



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8925 OF 2016**

Smt. Kamalbai W/o. Sahebrao Shelke
Age - 45 years, Occu.: Business of fair price shop
R/o. Vasai, Tq. Sillod, Dist. Aurangabad ..Petitioner

Versus

1. The State of Maharashtra
through Ministry for Food, Civil Supply & Consumer
Protection, Mantralaya Mumbai.
2. Dy. Commissioner (Supply.)
Aurangabad.
3. The District Supply Officer,
Aurangabad.
4. Bajirao S/o. Rangnath Wagh
Age - 50 Yrs, Occ - Agriculture
R/o. Vasai, Tq. Sillod, Dist. Aurangabad. ..Respondents

**WITH
CIVIL APPLICATION NO.2459 OF 2018
IN
WRIT PETITION NO.8925 OF 2016**

Shri Bajirao S/o Rangnath Wagh,
Age: 50 years; Occ: Agriculture,
R/o Vasai Tq. Sillod, Dist. Aurangabad. ..Applicant

Versus

1. Smt. Kamalbai W/o Sahebrao Shelke
Age: 55 years; Occ: Agriculture,
R/o Vasai Tq. Sillod, Dist. Aurangabad. (Original Petitioner)
2. The State of Maharashtra
through Ministry for Food, Civil Supply
and Consumer Protection
Mantralaya Mumbai. (Original Respondent No.1.)
3. Deputy Commissioner (Supply.)
Aurangabad. (Original Respondent No.2.)
4. The District Supply Officer,
Aurangabad. (Original Respondent No.3.)

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Mr. Ashutosh S. Kulkarni h/f Mr. J. V. Deshpande, Advocate for
Petitioner.

Mr. S. B. Jadhav, AGP for Respondent Nos.1 to 3.

Mr. Ajinkya Kale h/f Mr. S. B. Talekar, Advocate for Respondent No.4.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th AUGUST 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioner impugns judgment and order dated 01.07.2016 passed by the Hon'ble Ministry for Food, Civil Supply and Consumer Protection, Government of Maharashtra in File No.वैअम-१११४/प्र.क्र.१०३/नापु.२१.
3. Mr. Kulkarni, learned Advocate holding for Mr. Deshpande, learned Advocate appearing for the petitioner submits that the petitioner responded to proclamation dated 07.02.2004 issued by District Supply Officer, Aurangabad for allotment of fair price shop at village Vasai. The respondent no.4 also participated in process of allotment of shop in pursuance of aforesaid proclamation. Infact, in terms of Government Resolution dated 12.11.1991, the fair price shop was earmarked for women. Consequently, Gram Sabha allotted the same to the petitioner w.e.f. 23.06.2005 after examining candidature of other ten interested persons. Since then, the petitioner is continuously running fair price shop.
4. Mr. Kulkarni points out that respondent no.4 was previously running fair price shop in same village. In the year 2001, he was found involved in black marketing of Kerosene. Consequently, Crime No.3/2001 was registered at Police Station Sillod (Rural) for offences punishable under Section 3 and 7 of Essential Commodities Act, 1955. In deference to the registration of crime, the Sub Divisional Officer suspended respondent no.4's

authorization w.e.f. 21.06.2001. So far as the shop allotted to the petitioner is concerned, it was under independent proclamation for the same village. But when, respondent no.4 succeeded in getting acquittal in RCC No.95/2001 vide order dated 05.08.2008, he claimed for restoration of his shop. The respondent no.3-District Supply Officer rejected his application on two counts. Firstly, the fair price shop has been allotted to the petitioner was in pursuance of 33% reservation to the women in same village. Secondly, permanent allotment of shop under independent proclamation has nothing to do with acquittal of respondent no.4.

5. The order of District Supply Officer dated 06.09.2009 was carried in Revision before Deputy Commissioner (Supply), Aurangabad. The learned Deputy Commissioner directed restoration of fair price shop in favour of respondent no.4 observing that on 21.06.2001 fair price shop allotted to respondent no.4 was suspended due to registration of crime against him and it was wrongly allotted to the petitioner. The petitioner assailed the aforesaid order before the Hon'ble Minister, who pleased to maintain order of Deputy Commissioner (Supply) vide judgment and order dated 29.04.2011. The petitioner thereafter approached this Court in Writ Petition No.3856/2011. This Court after considering submissions advanced, remanded matter back to the Hon'ble Minister for fresh consideration with observations that Hon'ble Minister shall delve into the following issues:

- (i) *As to whether the grant of license to the petitioner pursuant to the proclamation dated 07.02.2004 was a stop gap arrangement pending criminal case against respondent no.4.*
- (ii) *If respondent no.4 had participated in selection process pursuant to the proclamation dated 07.02.2004 and failed, whether he has locus to challenge the selection of petitioner.*
- (iii) *Whether acquittal of respondent no.4 would lead to automatic dislodging the petitioner from fair price shop?*

6. The Hon'ble Minister vide impugned order dated 01.07.2016 again rejected the Revision Application observing that allotment of fair price shop in favour of the petitioner was subject to outcome of criminal proceeding against respondent no.4. Since respondent no.4 has been acquitted, the suspension of his license cannot be sustained. Hence, he is entitled for restoration of fair price shop in his favour.

7. Mr. Kulkarni would submit that proclamation dated 07.02.2004 depicts that specifically women candidates were invited to submit their candidatures for allotment of fair price shop. The proclamation nowhere stipulates that allotment of fair price shop is by way of stop gap arrangement or it has any resemblance with suspension of fair price shop license that was allotted in favour of respondent no.4. He would further point out that respondent no.4 himself had participated in the selection process alongwith petitioner in response to the proclamation dated 07.02.2004, since he was aware that it is a fresh proclamation. He would submit that order of allotment of fair price shop in favour of petitioner vide order dated 23.06.2005 nowhere stipulates that such allotment is subject to any decision to be rendered in the criminal proceeding. He would further submit that respondent no.4 never challenged the order dated 21.06.2001 regarding suspension of his license and order of allotment of fair price shop in favour of petitioner. He endeavours to contend that suspension of respondent no.4's license and criminal prosecution are independent actions. Only because respondent no.4 has secured acquittal in criminal proceeding, there cannot be automatic revival of suspension order, which has been suffered by respondent no.4. The acquittal of respondent no.4 cannot be used to supersede the right accrued in favour of the petitioner. However, learned Deputy Commissioner as well as Hon'ble Minister erroneously passed the impugned orders directing

restoration of fair price shop in favour of respondent no.4 and consequently, cancelled allotment in favour of petitioner.

8. Per contra, Mr. Kale, learned Advocate holding for Mr. Talekar, learned Advocate appearing for respondent no.4 vehemently opposes the contentions. He would submit that respondent no.4 was subjected to action of suspension of license due to the registration of offence under order dated 21.06.2001. However, there was no further proceeding to cancel license. The suspension of license can be for limited period. The respondent no.4 after getting acquittal in RCC No.95/2001 applied for restoration of license of shop no.79. However, learned District Supply Officer erroneously rejected his prayer. The respondent no.4 then approached Deputy Commissioner (Supply), Aurangabad, who allowed the Revision Application, thereby directing restoration of fair price shop in favour of respondent no.4. The same order is confirmed by the Hon'ble Minister. As such, there is nothing to interfere in concurrent findings of facts recorded by both the Authorities. To buttress his submissions he relies upon judgment of Supreme Court of India in case of ***Poonam Vs. State of Uttar Pradesh and Others***¹ to contend that the allotment of shop in favour of petitioner can be considered as temporary measure pending criminal prosecution against the respondent no.4. However, on acquittal, he is entitle for automatic revival of suspension order and restoration of fair price shop. The petitioner cannot claim any right to permanently hold the shop allotted in her favour by way of ad-hoc arrangement.

9. Having considered submissions advanced, first issue that requires consideration is as to whether order dated 21.06.2001, suspending license of respondent no.4 was subject to the final decision in criminal case. Perusal of order dated 21.06.2001 passed

¹ (2016) 2 SCC 779.

by the Sub Divisional Officer, Sillod clearly depicts that on registration of offence against respondent no.4 for black marketing of Kerosene, Tahsildar had forwarded proposal for suspension of license of respondent no.4. Consequently, show cause notice was served upon him on 11.04.2001, which was replied by respondent no.4 on 18.06.2001. His explanation was not accepted. Consequently, invoking provisions of Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, the license of respondent no.4 was suspended. The order nowhere stipulates that suspension is subject to the outcome of pending criminal proceeding. It appears to be independent action. Pertinently, the respondent no.4 never assailed validity of the said order before appellate authority. Having suffered order dated 21.06.2001, when District Supply Officer issued proclamation dated 07.02.2004, thereby inviting candidature for allotment of fair price shop at Vasai, respondent no.4 also applied. Pertinently, he had unsuccessfully challenged the said proclamation. Consequently, amongst 10 participants, including respondent no.4, petitioner emerged to be successful and she was allotted fair price shop. Pertinently, proclamation earmarks shop for women as against 33% reservation quota in pursuant to the Government policy promulgated under Government Resolution dated 06.03.2002 and 14.03.2002. The proclamation nowhere stipulates that allotment of fair price shop is on ad-hoc basis or reserves any right of previous shop owner i.e. respondent no.4.

10. It is true that on 05.08.2008 respondent no. 4 secured acquittal in RCC No.95/2001. However, such acquittal does not entitle respondent no.4 to seek revival of suspension of his license in the year 2001. Pertinently, such revival could not have affected right of the petitioner, who has been independently allotted fair price shop in pursuance to the proclamation dated 07.02.2004.

11. Mr. Kale relies upon the judgment in case of ***Poonam Vs. State of Uttar Pradesh and Others*** (supra). However, in that case license in favour of 'A' was cancelled. He preferred Appeal before Commissioner. The person 'B' got impleaded himself in Appeal on the ground that she has been allotted shop on cancellation of license granted to 'A'. The Appellate Authority restored the allotment in favour of 'A' and cancelled allotment of subsequent allottee. In the present case, respondent no.4 had suffered order of suspension dated 21.06.2001. The petitioner has been allotted fair price shop in pursuance of independent proclamation dated 07.02.2004. The respondent no.4 claims rights of restoration of shop merely because of his acquittal in criminal case. Apparently, acquittal in criminal case would not automatically bestow right in favour of respondent no.4 to seek restoration of his license, particularly by cancelling authorization granted in favour of the petitioner. Consequently, impugned orders cannot be sustained under law and liable to be quashed and set aside. Hence, following order:

ORDER

- a. Rule is made absolute in terms of prayer Clauses (B) and (C).
- b. In view of disposal of Writ Petition, present Civil Application is also disposed of.
- c. Writ Petition is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE