



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10124 OF 2023

Rohidas Gangadhar Shewale,
Age-65 years, Occu-Agril,
R/o. Solgavhan, Tq. & Dist. Jalna

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary
Department of Food, Civil Supply
and Consumer Protection,
Mantralaya, Mumbai
2. The Dy. Commissioner (Supply),
Aurangabad Division,
Aurangabad
3. The District Food and Supply Officer,
Aurangabad, Tq. & Dist. Aurangabad
4. Uttam Baburao Ghate,
Age-Major, Occu-Agri,
R/o. Solgavhan, Tq. & Dist. Jalna

...RESPONDENTS

Mrs. Sheetal V. Salunke, Advocate for the petitioner
Mr. N. B. Patil, AGP for the respondents/State
Mr. S. N. Rodge, Advocate for respondent No.4

CORAM : S. G. MEHARE, J.

DATE : 18th APRIL, 2024

JUDGMENT

1. Rule.

2. Rule made returnable forthwith. With the consent of the parties, the matter is taken up for a final hearing.

3. The petitioner/consumer of the ration shop has impugned the order of the Hon'ble Minister of Civil Supply and Consumer Protection dated 13-06-2023, passed in case No. वैअम-1119/प्र.क.61/ना.पु.21.

4. Respondent 4 had a ration shop license. There were complaints against him that he was selling the ration articles at higher rates and was not correctly distributing the kerosene and grains to the consumers. The complaint was lodged against him. The District Supply Officer recorded the statements of ration card holders. District Supply Officer, after inquiry, cancelled the ration card shop license of respondent No.4. He preferred the appeal against his order before the Deputy Commissioner (Supply), Aurangabad. He also dismissed the appeal. Then, he preferred the revision before the Hon'ble Minister. By order dated 08-08-2013, in case No. वैअम-113/प्र.क.209/ना.पु.21, the Hon'ble Minister, dismissed the revision. Respondent No.4 had preferred the writ petition No. 6398/2014 before this court.

However, on instructions, learned counsel for the petitioner sought leave of court to allow him to withdraw the writ petition as he desired to avail alternate remedy. The court accepted the statement and disposed of the writ petition by order dated 01-03-2018. Thereafter, respondent No.4 filed a review application before the Hon'ble Minister, who has quashed earlier orders dated 10-10-2012, 28-03-2013 & 08-08-2013 by order dated 13-06-2023 and directed to restore the license of respondent No.4.

5. Learned counsel for the petitioner submits that the Hon'ble Minister, had no power to entertain the review application after one year of the order passed in revision. There was an inordinate delay in preferring the review. The petitioner immediately filed a writ petition against the order of the Hon'ble Minister dated 08-08-2013 but kept it pending for four years and withdrew it, stating that an alternate remedy was available. The Hon'ble Minister did not consider the legal aspect and mechanically passed the impugned order. The review has not been considered as provided under Clause-24 of the Maharashtra Schedule Commodities (Regulation and

Distribution) Order, 1975 (from now on referred to as 'the Order, 1975'). Learned counsel for the petitioner vehemently argued that the reasons for allowing the review were also against the law. There were no errors on the face of the record in the earlier orders passed in revision. A wrong person may not be licensed to do the wrong action. There is no question of applying reformatory theory. The earlier order was passed long back in 2013. Therefore, the Hon'ble Minister had no reason to consider that keeping him away from business for 10 years was sufficient punishment. No such ground has been contemplated in clause 24(2) of the Order 1975. She prayed that the impugned order was prima facie illegal and against the provision of law. Hence, a writ petition may be allowed by setting aside the impugned order.

6. Learned counsel for the contesting respondent No.4 submits that since 2013, the Revenue Department has not proclaimed a notice for a new ration shop. The statement of the complainant was not recorded, and he was not involved in the enquiry. The accounts of his shop were not inspected. The

enquiry was ex-parte. Therefore, their decisions were incorrect. He submits that since the writ was pending, there was no delay. When the leave was granted to withdraw the writ petition, it was the last cause of action. Immediately after the order of this court in the writ petition, a review petition is filed. Hence, the review application was within limitation. He also argued that for ten years, the Collector did not proclaim for allotting shop. The Hon'ble Minister has correctly considered that keeping respondent No.4 away from the business for ten years is sufficient, and the fine of Rs.5000 would serve the purpose. He also argued that the Hon'ble Minister had exercised judicial discretion and made justice with the villagers. He prayed that there was no substance in the petition. Hence, the it may be dismissed.

7. The first legal question is whether the review petition was filed in time and whether it can be condoned. Clause 24(2) of the Order of 1975 empowers the Government to review the orders passed under its judicial jurisdiction. It has been provided therein that such review may be taken before the

expiry of a year from the date of any order passed in revision. The said clause does not fall under consideration for any application after such period.

8. In the said sub-clause, the grounds for review have been prescribed. The first ground was the discovery of new matter of evidence which after exercise of negligence was not within the knowledge of the applicant or could not produce by him at the time when the order was passed. The impugned order does not reflect that review was sought on this ground. The second ground for review was some mistake or error apparent on the face of the record, and the third was for any other sufficient reasons. Sub-clause restricts the jurisdiction of the Government from reviewing earlier orders on any other grounds. For review, there should be some mistake or error apparent on the face of the record. While considering the review application, the reviewing authority shall mention the apparent mistakes or errors in the order passed under revision. A review may be taken for any other reasons. Sufficient reason does not include discretion. Such orders must cause some

apparent injustice. There is no finding in the impugned order that there was a mistake or error apparent on the face of the record, nor were there sufficient reasons to review earlier orders passed in revision.

9. The Hon'ble Minister has recorded the submission of respondent No.4 that during the course of the inquiry, he was not allowed to participate. Account books of his shop are not inspected, and on the basis of statements ex-parte inquiry was done. These were only the submissions of respondent No. 4 but not the reason for the review. However, the District Supply Officer had submitted that the action was taken on the fact filed upon the complaint. The impugned order is without reasons, as provided under clause 24(2) of the Order 1975. This order does not reflect any of the grounds mentioned in those clauses. There was no provision to apply the reformation theory while delivering the order in the review application. The license of the shop of respondent No.4 was cancelled as he was cheating the consumers by charging higher rates. It is a ground contemplated under Order 1975 to cancel the ration shop license. The wrong

person should not be invited again, and the message should be spread in society that the law does not tolerate wrong and illegality. The law should be implemented in the true sense to maintain trust and certainty. Be that as it may, the impugned order is devoid of merits and not in consonance with the grounds of review mentioned above. Therefore, it deserves to be quashed and set aside. In view of the above, the following order is passed.

ORDER

- a] The writ petition stands allowed.
- b] The impugned order of the Hon'ble Minister, Department of Food, Civil Supplies and Consumer Protection, dated 13-06-2023, passed in the case No.वैअम-1119/प्र.क.61/ना.पु.21 is quashed and set aside.
- c] No order as to costs.
- d] Rule made absolute.

e] The learned Collector, Jalna, shall issue the proclamation inviting the application from the competent persons for granting a license of the shop of respondent No.4 as soon as possible.

[S. G. MEHARE, J.]

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