

(2013) 01 BOM CK 0253
In the Bombay High Court
Case No : Writ Petition No. 4983 of 2012

Balbhim

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) MCR 893

Hon'ble Judges : S. S. Shinde, J.

Bench : Single Bench

Advocate : Mr. Y.S. Choudhari, Advocate, for the Petitioner; Mr. D.R. Kale, A.G.P, for the Respondent Nos. 1 to 3; Mrs. M.A. Kulkarni, Advocate, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

S. S. Shinde, J.— Heard learned counsel for the respective parties.

2. Rule. Rule made returnable forthwith. By consent, heard finally.

3. This writ petition takes exception to the judgment and order dated 18.4.2012, passed by the Minister of Food, Civil Supply and Consumer Protection Department, Mantralaya, Mumbai, in Revision No. VAM-1011/C.N. 108/CS-21 dated 18.4.2012.

4. It is the case of the petitioner that the petitioner made complaint against the respondent No.4. According to the complaint of the petitioner, the Tahsildar (Supply) from 16.7.2010 to 21.7.2010 made enquiry about the fair price shop of respondent No.4 and found serious illegalities and irregularities committed by respondent No.4. On 31.8.2010, respondent No.4 was given a show cause notice. It is the case of the petitioner that after hearing both the parties, District Supply Officer, Osmanabad by order dated 9.9.2010, cancelled the licence of the fair price shop of respondent No.4 as well as confiscated the deposit amount of Rs.1000/-. The District Supply Officer also made complaint to the police station, Paranda and accordingly F.I.R. No. 19 of 2010 was registered against present

respondent No.4. Respondent No.4, being aggrieved by the order passed by the District Supply Officer, Osmanabad filed an appeal No. 284 of 2010 before the Deputy Commissioner (Civil Supply), Aurangabad. The petitioner was not made party to the said appeal. He filed intervention application as he is original complainant.

The Deputy Commissioner, Aurangabad, after hearing the parties as well as the petitioner intervener, by his judgment and order dated 7.1.2011 rejected the appeal preferred by respondent No.4. The respondent No.4 herein being aggrieved by the judgment and order of the Divisional Commissioner, Aurangabad preferred revision before the Minister of Food, Civil Supply and Consumer Protection, Mantralaya, Mumbai. The Minister allowed the revision filed by the respondent No.4. The petitioner being aggrieved and dissatisfied by the judgment and order passed by the Minister, had filed writ petition No. 6401 of 2011. This Court, after hearing the parties, remitted the matter back to the Minister for reconsideration. The petitioner herein appeared before the Minister and filed his detail reply to the revision filed by respondent No.4. After hearing the parties, the Minister allowed revision application filed by respondent No.4. Hence, this writ petition.

5. Learned counsel appearing for the petitioner submits that the judgment and order passed by the revisional authority is enlarging the scope of the revision. It is submitted that the Tahsildar made detail enquiry and found that many irregularities and illegalities are committed by respondent No.4, thereby violating the conditions for running the fair price shop and therefore, licence to run the fair price shop of respondent No.4 was cancelled. It is submitted that respondent No.2 while rejecting the appeal filed by respondent No.4 found that respondent No.4 has committed serious irregularities, inasmuch as she prepared a list of bogus card holders and committed misappropriation for an amount of Rs.33,155/-. It is submitted that the enquiry report submitted by the Tahsildar was accepted by the District Supply Officer. Respondent No.4 was given proper opportunity and thereafter the District Supply Officer rejected the contention of respondent No.4. The Deputy Commissioner (Supply), Aurangabad Region, Aurangabad has also confirmed the findings recorded by the District Supply Officer. Therefore, according to the learned counsel appearing for the petitioner, there was no reason for the Minister to interfere in the findings/reasons recorded by the District Supply Officer as well as the Deputy Commissioner (Supply), Aurangabad Region, Aurangabad. It is submitted that, scope of revision before the Minister is very limited. Unless it is found that the findings/reasons recorded by the authorities below are baseless or totally perverse, no revision can be entertained. It is submitted that respondent No.4 did prepare bogus list of B.P.L. (below poverty line) card holders and also other beneficiaries and committed serious irregularities and illegalities, therefore, the Minister should not have interfered in the decision of the District Supply Officer and also the Commissioner. It is submitted that the criminal case filed against respondent No.4 is pending investigation, therefore, the Minister should not have shown any

indulgence in the matter by allowing the revision filed by respondent No.4. Therefore, learned counsel relying upon the pleadings in the petition, grounds taken therein, report of the Tahsildar, the findings recorded by the District Supply Officer as well as the Divisional Commissioner would submit that this writ petition deserves to be allowed.

6. On the other hand, learned counsel appearing for respondent No.4 invited my attention to the contents of the affidavit in reply and submitted that the Minister has considered all aspects of the matter and allowed the revision filed by respondent No.4. It is submitted that criminal case filed against respondent No.4 is pending investigation and there is no any reason as to why respondent No.4 should be prevented from running the fair price shop and sale of kerosene. It is submitted that the order passed by the Minister has already been acted upon and therefore, the petition has become infructuous. Learned counsel relied upon the reasons recorded by the revisional authority and submitted that this petition deserves to be rejected.

7. Learned A.G.P. appearing for respondent Nos. 1 to 3 submitted that the judgment and order passed by the Minister is after hearing the parties and the said order is subject to the outcome of the criminal proceeding pending against respondent No.4.

8. I have given careful consideration to the rival submissions advanced by the counsel for the parties. I have perused the contents of the complaint filed by the petitioner before the District Collector, Osmanabad. It appears that serious contentions are raised in the complaint that the respondent No.4 has indulged in illegal activities of preparing the list of bogus beneficiaries and lifting the food grains and selling the same in the open market. The contents of the complaint also disclose that, though the respondent No.4 on record has shown distribution of food grains, there was no actual distribution of the food grains/kerosene to the persons covered under B.P.L. Scheme and also under other schemes of the government like Antyodaya and Annapurna etc.

9. Upon careful perusal of Exh. B at page 17 of the compilation of writ petition, it appears that Naib Tahsildar (Supply) Paranda has inquired and inspected the fair price shop run by respondent No.4 and found that the licence is misused by respondent No.4 for self gain, the schemes sponsored by the Government are not properly implemented, bogus record is prepared, respondent No.4 has not made available entire record of fair price shop for perusal to the inspecting squad, the preparation of bogus receipts of allotment of food grains to the persons, who are residing in other villages and thereby respondent No. 4 has gained Rs.33,155.60 Ps., the respondent No.4 has no any courtesy with the card holders, registration of offence against respondent No.4 under the provisions of Essential Commodities Act being crime No. 19 of 2010 with Paranda police station etc. It appears that show cause notice was given on 31.8.2010 to respondent No.4 and in pursuance to the said show cause notice reply was also filed by respondent No.4 denying the contents of show cause notice. It appears

that the District Supply Officer after satisfying himself and after perusal of the report of the Tahsildar, Paranda and reply filed by respondent No.4, recorded his satisfaction that there are serious irregularities and illegalities committed by respondent No.4 in running the fair price shop and also offence is registered against respondent No.4 with Paranda police station, cancelled the licence and also forfeited the amount of deposit of Rs.1000/-.

10. Upon careful perusal of the judgment of the Deputy Commissioner (Supply) Aurangabad Division, Aurangabad, it appears that the said authority has seen all the documents produced on record and the record summoned from the office of District Supply Officer, para wise comments, evidence produced on record by the authorities through advocates and after hearing the parties, rejected the appeal filed by the petitioner. The said authority has noticed that the respondent No.4 has not produced the record of fair price shop along with the appeal. The authorities has also taken a note of the fact that the offence is registered against respondent No.4 and further the charges levelled against her are serious in nature. Upon perusal of reply to the show cause notice, the authority has noticed that the respondent No.4 has not replied to all charges. The authorities have also noted that the file summoned from the office of the District Supply Officer does disclose the statement of beneficiaries, panchnama etc. Therefore, it follows from the discussion in the said judgment that the Deputy Commissioner (Supply) has meticulously considered the material placed on record and also record/file summoned from the office of the District Supply Officer and rejected the appeal filed by respondent No.4 herein.

11. It appears that the decision of the Deputy Commissioner (Supply), Aurangabad was challenged before the Minister in Revision No. VAM-1011/C.N.108/CS-21 preferred by respondent No.4 which was decided on 20.7.2011 by the Minister of Food, Civil Supply and Consumer Protection, Mantralaya, Mumbai. Even while deciding the said revision, it clearly appears that the Minister had taken a note of the fact that the offence is registered against respondent No.4 with Paranda police station and also recorded that upon hearing the parties and upon perusal of the documents produced on record, the irregularities are committed by respondent No.4 while running fair price shop and therefore, it is necessary to impose fine of Rs.5000/- upon respondent No.4 and accordingly the Minister had partly allowed the revision filed by respondent No.4 by imposing fine of Rs.5000/- for committing irregularities.

12. The petitioner herein did file writ petition No. 6401 of 2011 with a grievance that the revision is decided by the Minister without serving notice of hearing on the petitioner, who is original complainant. Therefore, this Court allowed the writ petition by setting aside the judgment and order of the Minister dated 20.7.2011 and remitted the matter back to the revisional authority.

13. Upon careful perusal of the judgment and order passed by the Minister i.e. Revisional authority, in second round, it appears that in the title cause of the revision, the petitioner herein is wrongly shown as applicant, in fact the revision

application is filed by respondent No.4. From perusal of the operative part of the order, it further appears that clause 1 mentions that the revision filed by the petitioner herein has been rejected. It appears that as stated by the petitioner in para 1 of the writ petition, the petitioner is wrongly shown as revision applicant in the said revision. By way of impugned order, the Minister upheld the judgment and order dated 20.7.2011 in Revision No. VAM-1011/C.N. 108/CS-21 filed by respondent No.4 herein. Therefore, the findings recorded by the Minister in his judgment and order dated 20.7.2011 that the respondent No.4 has committed irregularities and therefore, she is liable to pay fine of Rs.5000/- are intact. From careful perusal of the judgment of the Minister, it is abundantly clear that there are no any findings or observations recorded by the said authority disbelieving the enquiry report of the Tahsildar, which was subsequently accepted by the District Supply Officer. The Minister has accepted and observed that, there are certain deficiencies and irregularities found during inspection of the shop run by the respondent No.4, and rightly imposed fine of Rs.5000/-. However, it is beyond comprehension to understand that after recording the said findings and after taking a note of the fact that, the offence is registered against respondent No.4 with Paranda police station under the provisions of Essential Commodities Act, the Minister proceeded to partly allow the revision filed by respondent No.4, ignoring that there is overwhelming material available on record, and on the basis of said material/ evidence, Naib Tahsildar, made a report to the District Supply Officer and the District Supply Officer, after giving show cause notice to respondent No.4 and after recording his satisfaction that, the licence of respondent No.4 is required to be cancelled, has cancelled the licence. The first revision filed by respondent No.4 is also rejected by the Deputy Commissioner (supply) by giving cogent and sufficient reasons based upon the material placed on record and also after giving proper opportunity to all concerned. At this juncture, it would be relevant to reproduce herein below the object of Essential Commodities Act :-

"The object of the Essential Commodities Act is to provide, in the interests of the general public, for control of production, supply and distribution of trade and commerce in commodities which are specified in the Act to be essential commodities. The power of search and seizure are incidental and supplementary to other powers which are necessary to secure the objects for which the Essential Commodities Act has been passed.

The very object of the Essential Commodities Act is to check the inflationary trends in prices and to ensure equitable distribution of essential commodities."

14. Therefore, taking over all view of the matter, in my considered opinion, the Minister of Food, Civil Supply and Consumer Protection, Mantralaya, Mumbai, while entertaining the revision filed by the respondent No.4 has acted beyond the scope of revision and partly allowed the revision. In fact, when the Minister himself observed that respondent No.4 has committed irregularities while running fair price shop and imposed a fine of Rs.5000/- on respondent No.4,

there was no reason for the Minister to proceed further and partly allow the revision filed by respondent No.4.

15. This court in the case of Shivaji Tulshiram Thakre v. State of Maharashtra and ors. Reported in 2012 (3) ALL M.R. 789 has considered the scope of revision by the revisional authority and in the facts of that case, has taken a view that when the Minister confirmed the findings that the charges have been established against the licence holder and imposed fine of Rs.5000/- in that case, there was no question of restoration of licence and such action/direction of the Minister was beyond scope of review under clause 24(2) of the Maharashtra Schedule Commodities (Regulation of Distribution) Order (1975). This court in the case of Shivaji Tulshiram Thakre (Supra) in para 9, held thus:-

"9. Now coming to the merits of the matter, in the order dated 31-8-2009 passed by the Minister, which has been reviewed, the finding was recorded that the charges of misappropriation have been established and taking into consideration all the aspects, it was held that respondent No.4 had violated the terms and conditions of the fair price shop licence. In review, the finding that the charges have been established against respondent No.4 has been confirmed. It is only on humanitarian ground that one more opportunity was given to respondent No.4 to pay the amount, which he had misappropriated, along with fine of Rs.5,000/- as a condition for restoration of the licence. Such is not the scope of review under clause 24(2) of the said Order. The order impugned changes the view which was earlier taken on re-hearing of the matter. The view taken earlier being a possible view of the matter, no interference was called for in the jurisdiction of review under clause 24(2) of the said Order. The order passed by the Minister, impugned in this petition, cannot, therefore, be sustained."

16. Therefore, taking over all view of the matter, in my considered opinion, the impugned judgment and order dated 18.4.2012, passed by the Minister, Food, Civil Supply and Consumer Protection in Revision Application No. VAM-1011/C.N. 108/CS-21 cannot be sustained in law and the same is therefore, quashed and set aside. The order dated 9.9.2010, passed by the District Supply Officer, Osmanabad cancelling the licence of respondent No.4 to run the fair price shop, which is confirmed by the Deputy Commissioner (Supply) Aurangabad Division, Aurangabad on 7.1.2011, stands upheld and confirmed. As a result, restoration of licence/shop in favour of the respondent No.4 stands cancelled. The concerned authorities are directed not to allot quota of food grains or kerosene to respondent No. 4. The concerned authorities of the State Government shall issue fresh proclamation for allotment of shop in village Khasgaon, Tq. Paranda, District Osmanabad in accordance with law and the Government policies/relevant Government Resolutions/Rules etc. It is made clear that such allotment should be strictly in accordance with the government policies, framed from time to time, in that behalf.

17. Rule made absolute in the above terms. The petition is allowed to the above extent and stands disposed of.

18. Learned counsel appearing for respondent No.4 makes an oral prayer that effect and implementation of this judgment may be stayed for two weeks to enable the said respondent to file appropriate proceeding. The prayer is opposed by the counsel appearing for the petitioner. However, in the interest of justice, the effect, operation and implementation of this judgment is stayed for two weeks from today.