
(2010) 04 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 4760 of 2009

Gorakh Gadkar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 4 BomCR 183

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : S.B. Talekar, in Writ Petition No. 4760 of 2009 and S.R. Barlinge, in Writ Petition No. 3010 of 2009, for the Appellant; S.D. Kaldate, AGP for Respondents Nos. 1 to 4 in Writ Petition Nos. 3010 and 4760 of 2009, S.R. Barlinge, for Resep. No. 5 in Writ Petition No. 4760 of 2009 and S.B. Talekar, in Writ Petition No. 3010 of 2009, for the Respondent

Judgement

K.U. Chandiwal, J.—Heard learned Counsel for the respective parties. Both the learned Counsel, in the opening of their submissions, accepted that the writ petitions are to be finally heard and disposed of.

2. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

3. The elaborate narration, with reference to the communications, correspondence in both the petitions, being identical, it is summarized as under:

A fair price shop was allotted to Gorakh Madhukar Gadkar (petitioner in WP No. 4760/2009). The Government, having received several complaints of over-lifting of food stuffs earmarked for the persons below poverty line, did not reach the doorsteps of such needy persons, an in-depth inquiry was caused by Tahsildar, Gangapur, in which he found that it was a case of over lifting of food grains; not supplying the same to the card holders; manipulation of the record and consequently, show-cause notices were issued to such 138 license holders of fair price shops. Basically, these are the licenses issued by the Government to the concerned to distribute the food grains, within the parameters of the conditions

imposed thereon. It will not have colour of an absolute right to challenge every action of the Competent Authority. It is incumbent upon each of the petitioners to point the order under challenge smacks with illegality; perversity or it has some different sheds, not obviously seen, but latent in its colour. With this, let us proceed to the deal with further factual details.

4. An in-depth inquiry, as stated earlier, has ramifications in issuing a show-cause notice to petitioner - Gorakh dated 7.8.2003 by District Supply Officer, Aurangabad. The opening line of the show-cause notice demonstrate and refer to Tahsildar's inquiry and his report dated 10.7.2003. The notice informed petitioner - Gorakh has unauthorizedly lifted 102 quintals of wheat; it was not released/distributed to the card holders; it was sold in open market. The show cause notice also displayed, that there was no proper maintenance of Sale Register; distribution to the card holders is not accounted for; No demand letter of Tahsildar was submitted before lifting of the quota of food grains.

5) The contention of Mr.Talekar, that such show cause notice and the inquiry does not translate into access to petitioner - Gorakh to the Tahsildar's inquiry, has prejudiced him, is basically incorrect. What was the outcome of the inquiry was pointed to petitioner-Gorakh. He was called upon to explain the same. The petitioner-Gorakh has, by his reply dated 27.8.2003, while replying the show cause notice, harped only one point in 6-7 pages that, he was not supplied with requisite inquiry report of the Tahsildar.

6. Petitioner has indeed no business to castigate the report, it was his duty to explain from available record as to how he was justified in appropriating 102 quintals of wheat or his record was up to date, that the wheat reached the empty stomach of such deserving people. The wayward submissions made by the petitioner, naturally had its brunt in the order dated 6.10.2003 by the District Supply Officer, Aurangabad. I quite see that the order of District Supply Officer is a cyclostyle order. However, fact remains, it depicts as to what has happened in the inquiry conducted and the reply, having been received from petitioner - Gorakh therein. The ultimate outcome was, the petitioner's fair price shop license was cancelled and deposit, which he has made, was forfeited. This was again subjected to by an appeal before the Competent Authority. In the meantime, there was a public notice dated 27.10.2003, calling upon the public at large to make applications for allotment of the shop in question. Different categories of applications were specified in the said notice. Pursuant to this public notice, the petitioner in Writ Petition No. 3010/2009 (Smt. Shobha Pawar) applied and her case was independently considered on its own merits and she got an order of allotment of fair price shop. This allotment of license of fair price shop was again challenged by petitioner Gorakh.

7. The parties had a round of litigation before the Deputy Commissioner (Supply), who has allowed the revision of petitioner - Gorakh and set aside the order dated 30.5.2005, subject to outcome of the decision of the learned Minister. The Order also indicate, if required, there could be fresh proclamation

for allotment of a license of fair price shop.

8. Mr. Talekar canvassed, this order has reached finality as it was not challenged by Smt. Shobha Pawar (Petitioner in WP No. 3010/2009.) However, to this, Mr. Barlinge submits, that since the order of the learned Minister, dated 13.10.2005 did not approve case of Gorakh, declining relief to him, consequently, there was no necessity for Smt. Pawar to challenge.

9. The ultimate result in the matter is, petitioner - Gorakh approached the learned Minister in Revision after several rounds of litigation before this Court, as one Writ Petition, being Writ Petition No. 7584/2004, in which Rule on interim relief was issued on 23.12.2004, was pending and the learned Minister by his order dated 2nd March, 2009 allowed the contention of petitioner - Gorakh thereby cancelled the order dated 30.5.2005 issued in favour of Smt. Shobha Pawar, in the said order, apart from re-confirming the allotment to petitioner - Gorakh, he was directed to pay a fine of Rs. 15,000/- (Rupees fifteen thousand) and amount of Rs. 1,92,000/- (One lakh and ninety thousand) towards costs of wheat and rice lifted in excess of the quota and not accounted for.

10. The grievance of Mr. Talekar is, he is not aggrieved by the first part of order of re-allotment of the fair price shop to petitioner - Gorakh; he is also not concerned with the cancellation of license of fair price shop concerning Smt. Shobha Pawar, his grievance is, to the later part referred above, i.e. imposition of penalty. Mr. Talekar reiterated, in the light of there being no report of the Tahsildar available or scanned by the authorities, such penalty could not have been imposed.

11. I find, reading para 10 of the order of learned Minister, that certain submissions indicating accepting lapses and commissions were made by petitioner - Gorakh before him, whereupon the learned Minister directed the above referred penalty. The only concession that the petitioner - Gorakh could seek from this Court is, as show cause notice of the Tahsildar refers lifting of 102 quintals of wheat, the learned Minister could not have travelled beyond show cause to fix the liability on the petitioner - Gorakh for lifting of 123.60 quintals of wheat or 4.40 quintals of rice, and calculating the same for its reimbursement.

12. To this extent, the order of learned Minister needs modification/correction and it is directed that the fine amount mentioned in terms of Clause 4 shall remain unaltered. To the extent of order contained in Clause 5, as regards remittance of Rs. 1,92,000/-, it should be reduced to Rs. 1,50,000/- as price of 102 quintals of wheat lifted by the petitioner - Gorakh. I do not find, any prejudice has surfaced in not allowing the petitioner to traverse, Tahsildar's report. The in-depth Police inquiry manifested a systematic chain by shopkeepers with revenue authorities in siphoning of large scale wheat/rice for selling it in the open market at higher rate. The petitioner, it appears, having accosted with ground realities submitted to the orders of learned Minister. The petitioner has, in deed to establish infringement of his rights by any arbitrary action, he has failed

to do. It was a license to conduct a shop, to be done in terms of conditions imposed. The act of petitioner were betrayal to the conditions and the very loud object of Government scheme was drilled, followed by action by authorities.

13. Now, comes the position of Smt. Shobha Pawar. I quite see that her petition before this Court is immediately after the order dated 2nd March, 2009 and the order was stayed on 2nd May, 2009. The petition by Gorakh, challenging the order dated 2nd March, 2009, is filed on 15.7.2009. This may be due to the pressure created by order in Writ Petition No. 3010/2009. However, fact remains, the right accrued to petitioner - Gorakh to challenge the order of learned Minister, could not be scuttled and he rightly, even if it is belated, challenged the same.

14. The allotment of license of fair price shop to Smt. Shobha Pawar could not be, though it refers to be a permanent nature, construed to be a permanent nature, deviating the issuance of license of fair price shop in favour of petitioner - Gorakh. The order indeed indicate, it was subject to outcome of the court proceedings. As stated earlier, there was already the writ petition moved by petitioner - Gorakh being Writ Petition No. 7584/2004, wherein there was an order dated 23.12.2004. Consequently, any order passed by the Tahsildar allotting the fair price shop in favour of Smt. Shobha Pawar, was to face the outcome of on-going litigation. Consequently, it cannot be said that her allotment was of a permanent nature. It will not obliterate, squeeze the license issued in the name of petitioner Gorakh subject of earlier Writ Petition. Allotment of shop/ license to Smt. Pawar was in place of Gorakh and it was not absolute. The second allottee, being with a stopgap arrangement, will not give a milage to another source of license. The object being, the beneficiaries should not be a causality to face starvation. The advertisement though refers allotment of license permanently, however, it was with a warning and rider, subject to outcome of court cases. It was a question of fact. The Government had the powers to make the arrangements, which need not be tested in Writ jurisdiction. There is no case of excess of jurisdiction, or error apparent on face of the record to require interference.

15. Hence, Rule is made absolute in Writ Petition No. 4760/2009 to the extent indicated above; and Rule is discharged in Writ Petition No. 3010/2009. Heard. Order is stayed up to 5th of May, 2010.