 224 in which it is held as under:

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal case [Sarla Mudgal, President, Kalyaniv. Union of India, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal case [Sarla Mudgal, President, Kalyani v. Union of India, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the funda-

mental rights. No other sufficient cause has been shown for reviewing the judgment. **The words “any other sufficient reason appearing in Order 47 Rule 1 CPC” must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in Chhajju Ramv. Neki [AIR 1922 PC 112 : 49 IA 144] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] .** Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa v. T. Nagappa* [AIR 1954 SC 440 : (1955) 1 SCR 250] this Court held that such error is an error which is a patent error and not a mere wrong decision.

(emphasis supplied)

17. Thus, while exercising the power of review under ruled 16(1) (b) of the licensing order 1979, the State Government cannot pass an order as if it is exercising power of appeal or revision. Unless a specific case is made out that any new or important material was discovered which could not to be produced at the time of passing the order under review or an error apparent on the face of record is demonstrated in the order of review, the State Government is prevented from exercising the power of review.

18. While exercising the scope of the term ‘for any other sufficient reasons’ Division Bench of this Court in **Ramprasad Ramchandra Chavan** (supra) has held that the said expression would not cover to condone uncondonable illegality.

19. The manner in which the Minister has exercised power of review while passing in the order dated 26 October 2018 would indicate that he has dealt with the matter as if he was exercising power of revision over appellate authority. The relevant findings recorded by the Minister

while passing order dated 26 October 2018 are as under :-

वादी प्रतिवादी तसेच प्रतिवेदन अधिकारी यांच्यावतीने करण्यात आलेली प्रतिपादने व प्रस्तुत प्रकरणातील उपलब्ध कागदपत्रांवरून माझ्या असे निदर्शनास आले की, प्रतिवादी क्र . ३ यांच्या नावे रास्तभाव दुकानाचे प्राधिकारपत्र मंजूर आहे. प्रतिवादी क्र . ३ यांनी परिच्छेद-३ मधील दोष खुलासा करून नाकारले आहेत. मात्र, त्या समर्थनार्थ कोणतेही सबळ कारणे तथा पुरावे सादर केलेले नाहीत. यावरून प्रतिवादी क्र. ३ हे पूर्णतः निर्दोष आहे असे म्हणता येणार नाही. प्रतिवादी क्र . ३ यांनी पूर्वीच्या ठिकाणी दुकान सुरू केले आहे. तथापि वादी यांनी त्यास आक्षेप घेतला आहे. ग्रामपंचायत, तनाळी यांनी प्रतिवादी क्र. ३ हे शासन नियमाप्रमाणे धान्याचे वितरण करीत नसून लाभार्थ्यांकडून जादा दर आकारतात व पुरेसे धान्य देत नाहीत, असा ठराव मंजूर केल्याचे म्हटले आहे. तसेच ग्राहकांना राजीव गांधी जीवनदायी योजनेचा लाभ घेता आलेला नाही, असे वादीने म्हटले आहे. याउलट प्रतिवादी क्र. ३ यांनी त्यांच्या निवेदनात म्हटले आहे की, धान्याचे नमुने दुकानात ठेवले असून सर्व योजनेच्या लाभार्थ्यांच्या याद्या प्रसिद्ध केलेल्या आहेत. त्यांनी शिधापत्रिकाधारकांना नियमितपणे शिधावस्तूंचे वितरण केले असून, कार्डधारकांना रितसर पावत्या देऊन त्यावर सह्या/अंगठे घेण्यात आले आहेत. त्यामुळे वादी व प्रतिवादी क्र. ३ यांच्या उक्त दोन्ही विधानात विसंगती आढळते. या सर्व बाबीतील सत्यासत्यता तपासून जिल्हा पुरवठा अधिकारी, सोलापूर यांनी गृहभेटी देउन शिधापत्रिकाधारकांचे बयाण घेवून निर्णयार्थ येणे आवश्यक होते. अशा परिस्थितीत सर्व बाबींचा विचार करून उप आयुक्त (पुरवठा), पुणे विभाग, पुणे यांनी प्रस्तुत प्रकरणी सखोल चौकशी करून उचित कार्यवाही करणे योग्य वाटते. वादीने केलेला खुलासा, प्रतिवादी क्र. ३ व कार्डधारकांचे बयाण विचारात घेऊन उप आयुक्त (पुरवठा), पुणे विभाग, पुणे यांनी निर्णयार्थ येणे उचित राहिल, या निष्कर्षाप्रत मी आलो आहे.

20. Thus the Minister was not mindful of the fact that he was exercising the power of review over his earlier order dated 09 January 2018. There is no finding recorded in the order that the earlier order suffered from any error apparent on the face of record. The order is reviewed and set aside by merely recording contentions of both the parties and holding that Deputy Collector (Supply) is required to conduct

a detailed enquiry by taking into consideration explanation submitted by Petitioner as well as statements of Complainant and other card holders.

21. In my view therefore, the Minister clearly exceeded his jurisdiction in reviewing his earlier order dated 09 January 2018 without recording any finding as to whether his earlier order suffered from any error apparent on the face of record or that Complainants produced any fresh material which could not be earlier produced.

22. The Minister by his order dated 09 January 2018 had recorded detailed reasons that no cogent evidence was produced by the Complainant in respect of allegation of misappropriation of food grains or Kerosene. He had arrived at a conclusion that Petitioner's licenses were required to be restored on a condition of shifting shop at original place. He had also directed the District Supply Officer to conduct enquiry as to whether Petitioner was supplying food grains and Kerosene as per the fixed price or whether he was committing any misappropriation of amounts. He also arrived at a conclusion that penalty of Rs.10,000/- in each case deserved to be imposed on the Petitioner for committing the lapses.

23. However, in the orders passed in review petition, no findings are recorded as to how there was any error in the findings recorded in order dated 09 January 2018. In these circumstances I am of the view that the Minister, under the garb of exercise of power of review, has decided the proceeding as if a revision was freshly filed before him. He has not

made any attempt to examine as to why his earlier findings suffered from error apparent on face of record. In that view of the matter, orders passed by the Minister in a Review Petitions are clearly unsustainable.

24. The Minister has also ignored the fact that his order dated 09 January 2018 was already acted upon by restoration of Fair Price Shop license and Kerosene license of Petitioner by passing order dated 9 April 2018. In these circumstances the Minister could have careful in exercising power of review which has resulted in rendering restoration of license otiose.

25. The reliance of Mr. Patil on the Judgment in **Shivaji Thakre** (supra) relates to the issue of *locus standi*. which was not the ground on which the earlier orders were passed by the Minister on 09 January 2018. Therefore, the Judgment would not come to the assistance of the Respondent No. 7 and 8.

26. Writ Petitions are accordingly succeed. Orders dated 26 October 2018 passed by the Minister-Food, Supply and Consumer Protection in Review Petition No.662 and 227 are set aside and earlier orders passed by the Minister on 09 January 2018 are upheld. The Rule is made absolute.

SANDEEP V. MARNE, J.

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