



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 173 OF 2024 WITH
CIVIL APPLICATION NO. 5483 OF 2024
IN WP/173/2024

Adarsh Mahila Bachat Gut Through Its President Nilofer
Tahsin Shaikh Mohib Shaikh Ahemed

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

- Mr. D. A. Mane h/f Mr. N. R. Pawade, Advocate for the Petitioner
- Mr. S. B. Jadhav, AGP for the Respondent Nos. 1 to 3/State
- Mr. S. G. Karlekar, Advocate for the Respondent No. 4

CORAM : R. M. JOSHI, J
RESERVED ON : FEBRUARY 26, 2025
PRONOUNCED ON : MARCH 03, 2025

ORDER :

1. This Petition takes exception to the order impugned passed in Revision No. VAIM-1122/Case No 134/Na.Pu.21 before the Minister, Food Civil Supply and Consumer Complaint Redressal Department, Mantralaya, Mumbai.

2. The facts which led to the filing of this Petition can be narrated in brief as under:

An advertisement was published for the allotment of the new fair price shop (for short 'FPS')

license at Vidyanagar, Parbhani. Pursuant to the said advertisement, amongst others, Petitioner and Respondent No. 4 filed applications. The Committee appointed for scrutiny of the said applications, submitted its findings/report on 05.10.2021 holding Respondent No. 4 amongst other Applicants to be disqualified for the reason mentioned therein. As far as Respondent No. 4 is concerned, it was disqualified on the ground that there was no audit report or evidence with regard to the premises. This report of the District Supply Officer, Parbhani (for short 'DSO') came to be relied upon while accepting the proposals which satisfied test in the scrutiny.

3. Pursuant thereto, FPS license was issued on 25.10.2021 in favour of the Petitioner. Respondent No. 4 being aggrieved by the said order, filed Revision which came to be dismissed on 26.05.2022 by holding that the Respondent No. 4 has failed to comply with the mandatory requirements within specified period. Respondent No. 4 filed another Revision before the Minister against the order dated 26.05.2022. It is the case of the Petitioner that Minister partly allowed the

Revision only on sympathetic ground without assigning any reason for cancellation of the FPS allotted to the Petitioner. The Petitioner approached this Court by filing Writ Petition No. 660/2023 wherein by order dated 20.02.2023 this Court directed the Minister to decide the proceedings expeditiously on merit. By order dated 27.12.2023, the Minister allowed the Revision on the same ground. Hence, this Petition.

4. Learned Counsel for the Petitioner submits that the Respondent No. 4 has no right to take exception to the allotment of the FPS license in favour of the Petitioner since it did not challenge its disqualification, though duly communicated. It is his submission that after complying all the necessary requirements, the FPS license was issued and it was not open for the Minister to set aside the said order without recording reasons therefor. It is his submission that the Minister has exceeded its jurisdiction of review and without there being any case made out of error apparent on the record, the Minister out not to have exercised the said jurisdiction.

5. Learned Counsel for Respondent No. 4 & learned AGP supported the impugned order. It is argued on behalf of contesting Respondent that the order passed by the Minister indicates that the material on record is taken into consideration showing non compliance of mandatory requirements by the Petitioner such as registration as well as audit. He drew attention of the Court to the relevant documents in order to argue that the Petitioner is not registered and was in fact claiming registration through Nayi Roshani Lokshanchalit Sadhan Kendra, Parbhani. It is his further submission that there is non compliance of the mandatory requirement and as such, no license could have been allotted. By referring to the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, it is submitted that in clause 24(2) it is open for the Minister to even suo moto review the order, if it satisfies amongst other grounds that mistake or error is apparent on record. It is argued that even for any other sufficient reason, the review is permissible. To support his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of Rajendra Diwan vs. Pradeep Kumar Ranibala and

Another, (2019) 20 SCC 143.

6. From the record, it is clear that for the purpose of issuance of FPS license, pre-condition is Applicant be must registered and also has audited accounts. On the face of it record indicates that the Petitioner had applied for license is not registered but claims to be registered with another institution. Apart from this, the audit report of the said institution is relied upon by the Petitioner in order to seek the license which facts are apparent from the documents on record. There is nothing on record to indicate that these aspects were considered before issuance of FPS license to the Petitioner. This Court does not wish to express any opinion thereon as it is for the concerned Authority to take decision in this regard. Suffice it to say that in absence of any material to indicate consideration thereof, the order of issuance of license may not sustain.

7. In the light of the aforestated facts, if the order passed by the Minister is perused, though it seems that the Minister has passed order on sympathetic ground, however, from the said order it can be gathered

that these aspects were brought to his notice. The Minister is not judicially trained person in order to find technical fault in the text of the order. What is required to be seen is as to whether there was sufficient material to set aside the order granting FPS license to the Petitioner and directing Authorities concerned to reconsider the entire issue. The record has shown herein above clearly indicates that there was reason to believe that the order of issuance of license could not have been passed without considering issues raised as indicated above. Apart from this, the Petitioner has failed to show that order impugned has led to miscarriage of justice. It is always open for the Petitioner to justify its claim before the Authority. In such circumstances, this Court finds no reason to cause interference in the said order.

8. However, at the same time, one cannot ignore the fact that the order of rejection of application of the Respondent No. 4 was duly communicated and for want of any challenge thereof, the Respondent No. 4 now cannot be permitted to participate in the said process again. In such circumstances, though the order of the

Minister upheld, it would not be open for the Authorities to consider/entertain the claim of the Respondent No. 4 for the purpose of allotment of the license of the FPS.

9. Petition stands disposed of in above terms.

10. Pending civil application(s), if any, stands disposed of.

(R. M. JOSHI, J.)