



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

WRIT PETITION NO.9842 OF 2016

Shamkant @ Pankaj s/o Jaywantrao Patil
Age 32 years, Occ. Agri.
R/o- Dahiwad, Tq. Amalner,
Dist- Jalgaon

... Petitioner

Versus

- 1] Smt. Kokilabai Vasudeo Mali
Age 58 years, Occ. Fair Price Shop,
R/o. Dahiwad, Tq. Amalner,
Dist. Jalgaon.
- 2] The State of Maharashtra
Through Secretary,
Department of Food, Civil Supplies
And Consumer Protection,
Mantralaya, Mumbai-32
- 3] The Learned Minister,
Food and Civil Supplies,
State of Maharashtra,
Mantralaya, Mumbai-32
- 4] The Dy. Commissioner (Supply),
Nasik Division, Nasik
- 5] The District Supply Officer,
Jalgaon, Taluka Jalgaon,
Dist. Jalgaon.

...Respondents

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Mr. B.R. Waramaa, Advocate for Petitioner
Ms. M.L. Sangit, AGP for Respondents/State
Mr. Sanket Kulkarni, Advocate h/f Mr. Yogesh Jadhav, Advocate for
Respondent No.1
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CORAM : MANJUSHA DESHPANDE, J.

DATE : 14th JANUARY, 2025

ORDER :

1. The order dated 06/08/2016, passed by the Minister,
Food, Civil Supplies and Consumer Protection, State of Maharashtra,

in Appeal No. वैअना-1416/प्र.क.66/ना.पु.23, along with order dated 08/12/2022, passed by the District Supply Officer, Jalgaon, has been challenged in the present writ petition.

2. Petitioner claims to be a vigilant agriculturist fighting for the rights of poor persons, he has also undertaken campaign of awareness in respect of scheduled commodities sold in the shop of respondent No.1. He also claims that he has participated in inquiry conducted by Tahsildar, against respondent No.1. Respondent No.1 was a license holder of fair price shop No.146, at village Dahiwad, Tq. Amalner, Dist. Jalgaon. It is alleged by petitioner that fair price shop owner of shop No.146 was playing fraud in the distribution of scheduled commodities available in his shop. As a result the needy and eligible villagers were deprived of the scheduled commodities. They were not getting the commodities as per the price fixed by State Government.

Sarpanch of the village had made complaint to the respondent authorities thereby mentioning details about irregularities committed by respondent No.1. The Tahsildar, Amalner, submitted a report pursuant to the inquiry which was directed to be conducted by him on 21/01/2016. Some of the irregularities committed by the respondent No.1 as per the report are as under:

1) Though one Mankarnabai Dagadu Shete had expired on 20/12/2012, who was beneficiary of Antyoday Labharthi Yojana, her

name was maintained in the unit register and total 1295 Kg food grains have been distributed in her name for a period of 37 months.

2) Though in the unit register of Antyoday Labharthi Yojana maintained by the Tahsil Officer, there were only 128 members registered, however, record indicates that 142 beneficiaries have taken benefit of the scheme.

4) When the beneficiaries under Antyoday Labharthi Yojana were inspected, it was found that 16 members attached to Shop No.146 who were not in the list maintained by the Tahsil Office, Amalner, have taken benefit of total 560 kg food grains.

5) The BPL unit register of shop No.146 reflected that there were 20 card holders who were not found in the list maintained by the Tahsil Office.

Irregularities amounting to malpractice committed by respondent No.1 were observed in the report submitted by the Tahsildar to District Supply Officer, Jalgaon. After receipt of said fact finding report, show-cause-notice was issued to respondent No.1 on 25/01/2016 calling upon her explanation regarding the illegalities committed by her. After receiving the explanation given by respondent No.1, respondent No.5 District Supply Officer, has been pleased to pass an order dated 16/02/2016 thereby cancelling the license of fair price shop of respondent No.1 in exercise of his power under the Maharashtra Scheduled Commodities (Regulation of) Order, 1975, Part 3(2).

3. Being aggrieved by that order, respondent No.1 approached respondent No.4 Deputy Commissioner (Supply, Nashik Division, Nashik, by filing Revision Application No.18/2016. After taking into consideration the allegations and record in respect of irregularities and malpractices committed by respondent No.1, and after affording opportunity of hearing to the parties, respondent No.4 has been pleased to reject the Revision vide order dated 30/03/2016, which was subject matter of challenge in the Supply Appeal/Revision No.18/2016 filed before the Minister, Food and Civil Supply Ministry, Government of Maharashtra, Mumbai. The Minister has decided the appeal/revision vide order dated 06/08/2016. Though initially the Minister has granted stay to the order passed by respondent No.4 as well as respondent No.5 on 18/05/2016, however, eventually the Minister has been pleased to dispose of the appeal/revision vide order dated 06/08/2016.

4. Learned Advocate Mr. Waramaa, appearing for the petitioner submits that the order of Minister is challenged by him on the ground that there are no reasons recorded by the Minister in his decision. Whatever findings recorded are contrary and conflicting to each other. At one place the Minister has observed that there are illegalities committed and immediately in the next line he is making observation that there is no proof which creates dilemma. In fact, the record was produced before the Minister and he has also recorded finding about illegalities committed by respondent No.1.

However, there is no finding whether the Revision is allowed or dismissed.

5. It is observed by the Minister that after taking into consideration the submissions of respective parties and documents, it is found that the Revision applicant has denied all the allegations made against him by giving explanation, however, upon going through the documents and inspecting record it is found that though the beneficiaries some from Antoyday Labharthi Yojana have expired, their relatives have taken benefit and got the food grains distributed in their favour.

6. While recording the stand of respondent No.1 it is observed that the applicant has given explanation that. So far as 14 beneficiaries in Antoydaya Labharthi Yojana are concerned, they have been distributed the food grains since they were declared eligible by Gramsabha on 15/08/2012. Similarly, 20 beneficiaries with orange card were declared to be eligible by GramSabha for BPL scheme, therefore, food grains were distributed to them. It is further observed by the Minister that, however, the veracity of the above defence of respondent No.1 needs to be verified by the District Supply Officer.

7. Further there is an observation that scoring name by applying whitener in the unit register of Antyoday Labharthi Yojana is a serious illegality. Food grains to the extent of 490 Kg have been distributed to the beneficiaries under Antyoday Labharthi Yojana.

Though 16 persons whose names were not found in the unit register, food grains are distributed to them. Similarly, the food grains were distributed under the BPL scheme to 20 beneficiaries, whose names did not appear in the register. With regards to the food grains which were distributed under the Antyoday Labharthi Yojana as well as BPL scheme, the Minister has observed that there is no clarity whether food grains were misappropriated by applicant himself without distributing it to the beneficiaries.

8. Though while referring to the illegalities of respondent No.1 in the distribution of food grains, it is observed that it is a serious matter, however, again the Minister has taken a contrary stand observing that there is no clarity whether misappropriation is committed by the applicant. Immediately in the next line again Minister has taken conflicting view observing that, applicant has not produced sufficient proof to rebut the allegations made against him and has observed further that it is doubtful and he is not sure whether applicant had distributed the food grains or he has misappropriated them. Minister further observed that *prima facie* it is not appropriate to arrive at a conclusion that applicant has misappropriated the scheduled commodities.

9. The Minister after making above observations has further pleased to observe that in the above facts and circumstances he does not find any reason to interfere with the order passed by District Supply Officer as well as the Deputy

Commissioner (Supply), Nashik Division, Nashik. After making above observations, while passing the operative order the Minister has quashed and set aside the orders dated 30/03/2016 and 16/02/2016 passed by Deputy Commissioner (Supply) and District Supply Officer and recorded that the matter is remanded back to the Deputy Commissioner (Supply) for taking further action. It is further directed that he should take decision in the matter within a period of two months from the date of order and pending the decision of Deputy Commissioner (Supply), order dated 18/05/2016 granting stay, was directed to continue.

10. Learned advocate for petitioner submits that the order and observations passed by Minister are totally confusing and conflicting. There is no reason given as to on what ground the matter is remanded and as to why the matter is necessary to be decided by the Deputy Commissioner within two months. It is observed that the allegations are serious, however, there is no sufficient proof is produced by applicant to refute the allegations against him. Yet the matter is remanded to Deputy Commissioner (Supply) to take final decision within two months and the orders passed by Deputy Commissioner as well as District Supply Officer are quashed and set aside. The observations and findings recorded by the Minister are not only conflicting but are contrary to the operative order, resulting into an order which is not supported by reasons. In fact, it would be more appropriate to state that the

operative order passed by the Minister is contrary to the reasoning recorded by him. Hence, in that view of the matter, petitioner is seeking directions to quash and set aside the impugned order.

11. Learned AGP opposed the prayer made by petitioner.

12. Learned advocate for respondent No.1 who is represented by learned counsel Mr. Sanket Kulkarni, has opposed the prayer of petitioner on the ground that when show-cause notice was issued to him, he has satisfactorily replied the same. He submits that he has supplied food grains as per the list issued by Tahsildar, Amalner on 16/01/2013. He further submits that even the 16 beneficiaries who were selected and sanctioned by the Gramsabha for Antyodaya Labharthi Yojana and BPL were distributed the food grains as per the decision of the Gramsabha. According to him, food grains received as per the quota by him is duly distributed to the ration card holders and he has accurately maintained up-to-date record.

13. The record maintained by him is inspected by respondent authorities from time to time. The deficiencies or illegalities at his end allegedly committed by him in the due course of business have never been noticed by the authorities prior to the alleged inspection. The allegations regarding illegalities, irregularities and shortcomings in the functioning of his shop are vague. He further points out that, the concluding part of the report submitted by Tahsildar, recommends a penalty which is beyond the

scope of inquiry. Such recommendation by the Tahsildar was unwarranted. So far as the public distribution system is concerned, the names of persons who are beneficiaries is maintained by the Government and deletion of all ineligible individuals and inclusion of eligible persons is reviewed by the Government from year to year. Therefore, the fair price owner is not responsible for deletion or addition of beneficiaries or card holders attached to his shop.

14. Mr. Kulkarni, learned advocate further submits that as per the Government resolution dated 20/06/2006, the District Supply Officer has rightly passed the order and restored the license of fair price shop of respondent No.1, subject to the out come of the order in present writ petition. Order of restoration of license has been issued pursuant to the order passed by the Minister which is challenged in the present writ petition. He further relied on the Government Resolution dated 12/11/1991 and the various guidelines issued in respect of action to be taken against the fair price shop license holders who are alleged to have committed malpractices. In the said G.R. classification of malpractices is made on the basis of defects i.e. 1) Minor nature defect, 2) Moderate nature defect and 3) Serious nature defect. Based on the nature of defect action to be initiated or proposed, is required to be taken. The District Supply Officer has not taken into consideration the above aspect while passing the impugned order.

15. It is further submitted by learned advocate for

respondent No.1 that pursuant to the stay to the license of fair price shop of respondent No.1, the card holders of village Dahiwade are attached to various other fair price shops. Therefore, the card holders are facing hardship on account of their cards being attached to other shops. Due to the hardship faced by villagers they have made representations to the District Supply Officer, Jalgaon, wherein they have claimed that respondent No.1 sold schedule commodities regularly, but after the stay of license of respondent No.1, they are suffering hardship, since their cards have been attached to other shops. It is further submitted that petitioner has filed the writ petition only with an intention to grab the money from respondent No.1 and he has no *locus standi* to challenge the order dated 08/12/2022, passed by District Supply Officer, Jalgaon.

16. The learned advocate for respondent No.1 places reliance on the circular dated 14/07/2023. According to him, the said circular has been issued pursuant to the order passed by this Court wherein this Court has made certain observations about the notice to be given to respective parties for personal hearing before the authority. According to the order of this Court, giving less than 24 hours' notice or short notice of hearing is against principles of natural justice. Therefore, all the departments are instructed to give at least five minimum working days notice to the parties in every matter. According to him, he was not given sufficient opportunity for opposing the allegations made against him. He has also placed on

record various affidavits filed by the card holders which is titled as declaration. Card holders have stated that after the license of respondent No.1 has been restored, they have started receiving food grains irregularly. Therefore, license of respondent No.1 should be restored and their cards should be attached to his shop.

17. I have heard learned advocate for petitioner as well as respondent No.1 and learned AGP. There cannot be any dispute regarding the fact that reasons recorded and observations made by the Minister are totally contrary to the operative order passed by him. As has been observed hereinabove, though the Minister has accepted that it is serious matter and serious doubt is created from the record whether applicant has distributed food grains to the beneficiaries or has misappropriated the same, he has also recorded that there is no misappropriation committed by applicant. Though it is also recorded that he does not find that any case for interference in the orders passed by the Deputy Commissioner (Supply), Nashik, as well as District Supply Officer, Jalgaon is made out, in spite of that he has remanded the matter back to the Deputy Commissioner (Supply), Nasik, for taking further action and decision. It is not clear as to what decision needs to be taken and the reason for remand. It is also not clear as to on what ground the matter is remanded. Therefore, the order passed by the Minister is totally without any rhyme or reason. There is no clarity in the order passed by the Minister. There is total absence of any reason recorded while

deciding the Revision. Even the observations recorded are contrary to one another. The order being erroneous, which reflects total lack of application of mind, deserves to be quashed and set aside, by remanding the Revision back to the Minister, Food, Civil Supplies and Consumer Protection, to decide the Revision by passing a reasoned order.

18. Accordingly, the writ petition is partly allowed. Order dated 06/08/2016, passed by the Minister, Food, Civil Supplies and Consumer Protection, State of Maharashtra, in Appeal No. वैअना-1416 / प्र.क.66 / ना.पु.23, is quashed and set aside. The matter is remanded back to the Minister to decide the revision afresh by affording opportunity to the respective parties and pass a reasoned order, within a period of four months from the date of receipt of this order. It is made clear that all the issues are kept open to be agitated.

19. In view of the above, the writ petition is disposed of.

(MANJUSHA DESHPANDE, J.)