



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2055 OF 2021

Sayyad Hanif Sayyad Hasan,
Age 78 yrs., Occ. Agri.,
R/o Belkoni (Bk), Tq. Biloli,
Dist. Nanded.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
- 2 The Hon'ble State Minister,
Food, Civil Supply and Consumer
Protection Department, Mantralaya,
Mumbai – 32.
- 3 The Deputy Commissioner,
Civil Supply, Aurangabad.
- 4 The District Supply Officer,
Nanded.
- 5 Rajendra Shankar Dakewad,
Age 30 yrs., Occ. Agri.,
R/o Belkoni (Bk), Tq. Biloli,
Dist. Nanded.

... Respondents

...

Mr. S.S. Thombre, Advocate for petitioner
Mr. S.N. Kendre, AGP for respondent Nos.1 to 4
Mr. U.B. Bilolikar, Advocate for respondent No.5

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 19th JUNE, 2024

PRONOUNCED ON : 10th JULY, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner impugns the order dated 22.01.2021 passed by Hon'ble Minister for Food, Civil Supply and Consumer Protection Department, Maharashtra State in case No.VAM-1/1120/Case No.50/Napu-21.

3 The petitioner runs a fair price shop since last 25 years. Respondent No.5 filed complaint with respondent authorities alleging illegality/irregularities in conduct of the fair price shop. Consequently, Tahsildar conducted inquiry into the affairs of shop and submitted his report dated 16.09.2019 to District Supply Officer noting certain deficiencies. On 07.11.2019 District Supply Officer issued show cause notice to the petitioner. The petitioner replied to said show cause notice, denied allegations and put forth his explanation as regards to deficiencies. On 26.11.2019 the District

Supply Officer forfeited deposit amount and suspended the licence, further directed to cause detail inquiry into the matter. The Tahsildar, Biloli conducted detail inquiry, recorded statements of 460 card holders and submitted his detail report dated 05.02.2020. In pursuance of said report, District Supply Officer issued show cause notice dated 24.02.2020 to petitioner as to why petitioner's licence shall not be cancelled. On 26.02.2020 petitioner replied and denied adverse remarks. However, District Supply Officer accepting contents of inquiry report, cancelled licence of the petitioner.

4 The petitioner approached Deputy Commissioner (Supply), Aurangabad against the order passed by District Supply Officer, Nanded. The petitioner's revision came to be allowed vide order dated 23.09.2020. Consequently, the licence of the petitioner was restored. However, respondent No.5 approached the Hon'ble Minister, who quashed and set aside the order passed by Deputy Commissioner (Supply), Aurangabad and restored the order passed by District Supply Officer, cancelling petitioners license. The order of Hon'ble Minister is the subject-matter of challenge before this Court.

5 Mr. S.S. Thombre, learned Advocate appearing for the petitioner

submits that Government Resolution dated 12.11.1991 issued by the State in its Food, Civil Supply and Consumer Protection Department regulates PDS system and lays down comprehensive guidelines for granting licences to run the fair price shops, its conduct and supervision by the authorities. It stipulates for the inquiries into the illegalities/irregularities in the conduct of fair price shop. The classification is made based on the nature of complaints and penalties are proposed. By inviting attention of this Court to clause No.11 (A) of Resolution, he submits that charges attributed against petitioner may invite minor penalties only. The inquiry report or any other material placed on record would not be sufficient to make out case for major penalty like cancellation of licence. He submits that petitioner runs shop since last 25 years without any complaint, however, due to change of political scenario in the village, petitioner is sought to be victimized. He would further submit that the Deputy Commissioner (Supply), Aurangabad had rightly considered material on record and restored the licence of the petitioner, however, due to political reasons the Hon'ble Minister entertained Revision and cancelled licence by upsetting order of Deputy Commissioner (Supply), Aurangabad. He would, therefore, urge to allow the writ petition and direct restoration of licence of the petitioner.

Advocate appearing for respondent No.5 support the impugned order. They would submit that if licence holder recovers excessive amount from card holders, it would constitute default, inviting major penalty of cancellation of licence. In the present case large number of card holders complained of extracting excessive amount apart from other irregularities. Consequently, the District Supply Officer had rightly cancelled licence, however, the Deputy Commissioner had restored the licence by making erroneous observations contrary to record. Hon'ble Minister rightly intervened and corrected error. Hence they urge to maintain the impugned order.

7 Having considered submissions advanced, apparently conduct of fair price shop under PDS scheme is regulated by guidelines promulgated under Government Resolution dated 12.11.1991. It prescribes for the procedure to deal with the complaints as regards to the licence holder. The punishment is provided based on the nature of complaints. The clause 'C' prescribes the instances inviting major penalty, clause C(1) states about sale of foodgrains at excessive rates, beyond fixed by the Government and also inconsistency in maintaining the stock. Pertinently, Tahsildar conducted detail inquiry into allegations against the petitioner and submitted report dated 05.02.2020 to District Supply Officer. The report contains the statements of 460 card holders consolidated in two parts. Almost 370 card

holders complained against petitioner for charging of excessive rates and irregular distribution. Balance 89 card holders supported the petitioner contending that the shop is run as per rules.

8 In reply to the show cause notice, petitioner admits that rate stickers of particular foodgrains, were not affixed. Although such admission pertains to a minor discrepancy, no reason is given for noncompliance. In this background, if 70% of card holders are complaining that they are supplied foodgrains at excessive rate, the conclusion drawn by the authorities holding petitioner guilty for the major infraction cannot be faulted. The District Supply Officer had accordingly passed the order of cancellation of licence.

9 The Deputy Commissioner (Supply), Aurangabad in his order stressed upon the political scenario in the village, however, no reasons were recorded as to why statements of more than 70% of the card holders shall be discarded. Further, the Divisional Commissioner erroneously observed that the District Supply Officer has not classified the nature of default on the part of the petitioner. Such an observation is inconsistent with the record. The specific finding is arrived by District supply officer, based on the inquiry report of the Tahsildar that the petitioner is guilty of medium and serious

charges while imposing the penalty of cancellation of licence. The order passed by the Hon'ble Minister restoring decision of District Supply Officer requires no interference in exercise of writ jurisdiction of this Court under Article 227 of the Constitution of India. The writ petition stands dismissed. Rule is discharged.

(S.G. CHAPALGAONKAR)
JUDGE

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