

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

WRIT PETITION NO. 2388 OF 2021

Meghanath Hanuji Bahekar__ Vs. __ State of Maharashtra ad ors

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

Court's or Judge's orders

Mrs. A.R.Taiwade, Advocate for petitioner
Mr. N.R.Patil, AGP for Respondent Nos. 1 to 3
Mr. A.J.Mirza, Advocate for Respondent nos. 4 to 6

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/03/2023

1] Heard Mrs. Taiwade, learned counsel for the petitioner, Mr. Patil, learned AGP for respondent nos.1 to 3 and Mr. Mirza, learned counsel for respondent nos. 4 to 6.

2] The petition challenges the order dated 4.6.2020 passed by the District Supply Officer, cancelling the fair price shop license of the petitioner, on the ground that the comparison of the sale register and the entries in the ration cards indicated that 38 kgs of wheat and 247 kgs of rice were not sold to the cardholders by the petitioner (pg. 20). This order in turn was challenged before the Deputy Commissioner (Supply), who by the order dated 24.11.2020 found that there were contradictions in the report submitted by the

Inspector and the documents submitted by the petitioner and therefore, it was necessary for the learned District Supply Officer, to have reconciled the same before passing the order dated 20.11.2020, which having not be done, the order could not be sustained and therefore, was quashed and set aside and the petitioner was permitted to continue with the license (pg. 46). The revision there against to the respondent no.1 by the respondent nos. 4 to 6 has been allowed by the impugned order dated 24.5.2021 (pg.49).

3] Mrs. Taiwade, learned counsel for the petitioner submits that the impugned order does not reflect any discernible reason for setting aside the order of the Deputy Commissioner. The entire reasoning is wrapped up in one para in page 49, where the order of the District Supply Officer, has been upheld by relying upon the report dated 18.4.2020, without considering the effect of the report vis-a-vis the order of the Deputy Commissioner. It is submitted that before setting aside the order of the Deputy Commissioner, such an exercise was necessary, which having not been done, the impugned order cannot be sustained.

4] Mr. Mirza, learned counsel for the respondent nos. 4 to 6 supports the impugned order and contends that there has been wholesale defalcation of the food grains by the petitioner as per the report and therefore, the petition is required to be dismissed.

5] Mr. Patil, learned AGP for respondent Nos. 1 to 3 supports the impugned order.

6] A perusal of the impugned order would indicate that it does not give any reasons for disagreeing with the order of the Deputy Commissioner (Supply), nor is there any analysis of the report of the inspector vis-a-vis the order of the Deputy Commissioner. The respondent no.3 has filed an additional affidavit vide Stamp No.5/2023 along with it the report of the inspector has been annexed. The report of the Tahsildar dated 27.4.2020 (pg.97) indicates that except for the incidences at sr.nos. 9, 10, 11, 12, 13, 15, 16 & 17 to 21, there does not appear to be any defalcation by the petitioner.

7] Learned AGP, upon instructions, makes a statement that the original ration cards of these persons are not now available and therefore, any

remand of the matter for making a fresh enquiry would clearly not serve any purpose altogether. According to him, out of the ration cards which are available, two or three incidences still match and would indicate that there was discrepancy in the quantum of food grains as indicated by District Supply Officer.

8] Considering the above position, regarding the absence of ration cards, as are now available and which are no longer available, as indicated above, the question of remand does not arise. That apart, considering the fact the petitioner has been running the fair price shop since 1968 and there has been no complaint against him for all these decades, it would be unfair to deprive him of the use of the license, based upon material which at the most, can be considered as sketchy and unsubstantiable, so as to deprive the use of the license. In that view of the matter, I am of the considered opinion that the impugned order of the respondent no.1 dated 24.5.2021 cannot be sustained, the same is hereby quashed and set aside and the order of the Deputy Commissioner (supply) dated 24.11.2020 is restored.

(5)

926wp2388.21 (corrected)

9] The petition is accordingly allowed in above terms. No costs.

JUDGE

Rvjalit