

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

WRIT PETITION NO.1175 OF 2018

(YATAJ MAHILA BACHAT GAT...VS.. STATE OF MAHARASHTRA THR. DEPT OF FOOD & CIVIL
SUPPLIES, MUMBAI & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K.S.Agrawal, Adv. h/f. Shri S.W.Sambre, Advocate for Petitioner.
Ms H.N.Jaipurkar, A.G.P. for Respondent Nos.1 to 3.
None for Respondent No.4.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 27, 2023.

1. Heard learned counsel for the petitioner and learned A.G.P. for the respondent Nos.1 to 3. None for the respondent No.4, though served.

2. The order, dated 06/01/2018, passed by the Deputy Commissioner (Supply), Nagpur Division, Nagpur allowing the appeal preferred by the respondent No.4 against grant of Fair Price Shop and licence for retail kerosene sale and by holding that the Gram Sabha (Meeting), in which the decision was taken to grant Fair Price Shop and licence of retail kerosene sale vitiates on the ground that no representative of Tahsildar was present in the Special Women Gram Sabha and remanded the matter back to Gram Sabha for holding meeting for taking decision afresh.

3. The learned counsel for the petitioner submits that after following due procedure the Fair Price Shop and

licence for kerosene was granted in favour of the petitioner and it was challenged by the respondent No.6 by filing an appeal under Section 15 of the Maharashtra Scheduled Commodities Retail Dealers Licencing Order 1979. It is submitted that without supplying copy of the appeal memo, the respondent No.2-Deputy Commissioner proceeded with the matter and passed the impugned order.

4. It is submitted that no sufficient opportunity was given to the petitioner to submit his reply to the appeal memo as no copy of the appeal memo was provided to the petitioner.

5. It is further submitted that on merit also the order needs to be quashed and set aside as only on the basis of the suspicion the licence was cancelled and the matter was remanded back for taking resolution afresh by the Gram Sabha.

6. On the other hand, the learned A.G.P. opposes the writ petition and submits that sufficient opportunity was given to the petitioner and after hearing the petitioner the impugned order was passed.

7. It is submitted that, as the meeting of Gram Sabha vitiates as no representatives of the Tahsildar was present in the said meeting, the order passed on the basis

of such illegal meeting also goes. Therefore, she submits that the no error has been committed by the respondent No.2 in cancelling the licence.

8. In the light of the rival submissions, I have perused the writ petition, documents filed along with the writ petition and the impugned order.

9. From the record, it is evident that after passing the resolution by Gram Sabha and after following due procedure the licence in question was granted to the petitioner and on appeal filed by the respondent No.4 it was cancelled.

10. The order granting stay to the licence of the petitioner, dated 07/07/2017 does not show that with the said order a copy of the appeal memo was supplied to the petitioner. There is no specific statement made by the respondent Nos. 2 and 3 in their reply that copy of appeal memo was supplied to the petitioner and sufficient opportunity was given to the petitioner to meet the challenge raised with regard to grant of licence to the petitioner.

11. In the said backdrop, the reply filed by the petitioner is in general terms and in absence of supply of copy of the appeal memo, it appears that the petitioner could not meet the challenge raised in the appeal memo

and therefore, grant of hearing in this case would be an empty formality. Without making know the real challenge involved in the appeal memo, grant of hearing to the petitioner cannot be said in real terms compliance of the principles of natural justice.

12. In the circumstances, I am of the opinion that, it would serve the ends of justice if the matter is remanded back for fresh decision after affording sufficient opportunity to the petitioner in above referred terms. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 06/01/2018 passed by respondent No.2-Deputy Commissioner (Supply), Nagpur Division, Nagpur is hereby quashed and set aside.
- iii) The matter is remanded back to the respondent No.2-Deputy Commissioner to decide the same afresh, after providing sufficient opportunity to the parties to the dispute.
- iv) The petitioner shall appear before the respondent No.2 on 13th March 2022 at 12:00 noon, thereupon, the respondent No.2 shall issue notice to the respondent No.4.

- v) The respondent No.2 shall decide the matter afresh as expeditiously as possible and in any case within six months from the date of appearance of the parties.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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