
(2013) 03 BOM CK 0133
In the Bombay High Court
Case No : Writ Petition No. 2703 of 2012

Shashikant

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Citation : (2013) 4 ABR 634 : (2013) 3 ALLMR 866 : (2013) 5 BomCR 394 :
(2013) 4 MhLj 469

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

Bench : Single Bench

Judgement

S.S. Shinde, J.—Rule. Rule returnable forthwith. By consent, heard finally. This writ petition takes exception to the order dated 23.2.2012, passed by the Minister for Food, Civil Supply and Consumer Protection, Maharashtra State, Mantralaya, Mumbai.

2. The background facts leading to file this petition, as disclosed in the petition, are as under:-

a) The petitioner alongwith other villagers had made a complaint to the Tahsildar and requested for conducting enquiry regarding mismanagement and irregularities committed by respondent No. 5 in running the fair price shop and kerosene licence of respondent No. 5 at village Sonegaon, Tq and District Osmanabad. On 4.1.2009, the Naib Tahsildar, Osmanabad has conducted inquiry, verified the record, statement of the villagers were recorded and panchnama was drawn. On 5.1.2009, the Naib Tahsildar, submitted report of enquiry to the Tahsildar, Osmanabad.

b) On 28.1.2009, District Supply Officer Osmanabad issued directions to register crime against respondent No. 5. On 12.3.2009, the District Supply Officer cancelled the licence of fair price shop and kerosene licence of respondent No. 5. He has also forfeited the deposit amount of respondent No. 5.

c) Respondent No. 5 did file revision application No. 103 of 2009 before

respondent No. 3. Respondent No. 3 by order dated 1.4.2009, remitted the matter back to the District Supply Officer for re-enquiry. It is the case of the petitioner that being aggrieved by the order dated 1.4.2009, passed by respondent No. 3 herein, allowing revision filed by respondent No. 5 and remitting the matter back to respondent No. 4, is challenged by filing revision on 27.4.2009 before the Minister i.e. respondent No. 2 and the said is yet pending before the Minister.

d) It is the case of the petitioner that in pursuance to the order of the Deputy Commissioner (Supply), Aurangabad Division, Aurangabad remitting the matter back to respondent No. 4, during the course re-enquiry in respect of fair price shop of respondent No. 5, a special meeting of Gram Sabha of said village was called. In the said Gram Sabha many complaints and irregularities were stated by the villagers. Crime No. 28 of 2010 came to be registered against respondent No. 5 for the offences punishable under Sections 3 and 7 of the Essential Commodities Act. After the Gram Sabha, the Tahsildar again conducted inspection of fair price shop of respondent No. 5. On the basis of inspection conducted by the Tahsildar and after making necessary enquiry, District Supply Officer cancelled the licence of fair price shop of respondent No. 5. On 20.8.2010, respondent No. 5 filed revision before the Additional Commissioner (Supply), challenging the order passed by the District Supply Officer cancelling the licence to run fair price shop on 12.8.2010. On 4.5.2011, revision filed by respondent No. 5 before Additional Commissioner (Supply) came to be rejected.

e) It is further case of the petitioner that on 26.6.2011, the District Supply Officer issued letter to gram Panchayat stating therein that the Government intends to allot fair price shop to the Mahila Bachat Gat. On 11.7.2011, respondent No. 5 herein filed writ petition No. 5348 of 2011. On 11.8.2011, this Court directed respondent No. 2 to decide revision filed by respondent No. 5 within four months. Pursuant to the said order, on 23.2.2012, the Minister allowed the revision. Hence, this writ petition.

3. Learned counsel appearing for the petitioner submits that, the order passed by the Minister is non speaking and does not assign the reasons for cancelling the order of District Supply Officer and restoring fair price shop with respondent No. 5. It is submitted that the Minister ought to have taken into consideration the report of Tahsildar, reasons assigned by the Additional Commissioner (Supply), Aurangabad Region, Aurangabad and also the record made available by the District Supply Officer and should not have interfered with the decision of the District Supply Officer to cancel the licence to run fair price shop by respondent No. 5. It is submitted that the Minister has exceeded his jurisdiction and without calling the report from the concerned police station about the complaint filed by respondent No. 5 against some of the villagers, impugned order is passed presuming that investigation is yet pending. It is submitted that the Minister has referred in his judgment that the said complaint/FIR is already registered against the complainant by respondent No. 5 and investigation of the same is pending.

In fact, before decision is taken by the Minister, investigation was over and on 31.1.2011 itself, "B" summary report was filed by the Investigating Officer.

Therefore, according to the counsel appearing for the petitioner, observation of the Minister that the said complaint is pending with the police station, is contrary to the fact that already investigation is over and "B" summary report is filed by the Investigating officer on 31.1.2011. It is submitted that on inspection of fair price shop of respondent No. 5, investigating Officer found that there is no damage to the shop and record is not destroyed, as alleged by respondent No. 5 in his complaint. Learned counsel also invited my attention to the grounds taken in the petition, report of the Tahsildar and findings recorded by the Additional Commissioner (Supply), Aurangabad Region, Aurangabad, and other material placed on record and submitted that respondent No. 2 has unnecessarily interfered with the order of the District Supply Officer cancelling licence of respondent No. 5 to run fair price shop. It is submitted that, respondent No. 2 Minister has exceeded his jurisdiction and partly allowed the revision. Therefore, he submits that the petition deserves to be allowed.

4. On the other hand, learned counsel appearing for the respondent No. 5 invited my attention to the reasons assigned by respondent No. 2 and submitted that, the complaint was filed by respondent No. 5 with police station against the petitioner herein. Order passed by the District Supply Officer cancelling licence of respondent No. 5 to run fair price shop and kerosene, is without adverting to the relevant record. It is submitted that it is the case of respondent No. 5 that complainant and other villagers damaged the fair price shop of respondent No. 5 and also destroyed the record maintained in respect of fair price shop and therefore, respondent No. 5 was not able to produce the record before District Supply Officer. Therefore, District Supply Officer could not have cancelled the licence to run fair price shop and sell of kerosene without verification of record. Therefore, according to learned counsel appearing for respondent No. 5, judgment and order passed by respondent No. 2 Minister is in consonance with the material placed on record and needs no interference.

It is submitted that in the first round of litigation, the Deputy Commissioner (Supply), Aurangabad Region, Aurangabad did remand the matter back to the District Supply Officer realizing the fact that District Supply Officer has not properly carried out the enquiry. Learned counsel invited my attention to the charges levelled against respondent No. 5 and submitted that those are minor in nature and at the most those can be termed as irregularities which can be rectified and cured. Therefore, counsel for respondent No. 5 submits that writ petition is devoid of merits and the same may be rejected.

5. I have given careful consideration to the rival submissions. With the able assistance of learned counsel for the parties, I have perused entire material placed on record and the impugned judgment and order passed by the Minister, Food, Civil Supply and Consumer Protection, Maharashtra State, Mumbai.

It appears that in the year 2009, inspection of fair price shop of respondent No. 5 was carried out and the District Supply Officer Osmanabad on the basis of report of Naib Tahsildar, issued direction to register crime against respondent No. 5 and subsequently on 12.3.2009, licence was cancelled. The said order was assailed before the Deputy Commissioner (Supply) Aurangabad and the said authority remanded the matter back to the District Supply Officer for fresh enquiry. It appears that Gram Sabha was called by the villagers and upon perusal of the proceedings in the said Gram Sabha, many allegations, irregularities and also allegations of misappropriation are made against respondent No. 5. There are many allegations about non distribution of essential commodities and also misappropriation and selling of essential commodities in the black market. Therefore, District Supply Officer taking cognizance of the said irregularities, alleged misappropriation and further allegations of selling of essential commodities by respondent No. 5 in the black market and advertent to the complaints of the villagers, enquiry report of Naib Tahsildar and other material made available, has cancelled the licence of respondent No. 5 to run fair price shop.

6. Upon careful perusal of order dated 12.8.2010, passed by the District Supply Officer, certain irregularities and defects in respect of fair price shop of respondent No. 5 are mentioned in the said order. It is mentioned in the said order that, record in respect of distribution of essential commodities is not maintained by respondent No. 5. There were no banners/board updated as per the directions of the Supreme Court. The samples of essential commodities were not kept in the shop. The scheme introduced by the Central/State Government and the list of card holders of said scheme has not been shown/exhibited/ highlighted on the front portion of the shop. The offence is registered against respondent No. 5 u/s 3 and 7 of the Essential Commodities Act. It is further noted in the said order that, a show cause notice was issued to respondent No. 5 on 8.7.2010. It was mentioned in the said notice that, respondent No. 5 can reply the said notice and if he wish to produce on record any evidence in support of his case, he can do so. However, respondent No. 5 has not submitted any record/evidence in support of his case. It was only mentioned in the reply of respondent No. 5 that since the complainant i.e. petitioner herein, has attacked on ration shop and house of respondent No. 5 on 6.10.2011 and destroyed the record and caused damage to the shop. The lists of the card holders and booklet of Rules and Regulations pasted on the wall of shop were destroyed by the complainant and to that effect, respondent No. 5 has filed complaint with the police Station, Osmanabad.

7. It appears that District Supply Officer has considered the reply to the show cause notice and cancelled the licence of respondent No. 5 to run fair price shop. The Additional Commissioner (Supply), Aurangabad Region, Aurangabad by his order dated 5.4.2011, confirmed the order passed by the District Supply Officer. While confirming order passed by the District Supply Officer the Additional Commissioner (Supply) Aurangabad has adverted to the material placed on

record for his perusal. He has also adverted to the statements of villagers and narrated the allegations made against respondent No. 5 by the villagers and complainant in his judgment. The Additional Commissioner (Supply), Aurangabad Region, Aurangabad has noticed that respondent No. 5 did indulge in selling essential commodities for higher price than prescribed by the Government, there is no proper distribution of kerosene and essential commodities to the villagers. There are other allegations of which note has been taken by The Additional Commissioner (Supply), Aurangabad Region, Aurangabad. Therefore, the judgment and order passed by The Additional Commissioner (Supply), Aurangabad in revision filed by respondent No. 5 is after adverting to the report of Tahsildar, record made available from the District Supply Officer and all other material placed before him, including complaints by the villagers made in "Gram Sabha".

8. Upon careful perusal of the impugned judgment and order of the Minister from para 1 to 5, the Minister has only narrated the facts and contentions raised by the parties. In para 6, it is stated that when the Naib Tahsildar visited the shop of respondent No. 5, at that time shop of respondent No. 5 was in damaged condition. Respondent No. 2 has adverted to the arguments of advocate appearing for respondent No. 5 that complainant i.e. petitioner herein is giving unnecessary trouble to respondent No. 5, and the respondent No. 5 has not indulged in any unequal distribution of essential commodities or misappropriation etc. as stated by the complainant. It further appears that the Minister has observed that respondent No. 5 has already given representation to the District Supply Officer. The complaint is registered against respondent No. 5 with the police station. Therefore, it is not clear that whether there is any misappropriation or not. Since the offence is registered under the provisions of Essential Commodities Act and the said matter is pending before the competent court, therefore, the said court will scrutinize the material and will render appropriate decision. However, from the material placed on record, the Minister thought it fit to restore the licence to run fair price shop of respondent No. 5. Therefore, the Minister set aside the order dated 12.8.2010 of the District Supply Officer and the order of the The Additional Commissioner (Supply), Aurangabad Region, Aurangabad dated 5.4.2011.

9. Upon careful perusal of the reasons recorded by the Minister, in my opinion, the Minister has not properly considered the complaints of the villagers, outcome of the Gram Sabha, enquiry report of the Tahsildar, decision of the District Supply Officer to cancel the licence and judgment and order of The Additional Commissioner (Supply), Aurangabad Region, Aurangabad which was after assigning proper reasons and considering entire material placed record. However, the Minister has merely mentioned that, the offence is registered against respondent No. 5 and the same is sub judice before the court and therefore, only on scrutiny of material by the court, truth will come out, has allowed the revision filed by respondent No. 5. The observations of respondent No. 2 that, the complaint filed by respondent No. 5 against the complainant is pending with

the police station are contrary to the record. In fact, the decision of the Minister is dated 23.2.2011, and as contended by the counsel for the petitioner, the complaint filed by respondent No. 5 against the petitioner is disposed of on 31.1.2011. The report of the investigation officer as contended by the counsel for the petitioner shows that, there was no damage to the shop or record of fair price shop of respondent No. 5. The investigating officer has submitted "B" summary report.

10. Therefore, in my opinion, the order passed by the Minister suffers from non application of mind and ignorance the interest of the card holders and also the beneficiaries of various schemes introduced by the Central as well as State government and the fact that respondent No. 5 has repeatedly indulged himself in unequal distribution of essential commodities, not maintaining record of the fair price shop, selling the goods at higher price, not obeying the directions of Supreme Court in displaying certain informations and all other irregularities and deficiencies mentioned in the order of District Supply Officer cancelling the licence of respondent No. 5. The Minister should have paid attention to the reasons and object of Essential Commodities Act and should have addressed himself in the light of said reasons and objects while deciding the revision. However, unfortunately, the Minister has shown unnecessary indulgence and favouritism and allowed the revision of respondent No. 5, in spite of overwhelming material available on record against respondent No. 5. It is a matter of regret that, the Minister of Food, Civil Supply, Consumer Protection, Maharashtra State, Mumbai, contrary to the reasons and objects of the Essential Commodities Act, ignoring the interest of the card holders and beneficiaries, favours the "licence holders" i.e. various shop keepers, inspite of irregularities, illegalities, misappropriation, unequal distribution of essential commodities and sale of food grains by them in black market.

11. At this juncture, it would be apposite 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. When there is overwhelming material placed on record by the cardholders and there is report by the Tahsildar who is responsible Government Officer at Taluka place and further such report has been accepted by

the District Supply Officer and action of District Supply Officer to cancel the licence granted in favour of respondent No. 5 has been upheld by the the Additional Commissioner (Supply), Aurangabad Region, Aurangabad who has rejected revision filed by respondent No. 5, by any stretch of imagination, respondent No. 2 by cryptic findings should not have partly allowed the revision of respondent No. 5. Such exercise of powers by the respondent No. 2 i.e. Minister of Food, Civil Supply and Consumer Protection, Maharashtra State, Mumbai, is contrary to reasons and objects of Essential Commodities Act 1955 and the Maharashtra Scheduled Commodities (Regulation of Distribution) Order (1975).

12. Therefore, taking over all view of the matter, in my considered opinion, the impugned judgment and order dated 23.02.2012, passed by the Minister, Food, Civil Supply and Consumer Protection department, in Revision Application No. VAM-1011/P.K.303-11 N.P. 21 cannot be sustained in law and the same is therefore, quashed and set aside. The order dated 12.8.2010, passed by the District Supply Officer, Osmanabad cancelling the licence of respondent No. 5 to run the fair price shop, which is confirmed by the Additional Commissioner (Supply) Aurangabad Division, Aurangabad on 5.4.2011, stands confirmed.

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

14. The District Supply Officer is directed to issue proclamation inviting applications for allotting fresh shop at village Sonegaon, Tq. and district Osmanabad, in accordance with law, as indicated by him in his letter to the Gram Panchayat that the Government intends to allot the fair price shop to Mahila Bachat Gat. It is made clear that this Court has not expressed any opinion about the manner by which the District Supply Officer shall allot the fair price shop and kerosene licence to the deserving person and it is left open for him to do the same in accordance with the Government policy. Learned counsel for respondent No. 5 prays for stay of judgment and order pronounced today, for a period of four 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 four weeks from today.