



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1454 OF 2021

**(Tathagat Gramvikas Bahuddeshiya Sanstha, through its President Vs. Hon'ble Minister,
Food Civil Supply Consumer Protection & Ors.)**

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

Court's or Judge's orders.

Shri S.D. Chopde, Counsel for the petitioner.

Ms D.I. Charlewar, A.G.P. for respondent nos. 1 to 3/
State.

Shri U.J. Deshpande, Counsel for respondent no.4.

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CORAM : ANIL L. PANSARE, J.
OCTOBER 1, 2024

The petitioner – Society and respondent no.4 – Society are battling for running a fair price shop situated at Mouza – Shegaon, Tahsil – Shegaon, District – Buldhana.

2] Respondent no.3 – District Supply Officer vide order dated 7/4/2017 held the petitioner to be competent to run the fair price shop and accordingly allowed its application. The claim of respondent no.4 was rejected mainly on the ground that there was no banking transactions by the Society post 31/3/2016 and further that respondent no.4 has not submitted audit reports.

3] Respondent no.4 challenged the order passed by the District Supply Officer before respondent no.2 – Deputy Commissioner (Supply), Amravati Division, Amravati, under Section 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975 (hereinafter referred to as 'Order of 1975').

4] The respondent no.4, after examining the record of the District Supply Officer, found that audit reports of respondent no.4 were furnished till the year 2017 and audit reports of the petitioner were furnished till the year 2016. Accordingly, the Deputy Commissioner found respondent no.4 to be better equipped to run the fair price shop. Another ground on which the petitioner was found ineligible was that the petitioner – Society was not from the local area. Accordingly, the Deputy Commissioner allowed the revision and appointed respondent no.4 to run the fair price shop.

5] The petitioner then approached the Hon'ble Minister under Section 24 of the Order of 1975.

6] I have gone through the said provision to find that only one revision is maintainable. Section 24(1) provides that if any person is aggrieved by an order passed by the Collector, he may file application before the Commissioner and if a person is aggrieved by an order passed by the Commissioner, he may file application before the State Government. Thus, the revision will lie either before the Commissioner or before the State Government, as the case may be.

7] The proviso to sub-section (1), however, enables the State Government to suo motu call for and examine the record of the proceeding before any officer to satisfy itself as to the legality and propriety of any decision/order passed by any officer, which will include the order passed by the Commissioner. Though the State Government may suo motu exercise powers of revision

against order passed by the Commissioner, revision under sub-section (1) of Section 24 by the aggrieved person will lie upon an application made either before the Commissioner or the State Government, depending on the rank of officer, whose order is to be tested. The Hon'ble Minister, however, entertained second revision, not suo motu but on an application made by the petitioner, which, to my mind, was not permissible.

8] In the present case, first order has been passed by the District Supply Officer, who was exercising powers of the Collector. The respondent no.4, being aggrieved by the said order, had approached the Deputy Commissioner, who was exercising powers of the Commissioner. Surprisingly, the Deputy Commissioner held that as per record, audit of respondent no.4 has been done till the year 2017, despite there being argument that audit reports were not placed by respondent no.4. This finding is admittedly contrary to what is available on record. The audit reports are not available on record. The learned A.G.P. failed to show that the audit reports of respondent no.4 were placed on record before respondent no.3 – District Supply Officer.

9] On the point of requirement of local self-help group or Society, the learned A.G.P. and the learned Counsel for respondent no.4 have invited my attention to the Government Resolution dated 6/7/2017. Clause 4(ii) thereof provides that application can be filed by the Societies of the village/area, and eligible Society shall be selected from amongst these Societies.

10] Thus, it appears that local Society should be preferred to run the fair price shop. In fact, Section 3-A of the Order of 1975 provides for order of priority to be followed in issuing authorization to ration shop/fair price shop. The first in priority is Adiwasī person permanently residing in a village, second is Adiwasī Co-operative Societies at village level and so on. Thus, priority is focused on the village where fair price shop is to be run. There is nothing on record to show that respondent no.3 has made any effort to adhere to Section 3 of the Order of 1975.

11] The learned Counsel for the petitioner has vehemently argued that the petitioner – Society can also be treated as a Society situated in local area inasmuch as the Society has its registered office in the district in which the fair price shop is to be run.

12] I do not find substance in the argument. The fair price shop is to be run at Mouza and Tahsil – Shegaon, District – Buldhana. The petitioner – Society is from Tahsil – Sangrampur, District – Buldhana. This cannot be said to be from the same village. The expression used in the aforesaid Government Resolution as also Section 3 of the Order of 1975 refer to village/area, which, for the instant petition, would mean Village – Shegaon and will, at the most, include area in Tahsil – Shegaon, if extended meaning is given. The petitioner – Society is from different Tahsil, i.e., from Sangrampur and, therefore, it cannot be said to be a local

Society. To that extent, the Commissioner's finding is legitimate.

13] The petitioner then approached the Hon'ble Minister against the said order. As such, second revision was not maintainable, however, the same was entertained and vide order dated 16/3/2021, the revision was dismissed. Hence, present petition.

14] Thus, what transpires is that the petitioner and respondent no.4 Societies had applied to run a fair price shop located at Mouza – Shegaon, Tahsil – Shegaon, District – Buldhana. The respondent no.3 has found the petitioner Society to be competent to run the fair price shop. The petitioner Society is not from Mouza – Shegaon but has its office and business in Mouza – Sangrampur. While allotting the fair price shop, the officer concerned was duty bound to adhere to the order of priority in issuing authorization to run the fair price shop in terms of Section 3-A of the Order of 1975. Further, similar arrangement of priority is stipulated in Government Resolution dated 6/7/2017. There is nothing on record nor have parties to the proceedings pointed out that respondent no.3 – District Supply Officer has taken steps to adhere to the order of priority in granting authorization to run the fair price shop, in the sense, the order is silent as regards priority to be followed. In other words, there is nothing in the order to indicate that Adiwasi person permanently residing in Mouza – Shegaon was not available or Adiwasi Co-operative Society in the village did not apply or that self-help group (Mahila

Bachat Gat) was not available to run the fair price shop and so on.

15] It appears from the order passed by the District Supply Officer that there were only two applicants, one is the petitioner and other is respondent no.4. The District Supply Officer found that respondent no.4 – Society has not audited the account and has not placed on record any document in support. The Deputy Commissioner has upset the said finding on the ground that respondent no.4 had audited the account till the year 2017, despite there being argument that audit reports were not placed by respondent no.4. This finding is contrary to the record inasmuch as the audit reports of respondent no.4 Society were not found in the file/record of respondent no.3. The said finding has been upheld by the Hon'ble Minister without ascertaining availability of audit reports. The order of the Hon'ble Minister is, therefore, unsustainable. That apart, the second revision was not maintainable for the reasons noted earlier.

16] Thus, it is evident that respondent no.4 was not eligible because it failed to show its competence by filing audit reports. The petitioner appears to be not eligible because it is not a local Society. As such, the petitioner's claim could have been considered, however, the District Supply Officer ought to have recorded its satisfaction that despite efforts made to adhere to the priorities as enumerated under Section 3-A of the Order of 1975 coupled with the provisions of the Government Resolution dated 6/7/2017, except for the petitioner –

Society, no other person/entity was available. Having not done so, the matter will have to be remanded back to the District Supply Officer to consider the process of authorization of ration shop afresh, strictly in terms of the provisions of the Order of 1975 as also Government Resolution dated 6/7/2017. In a given case, he may initiate the process afresh.

17] Resultantly, the following order is passed :

ORDER

I] Order dated 16/3/2021 passed by the Hon'ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra, order dated 24/1/2019 passed by the Deputy Commissioner (Supply), Amravati Division, Amravati, in Revision Case No. CSS-90/Shegaon/2017-18 and order dated 7/4/2017 passed by the District Supply Officer, Buldhana, are quashed and set aside.

II] The enquiry is remanded back to the District Supply Officer, Buldhana, to decide the same afresh in the light of what has been stated in the body of the order and in a given case, may initiate fresh process.

III] Until the process of allotment is completed, the District Supply Officer may make necessary arrangement to run the fair price shop by an appropriate person.

18] At this stage, the learned Counsel for the petitioner made a request to stay the effect and operation of this order on the ground that for all these years, the

petitioner – Society is running the fair price shop and interim order was operating in this petition from the date of its inception, i.e., from the year 2021.

19] This request be made before the District Supply Officer, and if so made, it shall be considered on its own merit.

20] The writ petition is disposed of in above terms. No order as to costs.

(ANIL L. PANSARE, J.)

Sumit