
(2013) 03 BOM CK 0168
In the Bombay High Court
Case No : Writ Petition No. 5375 of 2012

Kalyan

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 4 ALLMR 242 : (2013) 4 BomCR 639

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

Bench : Single Bench

Advocate : S.A. Nagarsoge, for the Appellant; K.J. Ghute Patil, AGP for Respondent Nos. 1 to 4 and Mrs. M.A. Kulkarni, for the Respondent No. 5, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent, heard finally. This petition takes exception to the order date 23.04.2012, passed by the Minister for Food, Civil Supply and Consumer Protection, Maharashtra, State, Mantralaya, Mumbai in Revision No. (VAM-1012/PK 108-12/NP-21).

2. The background facts, which lead to institute the present writ petition, as disclosed in writ petition, in nutshell, are as under:--

(a) The petitioner herein is the card holder of the fair price shop of respondent No. 5 and on the basis of the complaints made by the petitioner and other villagers, the licence to run the said fair price shop has been cancelled. The said fair price shop was allotted in favour of respondent No. 5 for village Hirapur. Respondent No. 5 was selling the food grains at higher rate and was giving less quantity of food grains to the card holders. He was also selling the food grains and kerosene in black market. Therefore, the petitioners and other card holders made complaints against respondent No. 5 to the respondent authorities.

(b) The District Supply Officer, Aurangabad made an inquiry personally and inspected the shop of respondent No. 5. During inspection, he found that respondent No. 5 was not providing food grains to the card holders and was

selling kerosene at higher prices. It was also found that respondent No. 5 was not maintaining the record of shop properly.

(c) A show cause notice was issued to respondent No. 5 by respondent No. 3. Respondent No. 5 filed his reply to the said show cause notice. However, on going through the said reply, District Supply Officer, Aurangabad came to the conclusion that the same was not satisfactory and on 14.12.2004, respondent No. 3 has cancelled the licence of the respondent No. 5.

(d) Being aggrieved and dissatisfied with the order passed by the District Supply Officer, Aurangabad, respondent No. 5 preferred revision before the Deputy Commissioner (Supply), Aurangabad Division, Aurangabad. Respondent No. 2 by his order dated 1.3.2005. dismissed the revision and confirmed the order passed by the respondent No. 3

(e) Being aggrieved by the order dated 1.3.2005, passed by respondent No. 2, respondent No. 5 filed revision before the Minister.

(f) The Minister accepted the findings recorded by the District Supply Officer as well as the Deputy Commissioner (Supply) Aurangabad but without going through all aspects about illegalities committed by respondent No. 5, the Minister had partly allowed the revision and permitted respondent No. 5 to run the fair price shop and kerosene licence by imposing fine of Rs. 10000/-, by order dated 18.7.2007.

(g) The petitioner had filed writ petition No. 7513 of 2007 in this Hon'ble court challenging the order passed by the Minister dated 18.7.2007. This Hon'ble court on 16.9.2008, was pleased to quash and set aside the order dated 18.7.2007 and directed respondent No. 3 to decide the matter after giving opportunity to the parties.

(h) Respondent No. 3 after giving opportunity of hearing to the parties cancelled the licence of respondent No. 5 by an order dated 31.10.2008. The said order was challenged by respondent No. 5 before the respondent No. 2 i.e. The Deputy Commissioner (Supply), Aurangabad Division, Aurangabad. Respondent No. 2 had confirmed the order of the respondent No. 3, by his order dated 9.6.2010.

(i) It is further case of the petitioner that respondent No. 5 had challenged the orders passed by the District Supply Officer as well as the Deputy Commissioner (Supply) Aurangabad Division, Aurangabad by filing Revision before the Minister. However, the Minister without considering the illegalities and irregularities committed by respondent No. 5, to give one business opportunity, by order dated 23.4.2012, has permitted him to run the fair price shop and kerosene licence by imposing fine of Rs. 5000/-. Hence this petition.

3. Learned counsel appearing for the petitioner submits that the Minister has committed error in allowing the Revision filed by the respondent No. 5 and the reasoning is unsustainable in the eyes of law. There is no provision in the Act or Rules which permits the authority to condone the illegalities committed by the

Licensee and permit him to run the License by imposing only fine. Thus the Hon''ble Minister has exceeded his jurisdiction.

It is further submitted that the Minister has also held that, respondent No. 5 was guilty and the charges levelled against him are proved. However, he has allowed the Revision by observing that one business opportunity is required to be given to respondent No. 5. On perusal of evidence on record, it would reveal that all charges levelled against respondent No. 5 have been proved. Both the authorities have concurrently held that charges against respondent No. 5 have been proved. Therefore, it is submitted that considering all these aspects, the Hon''ble Minister ought not to have allowed the Revision.

Learned counsel invited my attention to the pleadings in the petition, grounds taken therein and submitted that once the Minister having been accepted the findings of the District Supply Office, which were confirmed by the Deputy Commissioner (Supply), Aurangabad Division Aurangabad, should not have caused interference in the order of the District Supply Officer. It is submitted that when the charges against the licence holder are established, there was no occasion for the Minister to cause any interference in the order passed by the District Supply Officer. Therefore, he submitted that this petition deserves to be allowed.

4. On the other hand, learned counsel appearing for respondent No. 5 while justifying the order passed by the Minister submitted that, order of suspension was issued without following due procedure under the statute. It is submitted that the order passed by the authority on 31.10.2008 was without making enquiry by respondent No. 3. It is submitted that, there are no complaints against the respondent No. 5 by the card holders. To distribute the cards is not the duty of the licence holder. It is submitted that the complaint filed by the petitioner is politically motivated and therefore, the Minister has rightly allowed the revision of respondent No. 5.

It is submitted that the scope of revision before learned Minister is not restricted and it is open for the Minister to review the order passed by the District Supply Officer, if he finds that the District Supply Officer has not followed principles of natural justice, or material placed on record has not been considered. In support of this contention, learned counsel for respondent No. 5 pressed into service, a reported judgment of the Division Bench of this Court in the case of Parmeshwar Sihoratan Bohara and another Vs. State of Maharashtra and another Learned counsel submitted that the Minister taking into consideration the financial position of respondent No. 5, has given one more business opportunity to continue "the distribution of essential commodities and there cannot be any infirmity in such directions issued by the Minister. It is submitted that while allowing revision, the Minister has given cogent reasons and therefore, this Court may not interfere in the impugned judgment and order.

5. I have given careful considerations to the rival submissions advanced by the

counsel for the respective parties. With the able assistance of counsel for the parties, I have perused the pleadings in the petition, grounds taken therein, annexures thereto, orders passed by the authorities below and the judgments cited across the bar by the counsel for the respective parties.

6. Upon careful perusal of the order passed by the District Supply Officer, it is abundantly clear that the said authority after inspection and on making proper enquiry has cancelled the licence of respondent No. 5 to run the fair price shop and allotment of kerosene to the card holders belonging to village Hirapur. It appears that the District Supply Officer has considered the complaint received from various card holders and after making thorough enquiry has cancelled the licence granted in favour of respondent No. 5 to run the fair price shop and distribution of kerosene to the villagers from village Hirapur. The said order was carried by respondent No. 5 upto the Minister. The said authority by order dated 18.7.2007 had partly allowed the Revision filed by respondent No. 5. The said order was challenged by the petitioner herein in this Court by filing writ petition No. 7513 of 2007. This Court by order dated 16.9.2008 had remanded the matter back and directed the District Supply Officer to take fresh decision after extending an opportunity of hearing to the parties. Even remand also, the District Supply Officer, has confirmed his earlier order.

7. From careful perusal of findings recorded by the Deputy Commissioner (Supply), Aurangabad Division, Aurangabad, it appears that the said authority has noted the fact that respondent No. 5 had taken cards from the Tahsil Office to distribute the same to the villagers, however, the same were not distributed to the concerned. The respondent No. 5 has not distributed the food grains and kerosene in the village for last six months prior to 14.12.2004. During the course of inspection, some irregularities have been found by the District Supply Officer. It is also observed that the reply filed by the respondent No. 5 to the show cause notice is vague. After hearing all concerned, the Deputy Commissioner (Supply), Aurangabad Division, Aurangabad has taken a note of the fact that the District Supply Officer before taking action against respondent No. 5 of cancellation of the licence, has considered entire material placed on record and after making detail enquiry has rightly cancelled the licence. The Deputy Commissioner, after scrutinizing entire record, recorded his satisfaction about the order passed by the District Supply Officer, Aurangabad.

8. The Revisional authority has also taken a note that respondent No. 5 has committed illegalities and the charges levelled against him are proved. The respondent No. 5 has continued his illegalities and sold the essential commodities at higher price than prescribed by the Government. He has not distributed essential commodities to the card holders and therefore, the Deputy Commissioner found that the interference in the order passed by the District Supply Officer is unwarranted in the facts of the case.

9. Respondent No. 5 herein again filed second revision before the Minister for Food, Civil Supply and Consumer Protection, Maharashtra State, Mumbai and

upon considering the material placed on record and after hearing the parties in para 6, the Minister found that, the action taken against respondent No. 5 is proper. However, the Minister has observed that to give one more business opportunity to respondent No. 5 by imposing fine of Rs. 5000/-, respondent No. 5 should be allowed to run the fair price shop and retail kerosene and accordingly the Minister has passed the impugned order on 23.4.2012.

10. Upon careful perusal of para 6 of the impugned judgment, it is abundantly clear that, though the Minister has accepted and held that the action taken against respondent No. 5 by the District Supply Officer is proper, therefore rightly imposed fine of Rs. 5000/- on respondent No. 5, however, without any basis has permitted respondent No. 5 to run the fair price shop. Respondent No. 2 should not have exceeded his jurisdiction and should have confined himself within the revisional powers, that too, while entertaining the second revision. By way of impugned judgment and order, the Minister has partly allowed the revision observing that one more business opportunity is required to be given to respondent No. 5 to run the fair price shop. Such finding is answered against the interest of card holders. At this juncture, it would be pertinent to reproduce herein below the objects 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.

Therefore, considering the object of the Act as quoted above, the Minister should have given importance to the interest of the card holders rather than the interest of respondent No. 5. There is overwhelming material placed on record by the cardholders and on the basis of said record, the District Supply Officer has cancelled the licence granted in favour of respondent No. 5. The said decision has been upheld by the Deputy Commissioner (Supply), who has rejected first revision filed by respondent No. 5 twice. In that view of the matter, by any stretch of imagination, the Minister, by cryptic findings should not have partly allowed the revision of respondent No. 5. Such exercise of powers by the Minister of Food, Civil Supply and Consumer Protection, Maharashtra State, Mumbai, is contrary to the reasons and objects of Essential Commodities Act 1955 and the Maharashtra Scheduled Commodities (Regulation of Distribution) Order (1975).

11. This court in the case of Shivaji Tulshiram Thakre Vs. State of Maharashtra, , in para 9, has 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.

In the facts of that case, the Minister concerned, restored the licence on humanitarian ground and ordered the licensee to pay back amount of misappropriation alongwith fine of Rs. 5000/-. This court while appreciating the facts of that case, held that the Minister concerned has not exercised the powers of review within the scope of clause 24 sub-clause (2) of the relevant Order.

12. Therefore, taking over all view of the matter, in my considered opinion, the impugned judgment and order dated 23.04.2012, passed by the Minister, Food, Civil Supply and Consumer Protection department. in Revision Application No. VAM-1012, P.K.108-12/N.P.21 cannot be sustained in law and the same is therefore, quashed and set aside. The orders dated 14.12.2004 and 31.10.2008, passed by the District Supply Officer, Aurangabad cancelling the licence of respondent No. 5 to run the fair price shop. which are confirmed by the Deputy Commissioner (Supply) Aurangabad Division. Aurangabad on 1.3.2005 and 9.6.2010 respectively, stand confirmed.

13. Rule made absolute in the above terms. The petition is allowed to the above extent and stands disposed of. At this stage, learned counsel for respondent No. 5 prays for stay to this judgment and order for a period of two weeks. Learned counsel for the petitioner vehemently opposed this prayer. However, in the interest of justice, effect, operation and implementation of this judgment and order is stayed for a period of two weeks from today.