



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

WRIT PETITION NO.3896/2021

- PETITIONERS :** 1. Nandkishor Onkar Mawaskar
COMPLAINANT Aged 40 yrs., Occ – Agriculturist.
2. Dharamdas Mangal Chirote,
Aged 57 yrs., Occ -Agriculturist.
3. Dayaram Pila Dhande,
Aged 58 yrs., Occ – Agriculturist.
4. Dinesh Raja Patel,
Aged 42 yrs., Occ- Agriculturist.

All R/o Tembli, Tah. Dharni, Distt. Amravati.

...VERSUS...

- RESPONDENTS :** 1. State of Maharashtra
Through its Secretary,
Department of Food Supply and
Consumer Protection, Mantralaya,
Mumbai.
2. Dy. Commissioner (Food Supply) Amravati
Division, Amravati.
3. District Food Supply Officer, Amravati.
4. Tahsildar, Dharni, Dist. Amravati.
5. Shivkumar Nathhuji Patil
Aged 50 yrs., Occ – Fair Price Shop Owner,
R/o Tembli, Tah. Dharni, Distt. Amravati.

Ms A.S. Lanjewar, Advocate h/f Mr. N.R. Saboo, Advocate for petitioners
Mr. S.B. Bissa, AGP for respondent Nos.1 to 4
Mr. S.M. Vaishnav, Advocate for respondent No.5

CORAM : ROHIT W. JOSHI, J.

Date of reserving the Judgment : 10/12/2025
Date of pronouncing the Judgment : 06/01/2026

J U D G M E N T :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.
2. By the present petition, the petitioners challenge the order dated 19/07/2021, passed by the Hon'ble Minister, Department of Food Civil Supplies and Consumer Protection, Government of Maharashtra in Case No.वैअअ 1421/प्र.क्र.59 ना.पु.23.
3. Respondent No.5 is authorized to run fair price shop at village Tembli Tah. Dharni, District Amravati. The petitioners/complainants are the cardholders attached to the fair price shop of respondent No.5. The petitioners/complainants had lodged complaint with respect to functioning of the fair price shop of the respondent No.5. On the complaint made by the petitioners, the District Supply Officer constituted Enquiry Committee for holding enquiry into the allegations levelled by the petitioners/complainants. The Enquiry Committee submitted report dated 14/12/2020 to the respondent No.3. Respondent No.3 called explanation of respondent No.5, in view of adverse report furnished by the Enquiry Committee. Respondent No.5 submitted his explanation disputing the findings by the Enquiry

Committee. After hearing the respondent No.5, the respondent No.3/District Supply Officer (DSO) passed order dated 20/01/2021 holding that respondent No.5 was guilty of breach of Clause 18 (2) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975 (for short hereinafter referred to as "Distribution Order, 1975") and was therefore liable for action, as contemplated under Clause 3 (4) of the said Order. Respondent No.3 has recorded that the respondent No.5 was guilty of misappropriation of wheat to the extent of 22.6 quintals and rice to the extent of 11.36 quintals. The DSO also recorded finding that although 2.49 quintals of pulses were allotted to the fair price shop of the respondent No.5, sale of 7.54 quintals of pulses was found to be done. Apart from this, some other irregularities are also recorded with respect to display of signboards in the shop. Based on the aforesaid, the respondent No.3 ordered forfeiture 100% security deposit, cancellation of authorization of fair price shop and recovery of cost of wheat, rice and pulses, as per prevailing market value.

4. The said order dated 20/01/2021, passed by the respondent No.3/DSO was assailed by the respondent No.5 by filing revision under Clause 24 of the Distribution Order, 1975. The said revision came to be dismissed by the Deputy Commissioner (Supply) Amravati Division Amravati/respondent No.2. The respondent No.2 has

confirmed the findings of fact with respect to variation in the quantities of wheat, rice and pulses as also other non-compliances with respect to display of signboards while dismissing the revision vide order dated 20/04/2021.

5. The aforesaid two orders came to be challenged by the respondent No.5 by preferring a second revision under Clause 24 of the Distribution Order, 1975. The said revision came to be partly allowed by the Hon'ble Minister. The orders passed by respondent Nos.2 and 3 came to be quashed and set aside. The Hon'ble Minister directed fresh inspection of the records of respondent No.5 in order to ascertain veracity of allegations of misappropriation of food grains. The Hon'ble Minister also directed the Authorities to record statements of at least 25% cardholders attached to the fair price shop of respondent No.5. It is directed that appropriate decision be taken in the matter after completing the aforesaid exercise. The Hon'ble Minister directed to restore the authorization of fair price shop of the respondent No.5. The aforesaid order passed by the Hon'ble Minister is challenged by the petitioners/original complainants in the present petition.

6. At the outset, Mr. Vaishnav, learned Advocate for respondent No.5 raises a preliminary objection with respect to maintainability of the petition. He contends that the petitioners, who are the original complainants, do not have locus to file the petition. His

contention is that a cardholder or complainant can, at best, complain to the appropriate Authority with respect to alleged illegality or irregularity in the functioning of a fair price shop. However, a cardholder or complainant does not have locus to assail the orders passed by the Authorities on his complaint. The learned Advocate places reliance on the order dated 04/09/2023 passed by the Hon'ble Supreme Court in the matter of *Vishvas Vs. The Ministry (Food, Civil Supply And Consumer Protection) and others in Civil Appeal Nos.5605-5606 of 2023* in support of his contention.

7. Ms Lanjewar, learned Advocate for the petitioners counters the contention by placing reliance on the judgment of this Court in the case of *Shivaji Tulshiram Thakre Vs. State of Maharashtra and others*, reported in *2012 (4) Mh.L.J. 453*. Learned Advocate contends that the Hon'ble Minister has committed serious error of law and jurisdiction in quashing and setting aside the impugned orders, without recording any positive findings as regards correctness or otherwise of the orders. She, therefore, contends that the order passed by the Hon'ble Minister is liable to be quashed and set aside.

8. In the matter of *Shivaji* (supra) a preliminary objection was raised with respect to locus of the petitioner therein to challenge the order passed by the Hon'ble Minister, in review under Section 24 (2) of the Distribution Order, 1975. The petitioner in the said case was the

original complainant. Reliance was placed on earlier judgment reported in *2012 (1) All MR 150* in support of the contention that petition at the behest of the original complainant was not maintainable. This Court has rejected preliminary objection. It is held that the ratio of the said judgment will not be applicable to a petition arising out of the orders passed under Clause 24 of the Distribution Order, 1975. This Court has dealt with the provisions of appeal and revision under the Licensing Order, 1979 and Clause 24 of the Distribution Order, 1975 and held that although a complainant cannot have locus to file petition in case where order is passed under the Licensing Order, 1979, a petition at the behest of the complainant will be maintainable in case order is passed under Clause 24 of the Distribution Order, 1975.

9. As regards the judgment of the Hon'ble Supreme Court in the matter of *Vishvas* (supra) the said order does not specifically record as to whether the order passed by the Authorities in the said case was passed under Distribution Order, 1975 or Licensing Order, 1979. However, paragraph 2 of the judgment makes a reference to appeal preferred before the Commissioner. Provision for filing the appeal is under the Licensing Order, 1979. There is no provision for appeal under the Distribution Order, 1975. It, therefore, appears that the judgment of the Hon'ble Supreme Court pertains to an order passed under the Licensing Order, 1979.

10. This Court in its judgment in the case of *Vishvas* (supra) has distinguished the provision of Distribution Order, 1975 and Licensing Order, 1979 and has held that although petition at the behest of complainant should not be entertained in case where order impugned is passed under the Licensing Order, 1979, the same will be maintainable in case where order is passed under Distribution Order, 1975. In view of the above, preliminary objection raised by the respondent No.5 is liable to be rejected.

11. Mr. Vaishnav, learned Advocate for the respondent No.5 justifies the order stating that the Hon'ble Minister was well within his Authority to order fresh enquiry in the matter. He contends that the past conduct of the respondent No.5 is relevant consideration, which has weighed with the Hon'ble Minister. He further contends that pursuant to the order passed by the Hon'ble Minister, fresh enquiry has been conducted and no adverse material is found against the respondent No.5 in the said enquiry. Learned Advocate draws attention to letter dated 09/02/2022, issued by the respondent No.3/DSO to the Additional Secretary, stating that pursuant to the order passed by the Hon'ble Minister fresh enquiry was held, in which statements of 102 cardholders were recorded and as per the said statements, the cardholders were getting regular and complete supply of food grains from the respondent No.5. His contention is that since adverse material

is not found against the respondent No.5 in fresh enquiry, the petition should be dismissed.

12. Perusal of communication dated 09/02/2022 does not indicate that enquiry report deals with the findings with respect to misappropriation of food grains, on the basis of which, order dated 20/01/2021 was passed by the respondent No.3/DSO. Therefore, the contention that the petition should not be entertained, in view of aforesaid subsequent development, is liable to be rejected. This Court, has, however, not expressed any final opinion as regards to subsequent enquiry report since the respondent No.5 has merely filed on record letter dated 09/02/2022 and the entire material, on the basis of which, the said letter is issued, is not filed.

13. As regards merits of the matter, it must be noted that the respondent No.3 has recorded a finding that the respondent No.5 was guilty of misappropriation of food grains and has failed to observe other conditions such as display of signboards etc. The respondent No.2 has confirmed these findings while dismissing the revision.

14. Perusal of the impugned order passed by the Hon'ble Minister will disclose that the Hon'ble Minister has not recorded a positive finding that the findings recorded by the respondent No.3/DSO or respondent No.2/Commissioner are incorrect or unsustainable. The Hon'ble Minister has recorded that the respondent No.5 was running a

fair price shop in a tribal area for around 20 years without any complaint in the past. The Hon'ble Minister has thereafter recorded that out of 369 cardholders, statements of 269 cardholders were recorded during the course of enquiry and that 221 cardholders stated that they had no grievance against the respondent No.5. Having held so, the Hon'ble Minister has recorded that the findings recorded by the Authorities in the orders impugned before him also should not be ignored. In the light of such observations, the Hon'ble Minister has directed to hold fresh enquiry in the matter. The Hon'ble Minister has directed to re-examine the records of fair price shop of respondent No.5 and also to record statements of at least 25% cardholders and thereafter to take a fresh decision in the matter.

15. Perusal of Clause 24 (1) of the Distribution Order, 1975 will demonstrate that revisional powers under the said provision can be exercised in order to arrive at satisfaction with respect to legality or propriety of the order impugned and regularity of proceeding, in which the order is passed. The scope of revision is limited. A Revisional Authority can set aside the order impugned before it only upon recording positive finding as regards legality or propriety of the impugned order or any adverse findings with respect to regularity of proceedings, in which the impugned order is passed. Under the said provision, the Revisional Authority cannot act as if it is the first

Authority. In the case at hand, it is found that the Hon'ble Minister has not recorded any positive finding that the findings recorded by the respondent Nos.3 and 2/DSO and Commissioner respectively are illegal or improper. Likewise, the Hon'ble Minister has not recorded any adverse findings with respect to regularity of proceedings, in which, orders were passed by the respondent Nos.2 and 3. The Hon'ble Minister has quashed the orders passed by the respondent Nos.2 and 3 only because the respondent No.5 was running the fair price shop in a tribal area for around 20 years without any complaint and around 221 cardholders made a statement that they had no grievance against the respondent No.5. The Hon'ble Minister has clearly exceeded his jurisdiction while passing the impugned order. The Hon'ble Minister could have interfered with the impugned orders only on arriving at satisfaction with respect to legality or propriety of the impugned orders and/or regularity of proceedings.

16. The impugned order passed by the Hon'ble Minister thus suffers from a serious jurisdictional error. The impugned order is clearly unsustainable and is liable to be quashed and set aside. The matter needs to be remanded to the Hon'ble Minister to decide the same afresh. It is directed that the Hon'ble Minister, while deciding the revision afresh, must record positive findings with respect to allegations of

misappropriation of food grains, on which, order of cancellation of authorization is passed by the respondent No.3/DSO.

17. Accordingly, Writ Petition is partly allowed in the following terms.

(i) Order dated 19/07/2021, passed by the Hon'ble Minister, Department of Food Civil Supplies and Consumer Protection, Government of Maharashtra in Case No.वैअअ 1421/प्र.क्र.59 ना.पु.23 is quashed and set aside.

(ii) Case No.वैअअ 1421/प्र.क्र.59 ना.पु.23 is remitted to the Hon'ble Minister, Department of Food Civil Supplies for deciding the revision afresh.

(iii) The Hon'ble Minister is requested to decide the revision as expeditiously as possible and preferably before 31/05/2026.

(iv) Till the adjudication of revision on merits, the respondent No.5 shall continue to run the fair price shop, if there is no other adverse order or legal impediment in that regard.

18. Rule is made absolute in the aforesaid terms. No order as to costs.

(ROHIT W. JOSHI, J.)