

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1155/2021 (S.B.)

Dinesh Vinayakrao Mahure,
Aged about 40 years,
Occ. Service (at present under suspension)
Godown Keeper, Babhulgaon, Tq. Babhulgaon,
District Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Civil Supplies,
Mantralaya, Mumbai.
- 2) Collector, Yavatmal.
- 3) District Supply Officer,
Administrative Building,
LIC Square, Yavatmal.

Respondents

Shri C.A.Babrekar, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 17th July, 2023.

Judgment is pronounced on 11th August, 2023.

Heard Shri C.A.Babrekar, Id. counsel for the applicant and
Shri S.A.Sainis, Id. P.O. for the Respondents.

2. On 07.07.2021 the applicant was working as a Godown Keeper at Babhulgaon, District Yavatmal. On that day the Deputy Commissioner, Food and Civil Supplies inspected the godown and found some shortage of food grains, and some other discrepancies. He prepared a report dated 07.07.2021 (A-1). Based on this report respondent no. 2 issued a show cause notice (A-2) to the applicant. The applicant gave his replies dated 25.08.2021, 02.09.2021 and 25.10.2021 (A-3 collectively) that the loss was natural, it had occurred during transportation, he could not be held responsible for the losses of 2013, 2016 and 2018 because he was holding the post of Godown Keeper at Babhulgaon since August, 2020. By separate orders dated 24.09.2021 (A-4 collectively) the applicant was placed under suspension and recovery as under was directed by respondent no. 2:-

“विषय:- शासकीय धान्य गोदाम तहसील कार्यालय, बाभुळगाव येथील श्री दिनेश व्ही. माहुरे गोदामपाल यांचे कडून गोदाम तुटीच्या रक्कमेची वसुली करणेबाबत

संदर्भ :- १)मा.उपआयुक्त, अमरावती विभाग, अमरावती यांचे पत्र क्रमांक/आकाअ/विगोनी/गो.त यवतमाळ/कावी/667/2021 दि. 2/8/2021 प्राप्त दि. 11/08/2021
 २)मा. जिल्हाधिकारी, यवतमाळ यांचा सी. आर. क्रमांक/11295 दि.11/8/21
 ३)या कार्यालयाची नोटीस क्र./पुरवठा/अका सामान्य/920/2021 दि.18/8/2021
 ४)श्री. दिनेश व्ही. माहुरे, गोदामपाल तहसील कार्यालय, बाभुळगाव यांचे स्पष्टीकरण दि. 8/9/2021

ज्याअर्थी, उपआयुक्त (पुरवठा) अमरावती विभाग अमरावती यांनी दि 07/07/21 ते 08/07/21 या कालावधीत बाभुळगाव येथील शासकीय धान्य गोदामाची तपासणी केली असता, सदर दिनांकास चाचणी वजनाच्या सरासरी नुसार या गोदामात गहू 58.28.973 क्वींटल व तांदुळ 48.68.800 क्वींटल धान्यसाठा कमी

आढळून आलेला असून सदर कमी आढळलेल्या धान्य साठ्याची शासन निर्णय क्रमांक संकीर्ण 4413/1381/प्र.क्र.492/नापु 16-ब, दि.31 डिसेंबर 2013 अन्वये तात्काळ वसूलीची कार्यवाही करणेबाबत संदर्भीय पत्रान्वये उपआयुक्त (पुरवठा), अमरावती विभाग, अमरावती यांनी कळविले आहे. सदर शासन निर्णयानुसार कमी आढळलेल्या धान्य साठ्याबाबत वसूल करावयाची रक्कम खालीलप्रमाणे आहे.

| अ. क्र. | धान्याचा प्रकार | कमी आढळून आलेले धान्य क्वि. | वसूल रकमेचा दर प्रती क्वि. | वसूल करावयाची रक्कम |
|--------------------------|-----------------|-----------------------------|----------------------------|---------------------|
| 1 | गहु | 58.28.973 | 2993.80 | 174507.79 |
| 2 | तांदुळ | 48.68.800 | 4229.79 | 205940.01 |
| वसूल करावयाची एकूण रक्कम | | | | 380447.80 |

त्याअर्थी, मी अमोल येडगे (भाप्रसे), जिल्हाधिकारी यवतमाळ मला प्रदान करण्यात आलेल्या अधिकारानुसार खालीलप्रमाणे आदेश पारीत करतो की, शासकीय धान्य गोदाम तहसील कार्यालय बाभुळगाव या गोदामाची तपासणी केली असता गहु तांदुळ चाचणी वजनात तुट आढळून आल्यामुळे श्री दिनेश व्ही. माहुरे गोदामपाल यांचेकडून तात्काळ रुपये 3,80,448/- (अक्षरी-तिन लाख अंशी हजार चारशे अठेचाळीस रुपये) रकमेची वसूलीची कार्यवाही करण्याबाबत आदेश करण्यात येत आहे. वरील वसूलीची रक्कम तात्काळ शासन जमा करण्याची कार्यवाही करण्यात यावी. सदर कार्यवाहीस विलंब होणार नाही याची कटाक्षाने दक्षता घेण्यात यावी.”

3. By order dated 21.03.2021 (A-5) suspension of the applicant was revoked and he was reinstated. To show his bonafides the applicant deposited Rs.1,00,000/- on 14.02.2022 (A-6). On 09.09.2022 respondent no. 3 passed the order (A-7) directing recovery of remaining amount in 25 instalments from him. Hence, this O.A. impugning the orders of recovery dated 24.09.2021 and 09.09.2022.

4. According to the applicant, the impugned orders cannot be sustained because before passing the same proper opportunity of

hearing was not given to him, contents of his replies were not taken into account and provisions of Godown Manual were not followed.

5. Stand of respondents 2 & 3 is that show cause notice was issued to the applicant, his explanation was considered, it was found to be unsatisfactory and both the impugned orders were passed as per provisions of Godown Manual.

6. It is a matter of record that the applicant was served with a charge-sheet dated 04.10.2022 (at PP. 87 to 90), he filed a reply on 21.02.2022 and the enquiry still appears to be pending. It may be observed that the departmental enquiry is also in respect of shortage of food grains stated to have been noticed during the inspection dated 07.07.2021.

7. I have already quoted above the impugned order of recovery dated 24.09.2021. Contents of this order merely refer to inspection report, show cause notice and reply dated 08.09.2021 filed by the applicant without even briefly adverting to what any of these communications were. There is no reference in this order of recovery to relevant provisions of Godown Manual. The order does not show that contents of reply of the applicant were in fact considered before passing the same. The order entails civil consequences. Therefore, it was necessary to back it up by reasons. The power to issue order of recovery

is drastic. Therefore, it ought to have been exercised with caution. The source of this power can be traced to G.R. dated 31.12.2013 issued by Department of Food and Civil Supplies, Government of Maharashtra. This G.R. reads as under:-

“शासन निर्णय

त्यानुषंगाने आता निर्देश देण्यात येत आहेत की, सार्वजनिक वितरण व्यवस्थेअंतर्गत अन्नधान्याच्या साठवणुकीमधील तुट अथवा अन्नधान्याच्या अपहार प्रकरणी त्या त्या हंगामासाठी केंद्र शासनाने निर्धारित केलेल्या Economic Cost नुसार रक्कम निर्धारित करून प्रत्यक्ष अपहार झाल्याच्या दिनांकापासून वसुली करण्याच्या दिनांकापर्यंत राष्ट्रीयकृत बँकेच्या त्या कालावधीकरीता असलेल्या व्याजाच्या दराने आकारणी करून तुटीच्या एकूण वसुलीची रक्कम निश्चित करून त्याप्रमाणे वसुली करावी”

This G.R. refers only to recovery. It does not specify when, at what stage, recovery can be ordered. This aspect assumes relevance and significance because in this case, on same allegations departmental enquiry is ordered and it is pending. On conclusion of enquiry, if the charge is held to be proved, recovery of amount of loss said to have been suffered by the Government can be ordered by way of punishment. Viewed from this angle the impugned order of recovery dated 24.09.2021 can be said to be premature. It can be reiterated that want of reasons makes this order ex-facie unsustainable. Once this order is held to be unsustainable, the order dated 09.09.2022 which is consequential in nature, too cannot be sustained. Hence, the order:-

ORDER

A. The O.A. is allowed.

B. The impugned orders of recovery dated 24.09.2021 and 09.09.2022 are quashed and set aside.

C. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 11/08/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 11/08/2023.
and pronounced on

Uploaded on : 17/08/2023.