



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2101 OF 2000

Bhimrao Eknath Borkar,
aged about 32 years, Occ. Fair Price
Shop Keeper, R/o. Pipriya, Tah. Tirora,
Distt. Gondia (Old Distt. Bhandara)

PETITIONER

...VERSUS...

1. Jitendra Bhojraj Lilhare,
aged about 22 years, Occ. Agriculturist,
R/o. Pipriya, Tah. Tirora,
Distt. Gondia (Old Distt. Bhandara).
2. The Commissioner, Nagpur.
3. The Sub Divisional Officer, Gondia,
4. The State of Mah. Through its Secretary,
Food, Civil Supply and Consumer Protection
Department, Mantralayta, Mumbai

RESPONDENTS

Shri V.R.Borkar, counsel for Petitioner.

None for respondent No.1

Shri V.P.Maldhure, AGP for Respondent nos. 2 to 4

CORAM: R. K. DESHPANDE, AND

Mrs. SWAPNA JOSHI, JJ.

DATE : 7th JUNE, 2017 .

ORAL JUDGMENT (per Deshpande, J.)

- 1] The petitioner was allotted fair price shop, as his
name appeared in the priority list as a candidate belonging to

Scheduled Caste Category under Clause 3-A (1) (B) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, (in short "the said Order of 1975) by the order passed by the Additional Collector, Gondia, on 25.10.1999. This was challenged by the respondent No.1 before the Commissioner (Supply), Nagpur Division, Nagpur, in Revision under clause 24 of the said Order, which was registered as R.P.No. 58/1999-2000. On 24.05.2000, the Deputy Commissioner (Supply) who dealt with the Revision, set aside the order passed by the Additional Collector and directed that the respondent No.1 – Jitendra Bhojraj Lilhare, belonging to 'Educated Unemployed' category, having priority over the 'Scheduled Caste' as per the priority list contained in the Government Resolution dated 20.03.1999, was entitled to allotment of fair price shop. The order directed the Sub Divisional Officer to take appropriate steps in the matter and accordingly, the Sub Divisional Officer passed an order on 03.06.2000 in favour of the respondent No.1.

2] The petitioner has preferred this writ petition, challenging the order dated 24.05.2000 passed by the Deputy Commissioner, the order dated 03.06.2000 passed by the Sub Divisional Officer, Gondia, along with the

Government Resolution dated 20.03.1999, which has been acted upon by the Deputy Commissioner to decide the entitlement of respondent No.1.

3] Shri Borkar, the learned counsel for the petitioner has urged before us that in the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, there is no priority given to the 'Educated Unemployed' person belonging to caste or tribe other than Scheduled Caste or Scheduled Tribes over the persons belonging to Scheduled Caste or Scheduled Tribe for issuing the authorization to the ration shops. He submits that the petitioner belongs to Scheduled Caste category, which is given priority at Sr.No.4 in clause (3-A) (1) (B) of other areas. In normal circumstances, the petitioner would get allotment being a candidate of Scheduled Caste category.

4] Shri Borkar, the learned counsel for the petitioner, does not dispute that such a priority is changed by the State Government by issuing Government Resolution dated 20.03.1999 (in short "the said Government Resolution), in terms of which respondent No.1 was entitled to priority as a person belonging to 'Educated Unemployed' category over

the persons belonging to Scheduled Caste and Scheduled Tribe category. It is the contention of Shri Borkar that by issuing the said Government Resolution, the priority prescribed under Clause (3-A) of the said Order of 1975 cannot be changed. He submits that if the priority is required to be changed, then the said Order of 1975 is required to be amended in accordance with the procedure prescribed for that purpose and the Government Resolution contrary to the said Order cannot be given effect for the purposes of allotment of fair price shop to the respondent No.1.

5] Shri Borkar, the learned counsel further submits that assuming for the sake of argument that the Deputy Commissioner did not commit an error in relying the said Government Resolution to consider the priority, the case of the respondent No.1 was required to be further examined on the basis of several conditions prescribed in the said Government Resolution; one of which being that the educated unemployed person proposed for allotment should not have obtained the benefit meant for such persons under the scheme framed either by the State Government or the Central Government. He has invited our attention to the specific ground of challenge raised on page No.7 of the

petition to the effect that the respondent No.1 has about an year back, obtained a loan of Rs.1,00,000/- for running the shop of kirana goods under the scheme of 'Educated Unemployed' from the Prime Minister funds through Bank of India, Paraswada, Tq. Tiroda, Distt. Gondia.

6] After going through the order passed in Revision, we find that except the question of inconsistency between the provisions of the said Order of 1975 and the said Government Resolution, no other point has been dealt with and therefore, we would concentrate our attention for the decision of said point. As per the order passed in Revision, the priority altered by the said Government Resolution has been relied upon and the claim of the respondent No.1 as belonging to the category of 'Educated Unemployed' has been preferred over the petitioner who belongs to Scheduled Caste category. Normally, the altered priority by the said Government Resolution would not have precedence over the priorities mentioned in the said Order of 1975 and in case of conflict between two, there would be no hesitation to accept the contention of Shri Borkar that the altered priority cannot be acted upon in the face of statutory provision contained in the said Order of 1975.

7] With the assistance of the learned counsels appearing for the parties, we have gone through the provisions of Sub-sections (1) and (2) of Section 3 and Section 5 of the Essential Commodities Act, 1955. The said Order of 1975 has been issued by the Food and Civil Supplies Department of the State Government under Section 3 of the Essential Commodities Act, in exercise of its power delegated by the Central Government under Section 5 of the said Act by issuing notification dated 09.06.1978 which is placed on record as Annexure-E to the petition. Relying upon this delegation of powers, Shri Maldhure, the learned AGP appearing for Respondent Nos. 2 to 4 has urged that the said Order of 1975 has been issued by the State Government and it recites that it has been issued with prior concurrence of the Central Government.

8] Perusal of the Order of delegation dated 09.06.1978 reveals that the State Government is not required to obtain the concurrence from the Central Government for issuing order **regulating licenses and permits** under Clause (d) of Sub-Section (2) of Section 3 of the said Act. The requirement of obtaining of prior concurrence is in

respect of ***distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff as stipulated under clause (d)***. It is after issuance of this power of delegation on 09.06.1978, that the provision of Clause (3-A) prescribing the order of priority to be followed in issuing authorization to ration shops was introduced in the said Order of 1975 by way of amendment effected on 20.01.1992. Shri Borkar is unable to point out any provision under the said Act requiring obtaining of prior concurrence of the Central Government for altering the priority for grant of or regulating the licenses and permits as stipulated under Clause (d) of sub-section (2) of Section 3 of the said Act.

9] In view of the aforesaid position, though we find that there is a conflict in between the priority mentioned in clause (3-A) of the said Order of 1975 and in the priority mentioned in the said Government Resolution, the State Government was competent to alter such priority without obtaining prior concurrence of the Central Government in terms of the Order of delegation dated 09.06.1978. We, therefore, reject the contention of Shri Borkar that the State Government was not competent to alter the priority by

issuing the said Government Resolution.

10] As pointed out earlier, Shri Borkar, the learned counsel appearing for the petitioner, invited out attention to the question of eligibility of the respondent No.1 to get an order of allotment, particularly when the allegation is that respondent No.1 has availed the benefit under one of the schemes promulgated by the Central Government for 'Educated Unemployed' persons. This aspect has not been dealt with by the Revisional Authority. Obviously, the case was not tested on the other aspects of the matter. The eligibility of the respondent No.1 is required to be judged on the basis of the terms and conditions stipulated in the Government Resolution dated 20.03.1999; more particularly clause (3) in Condition No. 4 of the said Government Resolution.

11] Consequently, the order impugned passed in Revision and consequently the order passed by the Sub Divisional Officer, both will have to be, therefore, quashed and set aside with an order of remand of the matter back to the Deputy Commissioner (Supply), Nagpur Division, Nagpur, for considering the question of eligibility of

respondent No.1 for allotment of such fair price shop. The parties shall be at liberty to raise all such points as are available. The respondent No.1 can also raise the points in defence and after hearing the parties, the Deputy Commissioner (Supply) shall decide the matter.

12] In the result, the order dated 24.05.2000 passed in Revision R.P.No. 58/1999-2000 is hereby quashed and set aside alongwith the order dated 03.06.2000 passed by the Sub Divisional Officer, Gondia. The matter is remitted back to the Deputy Commissioner (Supply), Nagpur Division, Nagpur, for decision in accordance with law, keeping in view the observations made by this Court.

As a result of setting aside the order passed in Revision, the order passed by the Additional Collector continues to operate. The petitioner was protected by way of an interim order passed by this Court, as a result he continues to run the fair price shop. This position shall continue to operate pending the decision of the Revision before the Deputy Commissioner. The Deputy Commissioner (Supply), Nagpur Division, Nagpur, shall decide the matter within a period of six months from the date

of first appearance of the parties before it.

Rule is made absolute in above terms. No order
as to costs.

JUDGE

JUDGE

Rvjalit