

(1980) 09 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 466 of 1977

Kallappa Balicha Chaugule and Another

APPELLANT

Vs

The Collector, Kolhapur and Others

RESPONDENT

Date of Decision : 22-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 Bom 281

Hon'ble Judges : Sawant, J;Pratap, J

Bench : Division Bench

Advocate : Dilip B. Bhosale, for the Appellant; S.P. Kanuga, Asst. Govt. Pleader and S.G. Page, for the Respondent

Judgement

Sawant, J.—This petition filed under Article 226 of the Constitution, is directed against the order dated the 9th February 1977, passed by the Government, i.e., the Honourable Minister of State (Food and Civil Supplies).

2. There is a chequered history of this matter and although the facts are unessential to determine the filial outcome, they will have to be stated to follow the course of events. The controversy relates to a licence to run a fair-price foodgrains shop situate in village Umalawd of Taluka Shirol, District Kolhapur. The said shop was run by the 4th respondent co-operative society by virtue of a licence granted by the Government under the Essential Commodities Act, 1955. By his order dated the 5th February, 1974, the Tahsildar proposed to withdraw the licence granted to the society to run the said shop and allowed the petitioners herein who are freedom fighters to conduct the same temporarily for a period of two months. By his report dated the 27th March, 1974, he recommended the said step to the Sub-Divisional Officer, Karvir Division, Kolhapur, who was the competent authority at the relevant time. On the basis of the said report, the Sub-Divisional Officer by his order dated the 15th March 1974, cancelled the allotment of the said shop to the society and allotted the same to the petitioners. This step was, however, taken by the Sub-Divisional

Officer without hearing the society. The society therefore preferred an appeal to the Divisional Commissioner, Pune, and the Divisional Commissioner by his order dated the 8th July, 1974, allowed the appeal of the society on the ground that the Sub-Divisional Officer had passed the said order without hearing the society. He therefore cancelled the order dated the 15th March, 1974, passed by the Sub-Divisional Officer and directed the Collector (who was in the meanwhile invested with the relevant power) to restore the said shop to the society. The said order was, therefore, implemented, and the shop was allotted to the society. The Collector by his order dated the 16th August, 1974, in turn, directed the Tahsildar, Shirol, to implement the said order of the Divisional Commissioner.

3. In the meanwhile, the petitioners had preferred a writ petition in this Court against the said order dated the 8th July, 1974, passed by the Divisional Commissioner and in the said writ petition, by, consent, the Collector (who in the meanwhile had stepped in the shoes of the S. D. O.) was directed to hear both sides and pass his order according to law.

4. Thereafter, the Collector heard both the sides and by his order dated the 19th November, 1975, held that the said shop should not be allotted to either of the parties. He therefore directed that the cards attached to the said shop should be transferred to another shop situate at Joysingpur. The Tehsildar implemented the said order on the 20th November, 1975. Thus the society as well as the petitioners lost the allotment of the said shop on that day.

5. Against the order of the Collector dated the 19th November, 1975, the society, instead of approaching the Divisional Commissioner in appeal, approached the Government directly, by two letters dated the 22nd November, 1975, and the 6th December, 1975. On the other hand, the petitioners preferred an appeal to the Divisional Commissioner and the Divisional Commissioner by his order dated the 10th May 1976, allowed the petitioners' appeal and allotted the said shop to the petitioners. It appears, however, that to this appeal the petitioners did not make the society a party nor the Divisional Commissioner directed them to make the society a party and the Divisional Commissioner passed the said order without hearing the society. Against the said decision of the Divisional Commissioner as well as the decision of the Collector dated 19-11-1975, the society preferred a revision petition before the Government. This revision petition was in addition to the two letters dated the 22nd November, 1975 and the 6th December, 1975 which were addressed by the society to the Government against the said order of the Collector dated the 19th November, 1975.

6. Finally, this revision petition was heard by the Honourable Minister for Civil Supplies. Both the parties were present and were heard by the Minister and by his impugned order dated the 9th February, 1977, the Honourable Minister held that the earlier order passed by the Collector cancelling the allotment of shop to the society was on a flimsy ground, and therefore, not tenable. He, therefore, allowed the revision petition of the society and directed that the shop be restored to the society. It is this, order as stated at the outset, which is attacked in this

petition.

7. Shri Bhosale, the learned counsel, appearing for the petitioners, contended that the Minister ought not to have entertained the revision petition filed by the society, because the society had not preferred an appeal to the Divisional Commissioner against the order of the Collector dated the 19th November, 1975. It is true that the society had omitted the said step and has approached the Government directly against the said order of the Collector. However, it is also undisputed that when the Divisional Commissioner heard the petitioners' appeal the petitioners had not made the society a party to the said appeal nor was the society heard by the Divisional Commissioner and the Divisional Commissioner came to pass his order dated the 10th May, 1975 ex parte against the society. That itself was illegal and the Divisional Commissioner's said order was liable to be set aside only on that count. Ultimately, when the society preferred the revision petition, it was directed both against the order of the Collector dated the 19th November, 1975 as well as the order of the Divisional Commissioner dated the 10th May, 1976. To this revision petition, the petitioners were made parties. Both the parties were heard and finally the order came to be passed. As has been held by the Honourable Minister, the original order cancelling the allotment of the shop to the society was passed on only one ground, namely, that for 15 days the shop was kept closed. The Honourable Minister found that this ground was too flimsy to warrant the extreme step of cancellation of the allotment of the shop to the society. Since we find that finally both the parties have been heard and justice has been done in the matter, we are not inclined to interfere with the said order while exercising our extraordinary jurisdiction under Article 226 of the Constitution on the mere technical plea that the society had not preferred an appeal to the Divisional Commissioner against the order of the Collector dated the 19th November, 1975. According to us, no injustice has been done to the petitioners since they have been heard by the final authority under the Act, and there is no grievance that they were handicapped because the society had not preferred an appeal before Divisional Commissioner.

8. In the circumstances, we are of the view that the impugned order should be allowed to stay as it is. The petition is therefore dismissed and the Rule is discharged. In the circumstances of the case, there will be no order as to costs.

9. Petition dismissed.