

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14561 OF 2024

Jay Shri Ram Mahila Saha. Dudh Vyavsay Sanstha
Maryadit, Allatwadi

...Petitioner.

Versus

The Minister, (Food, Civil Supplies and Consumer
Protection) Maharashtra State, Mumbai & Ors.

...Respondents.

*Mr. Padmanabh D. Pise a/w. Ms. Sejal A. Hariyan i/b P. Padmanabh &
Associates for the Petitioner.*

Ms. V. S. Nimbalkar, AGP for the Respondent-State.

*Mr. Suryajeet Chavan a/w. Ms. Vishakha S. and Mr. Ajinkya Wakejar for
Respondent No.6.*

Coram : Sharmila U. Deshmukh, J.

Date : 25th October, 2024.

P. C. :

1. Heard.
2. By this petition, challenge is to the order dated 3rd October 2024 passed by the State Government through the Hon'ble Minister (Food, Civil Supplies and Consumer Protection) in Revision Application preferred by respondent No.6.
3. Briefly stated the facts of the case are that advertisement was issued for allocation of Fair Price Shop in which the petitioner as well as

respondent No. 6 participated. By order dated 27th March 2024, license was granted to the petitioner which came to be challenged by respondent No.6 by way of revision filed beyond the period of limitation of 30 days as provided under Section 24 of the Maharashtra Schedule Commodities (Regulation of Distribution) Order, 1975. As there was no sufficient explanation, the Divisional Commissioner by order dated 26th August 2024 rejected the revision on the ground of limitation which was challenged by respondent No.6 before the Hon'ble Minister and by impugned order dated 3rd October 2024, the Hon'ble Minister cancelled the license granted to the Petitioner and approved the grant of license to respondent No.6.

4. Learned counsel appearing for the petitioner would submit that Divisional Commissioner has rejected the challenge by Respondent No. 6 on the ground of limitation and therefore the Revision before the Hon'ble Minister was only on the aspect of condonation of delay. Pointing out to the findings in the impugned order, he submits that the Hon'ble Minister has not decided the issue of delay and instead adjudicated the application on merits and cancelled the license allotted to the petitioner. He submits that such a course was not available and only issue as against which revision was preferred was the issue of dismissal by the Divisional Commissioner on the ground of revision being preferred beyond the period of limitation.

5. *Per contra*, learned counsel appearing for respondent No.6 would submit that there has been suppression of material fact inasmuch as the office bearers of the petitioner had filed the appeal before the Divisional Commissioner itself seeking cancellation of the license issued to the petitioner. He would further point out that resolution on the basis of which application was made is stated to be false and therefore as the issue is of running of a fair price shop and considering that the petitioner is not in a financial position to run the same, the order of the Hon'ble Minister can be substantiated on that ground.

6. Considered the submissions and perused the record.

7. The undisputed fact is that against the order of Divisional Commissioner dated 26th August 2024 rejecting the appeal on the ground of non sufficiency of explanation for condonation of delay, the revision came to be filed before the Hon'ble Minister. The only issue which was required to be adjudicated in the Revision Application by the Hon'ble Minister is the issue of condonation of delay. It is well settled that where application for condonation of delay is pending adjudication, it is not permissible to enter into the merits of the matter and decide the same without first deciding the issue of delay. In the present case, perusal of the impugned order would indicate that there is no finding or discussion on the aspect of delay which gave rise to the revision in the first place and without going into the same or even

condoning the delay, the Hon'ble Minister has entered into merits of the matter and has cancelled the license which was granted to the petitioner. Such a course is impermissible in law and therefore the impugned order cannot be sustained.

8. Considering that revision was against the order rejecting the appeal on the ground of limitation the matter will have to be remitted to the Hon'ble Minister to be considered afresh on the aspect of limitation only.

9. Resultantly, the impugned order dated 3rd October 2024 is hereby quashed and set aside. The Revision Application No.146 of 2024 is remitted to the State Government to be decided afresh. Considering the Code of Conduct which has been imposed, learned AGP submits that the matter can be decided by the Principle Secretary. The Principal Secretary is requested to decide the Revision Application expeditiously.

10. Petition stands disposed of in the above terms. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]