

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NOS. 205, 206 & 207 ALL OF 2024
(Subject – Suspension)**

1. ORIGINAL APPLICATION NO. 205 OF 2024

DISTRICT : PUNE

Smt. Varsha Landge,)
Age : 38 years,)
Working as Deputy Collector / Sub Divisional)
Officer (under Suspension) Purandar, Dist. Pune.)
Residing at- Purandar, Dist. Pune.)
.... **APPLICANT**

2. ORIGINAL APPLICATION NO. 206 OF 2024

DISTRICT : PUNE

Shri. Vikram Mahajan Rajput,)
Age : 34 years,)
Working as Tahsildar (under Suspension))
Purandar, Dist. Pune.)
Residing at- Sukhangan Apartment,)
Sonori Road, Sasswad, Dist. Pune.)
.... **APPLICANT**

3. ORIGINAL APPLICATION NO. 207 OF 2024

DISTRICT : PUNE

Shri. Tanaji Dilip Barade,)
Age : 36 years,)
Working as Sub Divisional Police Officer, Bhor,))
Pune Rural, (under Suspension))
Saswad, Dist. Pune.)
Residing at- At. Post-Raogaon, Tal. Karmala,)
Dist. Solapur.)
.... **APPLICANT**

V E R S U S

1. State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai- 400 032.)

2. **The Director General of Police,**)
 Maharashtra State, Mumbai,)
 Maharashtra Police Headquarter,)
 Shahid Bhagat Singh Marg, Colaba,)
 Mumbai- 400 001.)
3. **The Superintendent of Police,**)
 Pune Rural, Chavan-nagar, Pashan)
 Road, Pune-411 008.)
4. **A.C.S. & Chief Election Officer,**)
 General Administration Department,)
 5th Floor, Madam Cama Road,)
 Hutatma Rajguru Chowk,)
 Mantralaya, Mumbai-32.)
5. **Election Commission of India,**)
 Nirvachan Sadan, Ashoka Road,)
 New Delhi-110001.)

... **COMMON RESPONDENTS**

APPEARANCE : Smt. Punam Mahajan, Counsel for Applicants
 in all these O.As..

: Ms. S.P. Manchekar, Chief Presenting Officer
 for respondent authorities in all these O.As.

: Shri Alok Sharma, counsel for respondent No.5

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **19.03.2024**

DATE : **02.04.2024**

C O M M O N - O R D E R

(Through Video Conferencing)

1. Heard Smt. Punam Mahajan, learned counsel
 appearing for the applicants, Ms. S.P. Manchekar, learned Chief
 Presenting Officer appearing for respondent authorities and Shri

Alok Sharma, learned counsel for respondent No. 5 i.e. Election Commission of India.

2. All three applicants in the aforesaid three respective Original Applications are the Government servant from different cadres, however, they were served with the suspension orders by the Revenue and Forest Department on 09.02.2024 and Home Department on 08.02.2024 in terms of the directions given by the Election Commission of India by communication dated 06.02.2024 sent to the Chief Secretary, Government of Maharashtra. The applicants have been suspended for the lapses on their part in making security arraignments for the Electoral Voting Machines and VVPATs (in short EVMs-VVPATs). Thus all these Original Applications are taken together for discussion and decided by this common judgment and order.

3. Brief facts as stated by the applicants giving rise to all these Original Applications are as follows :-

(i) In view of the upcoming Parliamentary Elections, the Election Commission of India vide its letters dated 17.11.2023 and 20.11.2023 issued instructions regarding distribution of EVMs-VVPATs for public awareness campaign. The necessary instructions have been issued to

the Nodal Officer EVM-VVPAT Management to allot the said machines for awareness and training to 21 Assembly Constituencies and to communicate all the political parties in this regard on 24.11.2023. In terms of contents of the EVM Manual and also as per the instructions given by the Election Commission of India in this regard, detailed instructions were given with respect to storage, security and distribution of the EVMs-VVPATs for Training and Awareness to all the SDOs by the Collector vide letter dated 08.12.2023. In terms of these instructions, distributed EVMs-VVPATs for Awareness and Training are required to be stored at designated strong rooms at a respective Sub Divisional headquarters with proper security and lock.

(ii) In view of above, 40-Electoral Voting Machines i.e. EVMs (CU-40, BU-40 and VVPAT-40) were allotted to 202-Purandar Legislative Assembly Constituency in Pune District for Voters awareness and Publicity. These machines were kept in strong room at Tahsil Office, Purandar at Pune. After completing awareness campaign during the day hours, all the EVM-VVPAT machines were again kept in the strong room and the strong room used to be sealed. As per security protocol, on every working day,

the in-charge of strong room opens the strong room and gives two machines to supervisors of awareness team and in the evening, these machines are kept back in the strong room. After sealing the strong room is under the surveillance of security guards and CCTV installed therein.

(iii) On 05.02.2024 at 10.00 a.m., Tahsil office staff, Purandar found that the sealed strong room lock was broken. This fact was communicated to Sub Divisional Police Officer Bhor, Sub-Division Saswad. After completing the prima-facie enquiry and inspecting the CCIV footage, it was revealed that one control unit No. BCUEL 41601, 5 paper rims and stationary has been stolen from the strong room at 03.43 a.m. on 05.02.2024. One security guard and one home guard were appointed for the security of the said strong room. On the basis of complaint lodged by the Naib Tahsildar Purandar, Crime No. 38/2024 came to be registered at Police Station Saswad for the offences punishable under sections 454, 457 und 380 of IPC against the unknown persons on 05.02.2024.

(iv) Immediately after receipt of the information, the District Election Office, Pune by letter dated 05.02.2024

issued show cause notice and called explanation from the Sub-Divisional Officer, Purandar regarding the incidence. The Sub Divisional Officer, Purandar submitted explanation on 06.02.2024. The Superintendent of Police, Pune Rural vide letter dated 05.02.2024 communicated that the offence has been registered and investigation is carried out and responsibility is fixed on the Police guard and the Departmental Enquiry will be initiated.

(v) The applicant Varsha Landge in O.A. No. 205/2024 is from the cadre of Deputy Collector and working as Sub-Divisional Officer, Purandar, Dist. Pune, the applicant Vikram Mahajan Rajput in O.A. No. 206/2024 is from the cadre of Tahsildar and working as Tahsildar, Purandar, Dist. Pune and the applicant Tanaji Dilip Barade in O.A. No. 207/2024 is from the cadre of Dy. Superintendent of Police and working as Sub-Divisional Police Officer, Bhor, Pune Rural, Tq. Purandar, Dist. Pune.

(vi) The Election Commission of India vide letter dated 06.02.2024 has directed the Chief Secretary of Maharashtra State that the Sub-Divisional Officer, Tahsildar and Sub-Divisional Police Officer concerned be

placed under suspension immediately and disciplinary proceedings be initiated against them. It has also been directed to the Chief Electoral Officer, Maharashtra to constitute a committee and to enquire into the matter and submit report to the Commission within a week.

(vii) In terms of the directions given by the Election Commission of India and the Chief Secretary of Maharashtra State in connection with the letters received from the Chief Electoral Officer, Maharashtra in this regard and report submitted by the Collector, Dist. Pune, by impugned separate orders dated 09.02.2024 the Revenue and Forest Department has suspended the applicants Varsha Landge, Deputy Collector, Purandar, Dist. Pune in O.A. No. 205/2024, Vikram Mahajan Rajput, Tahsildar, Purandar, Dist. Pune in O.A. No. 206/2024 and by order dated 08.02.2024, the Home Department has suspended the applicant Tanaji Dilip Barade, Sub Divisional Police Officer, Bhor, Pune Rural in O.A. No. 207/2024. Hence, the present three Original Applications.

4. Learned counsel appearing for the applicants in the aforesaid Original Applications submits that in view of Section

28-A of the Representation of People Act, 1951, Returning officer, presiding officer etc. deemed to be on deputation to Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers, shall, during that period, be subject to the control, superintendence and discipline of the Election Commission. Learned counsel in this context submits that as on the date of passing of the impugned orders against all the applicants i.e. on 08.02.2024 and 09.02.2024 respectively, no election notification has been issued as contemplated under Section 28-A of the Representation of the People Act, 1951.

5. Learned counsel for the applicants submits that in terms of the directions given by the Election Commission of India in the letter dated 06.02.2024 to the Chief Secretary, Government of Maharashtra, Mumbai to place the applicants under suspension immediately and the disciplinary proceedings be initiated against them, the impugned suspension orders came to be passed by the respondent No. 1 in respect of applicants in O.A. Nos. 205/2024 and 206/2024 on 09.02.2024 and applicant in O.A. No. 207/2024 on 08.02.2024. Learned counsel submits that the impugned orders have been passed in arbitrary manner

without application of mind, merely on the basis of the directions given by the Election Commission of India vide letter as referred above dated 06.02.2024. Learned counsel submits that even though the directions in this regard have been issued by the Election Commission of India for suspension of the applicants, in view of the provisions of Section 28-A of the Representation of the People Act, 1951, the same is improper, incorrect and illegal.

6. Learned counsel for the applicants submits that the impugned orders are mala-fide, as there is no dereliction of duties on the part of the applicants. Learned counsel submits that the officers of the Revenue and Forest Department of the rank of Deputy Collector and Tahsildar respectively and also officers of the Home Department of the rank of Dy. Superintendent of Police have no role to play in the security in strong room. Learned counsel submits that even though the Collector and District Election Officer, Pune vide communications dated 05.02.2024 and 06.02.2024 had informed the entire incidence of theft to the Chief Election Officer, Maharashtra State, Mumbai and before forwarding the said communications, the District Collector and District Election Officer, Pune along with Superintendent of Police, Pune Rural has inspected the spot and also CCTV footage. He has specifically mentioned in the

report that in the CCTV footage, the security guards are found absent at the time of commission of theft and as such, they are guilty of the dereliction of duty. Learned counsel submits that only on the basis of said communications received from the District Collector and District Election Officer, Pune, the Election Commission of India by letter dated 06.02.2024 has given directions for suspension of the applicants and initiation of the Departmental Enquiry against them. Learned counsel submits that there is no whisper in the said report about the dereliction of duty and negligence on part of the applicants in any manner.

7. Learned counsel for the applicants submits that the suspension order is arbitrary, malafide, illegal and against the law. There was no necessity or justification for the suspension of the applicants. The suspension seems to have been actuated with an ulterior motive and is the outcome of an arbitrary exercise of powers. Even considering the reasons mentioned in the suspension order, there would be no hurdle as such for proceeding with the Departmental Enquiry without suspension. The suspension order is a colorable exercise of power on the part of the respondents. The competent authority is not vested with arbitrary and unfettered power to place its officers under disability and distress.

8. Learned counsel for the applicants submits that the suspension order is also illegal on the ground that it has been issued in the flagrant violation of the guidelines prescribed in the Departmental Enquiry Manual. The suspension order of the applicants is punitive in nature and no purpose is likely to be achieved by suspending them. There is no question of tampering with evidence or influencing witnesses in the present case. It is part of record that accused persons who had committed theft were identified and two out of them were arrested on 07.02.2024. Additionally, the EVM machine and other property have been recovered from the arrested accused persons. It is well settled that the power of suspension cannot be exercised for trivial lapses nor should the authorities be afflicted by “suspension syndrome.”

9. Learned counsel for the applicants in response to the affidavit in reply submitted on behalf of respondent No.5 i.e. the Election Commission of India submits that the Chief Electoral Officer, Maharashtra State has constituted two members committee under the chairmanship of Divisional Commissioner (Revenue), Pune and consisting of IG Kolhapur Range, Kolhapur as a second member. The above mentioned committee has submitted the detailed report on 14.02.2024 to the respondents.

The said committee has recommended that the local Police Inspector also should be placed under the suspension.

10. Learned counsel Shri Alok Sharma representing the respondent No.5 i.e. the Election Commission of India has placed before this Tribunal the copy of said two members committee report dated 14.02.2024. Learned counsel for the applicants submits that the committee has opined that the strong room was found in good condition and the certificate of Deputy Engineer regarding suitability of strong room is on record. It is also observed by the committee that the arrangement of double lock system, CCTV, fire extinguisher etc. is made available as per the guidelines of ECI. It is also recorded in the said report that both SDO and Tahsildar have visited the strong room from time to time. Learned counsel submits that however, the committee has made certain adverse remarks to the extent of arrangement of the security and stated that the security arrangement is not in accordance with ECI guidelines to provide for minimum half section of armed police of 24X7 security. It is also observed by the committee that the SDPO, Bhor has forwarded written communication to Police Inspector, Saswad to provide appropriate police security for the strong room at Tahsil Office, Saswad. However, the strength of security personnel to be

provided is not mentioned in the letter. He has visited the strong room from time to time but has not been taken any action on the inadequate number of security personnel i.e. half section mandate as per ECI guidelines.

In this context, learned counsel for the applicants most humbly submits that the entire approach of the said committee consisting of top officials from two departments is erroneous. Learned counsel for the applicants submits that the storage protocol of regular EVM'S and the EVM'S kept for training and awareness is altogether different. Learned counsel for the applicant has referred the manual on EVM which has been issued by the Election Commission of India.

11. Learned counsel Shri Alok Sharma representing the respondent No.5 i.e. Election Commission of India has placed on record copy of Chapter-I of the said manual. Learned counsel for the applicants has placed on record the copy of the said manual which consisting of Chapter-5 also. Learned counsel for the applicants has pointed out that the said chapter-5 has not submitted by the respondent No.5 i.e. Election Commission of India before the Tribunal though it is part of the manual. Learned counsel for the applicants submits that in terms of clause No.5.6 of chapter-5 which titled as **Training and**

Awareness of EVMs', the above mentioned EVMs (Training & Awareness) shall be stored in a separate designated warehouse, not below the sub-division headquarters with proper security and lock. Learned counsel for the applicant submits that as per Chapter-I of manual which titled as '**Storage of EVMs and Opening of EVM Warehouse during Non-Election period and Emergency-Movement/Shifting of EVMs'**', in clause No. 1.3 non-election period is defined after C+ 45 days. Learned counsel for the applicants submits that the 'C' means counting and 45 days thereafter. Learned counsel for the applicants has pointed out clause No. 1.3.2 wherein the directions have been given for the security and safety arrangements for EVM Warehouse/strong room and as par the said clause No. 1.3.2. (ii), minimum half section of armed police for 24 X 7 security (only Government Security Personnel). Home Guards Security as an exception when regular police cannot be posted.

12. Learned counsel for the applicants submits that as pointed out earlier clause No. 5.6 of Chapter -5, the security arrangement so far as the training and awareness of EVMs is with proper security and lock. Learned counsel for the applicants submits that thus the entire approach of the Election Commission of India, hastily giving directions to suspend the

applicants, is an arbitrary exercise of power and the order of suspension is apparently punitive in nature. The basis of the impugned order is the erroneous presumption of negligence on the part of the applicant. Learned counsel for the applicants submits that all the applicants have an excellent service record as attested by their superiors. Learned counsel for the applicants submits that thus all three Original Applications deserve to be allowed.

13. Learned counsel for the applicants in order to substantiate her contention placed reliance on the following cases:-

(i) **Union of India & Anr. Vs. Ashok Kumar Aggarwal** reported in (2013) 16 SCC 147

(ii) **State of Maharashtra Vs. Dr. Subhash Dhondiram Mane** reported in 2015 (4) Mh.L.J.

(iii) **Dr. Subhash Dhondiram Mane Vs. The State of Maharashtra** in O.A.No. 834 of 2024

(iv) **Smt. Diptee Ramchandra Pawar Vs. The State of Maharashtra & Ors.** in O.A.No. 658 of 2022.

(v) **Sanjay M. Bhagwat Vs. The State of Maharashtra & Ors.** in W.P.No. 4241 of 2022.

14. Learned Chief Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.1 in O.A.No. 205 of 2024 filed by applicant namely Smt. Varsha Landge,

Deputy Collector/Sub Divisional Officer and O.A.No. 206 of 2024 filed by the applicant namely Shri Vikram M. Rajput, Tahsildar, submits that the suspension order issued by the department of Revenue and Forest is in consonance with the directives issued by the Election Commission of India. It is further submitted that the Election Commission of India has taken cognizance of the said incidence and directed the Chief Secretary, Government of Maharashtra Mumbai that Sub-Divisional Officer, Tahsildar and Sub Divisional Police Officer concerned, be placed under suspension immediately and to initiate Disciplinary Proceedings against them. So far as the Original Application No. 207/2024 filed by the applicant namely Shri Tanaji D. Barade who is Sub Divisional Police Officer is concerned, learned Chief Presenting Officer submits that as per the directives issued by the Election Commission of India by letter dated 06.02.2024, the respondent No.1 suspended the applicant vide order dated 08.02.2024. Prima -facie it is seen that there is lack of supervision and control over the sub-ordinates by the applicant. Hence, the order of suspension is not malafide. Learned C.P.O. submits that due to the designated security officer's absenteeism, the theft of the control unit of demo EVM took place. Hence, the order of suspension is not malafide.

15. In connection with O.A.No. 205 of 2024 filed by the applicant namely Varsha Langde and O.A.No. 206 of 2024 filed by applicant namely Vikram M. Rajput, on the basis of affidavit in reply submitted on behalf of respondent Nos. 2 & 3, learned C.P.O. submits that the incidence is serious in nature and it was in the jurisdiction of Sub-Divisional Officer, Purandar, hence, the Election Commission of India (ECI) took immediate action against both the applicants in the aforesaid two Original Applications. Learned C.P.O. submits that it cannot be said that the Deputy Collector and Tahsildar have no role to play in the security of the strong room.

16. Learned Chief Presenting Officer submits that on 05.02.2024 at 10.00 a.m., Tahsil Office, Purandar staff found that the sealed strong room lock was broken. The fact was immediately communicated to Sub-Divisional Police Officer, Bhor, Division Saswad and office of the Superintendent of Police Pune Rural. After conducting prima-facie enquiry and CCTV footage, it was revealed that one control unit no. BCUEL 41601, 5 paper reams and stationary have been stolen from the strong room at 03.43 a.m. on 05.02.2024. One security guard and one home guard were appointed for the security of strong room. At

the time of enquiry it was revealed that they were absent on duty at the time of incidence. Learned Chief Presenting Officer submits that all the Original Applications are liable to be dismissed.

17. Learned counsel Shri Alok Sharma for respondent No.5 i.e. Election Commission of India submits that 40-Electoral Voting Machines i.e. EVMs (CU-40, BU-40 and VVPAT-40) were allotted to 202-Purandar Legislative Assembly Constituency in Pune district for Voters awareness and Publicity. These machines were kept in strong room at Tehsil Office, Purandar at Pune. On 05.02.2024, it was noticed that lock of the aforesaid strong room was broken. After a preliminary enquiry and after examining the CCTV footage, it was revealed that 1 CU (Sr.no.BCUEL 41601) was stolen from the strong room by thieves at 3.43 a.m. on 05.02.2024. The Superintendent of Police, Pune Rural had intimated the Collector Office that a criminal offence has been registered in Saswad Police Station vide crime no. 38/2024 for the offence punishable under Section 454, 457 and 380 on 05.02.2024, as per complaint made by Naib-Tehsildar, Purandar.

18. Learned counsel Shri Alok Sharma for respondent No.5 submits that the procedure for creation of awareness about

EVM/VVPAT was issued by Election Commission of India i.e. respondent No.5 vide letter dated 11.11.2021. In that letter it was mentioned that EVMs and VVPATs for training and awareness are to be stored in separate designated warehouse, not below the Sub-Division Headquarter with proper Security and lock. Purandar is a headquarter of SDO, Purandar and also a Tahsil headquarter.

19. Learned counsel Shri Alok Sharma for respondent No.5 submits that the respondent No.5 i.e. the Election Commission of India had received the report from the Collector and District Election Officer, Pune (respondent No.3) vide letter dated 05.02.2024 about the EVM theft case of Pune. Accordingly, the office of Chief Electoral Officer, Maharashtra had submitted the detailed report by letter dated 06.02.2024 to Election Commission of India.

20. Shri Alok Sharma, learned counsel for respondent No.5 further submits that considering the above facts and the provisions enlisted in the manual, the respondent No.5 vide order dated 06.02.2024 had directed to the Chief Secretary of Maharashtra State that the Sub-Divisional Officer, Tahsildar and Sub-Divisional Police Officer concerned be placed under

suspension immediately and a disciplinary proceedings be initiated against them. Further the respondent No.5 has also directed vide order dated 6.02.2024 to the Chief Electoral Officer, Maharashtra to constitute a committee and to enquire into the matter and submit the report to the commission within a week.

21. Shri Alok Sharma, learned counsel for respondent No.5 submits that as per said directions the Chief Electoral Officer, Maharashtra had constituted a two members committee under the chairmanship of Divisional Commissioner (Revenue), Pune and I.G. Kolhapur Range, Kolhapur. The above mentioned committee had submitted its detailed report on 14.02.2024 to the respondent No.5. The said committee has also recommended that the local Police Inspector also should be placed under suspension.

22. Shri Alok Sharma, learned counsel for respondent No.5 submits that the incidence of the theft of EVM, is an offence under the Criminal Law. It is highly sensitive issue, more so the circumstances and the timing of the theft have taken place when the Lok Sabha elections are round the corner. This would create a wrong impression in the eyes of the public and would have a negative impact on the forthcoming elections. It is also been

endeavor of the Election Commission of India that all elections are done without any fear and favour. Thus this incidence of the theft has the capability to tarnish the reputation of the Commission which it is maintaining unblemished. Shri Alok Sharma, learned counsel for respondent No.5 further submits that the suspension order which is a subject matter of all the three applications does not tantamount to punishment. It is temporary and subject to further investigation.

23. Shri Alok Sharma, learned counsel for respondent No.5 further submits that the officers related to Electoral system are meant to be under the deputation of Election Commission of India in terms of provisions of Section 13-CC of the Representation of People Act, 1950. In view of same, the respondent No.5 i.e. the Election Commission of India has powers to recommend for Disciplinary Action over Government servants deputed for election duties. Thus within the power of respondent No.5 to make recommendation to the competent authority for taking disciplinary action, for any act of insubordination or dereliction of duty while on election duty which is observed in a case of **Election Commission of India Vs. Union of India** and Ors. by the Hon'ble Supreme Court in Writ Petition No. (C) No. 606 of 1993.

24. Shri Alok Sharma, learned counsel for respondent No.5 further submits that no coercive action is taken against the applicants and they have got an opportunity to submit their grievance and raise their issues before the Disciplinary Committee. In a case, **P. Narasimha Chary Vs. The State of Telangana and another** vide order dated 16.09.2020 the Hon'ble High Court of Telangana in **Writ Petition No. 339/2020** has held that the suspension is not a punishment, rather it merely suspends the relationship between the employer and employee.

25. Shri Alok Sharma, learned counsel for respondent No.5 further submits that in terms of the interim order dated 15.02.2024 the posts of the applicants kept vacant. The respondent No.5 has designated the post of S.D.O. Purandar as Assistant Returning Office for 202-Purandar Assembly Constituency in Baramati Parliamentary Constituency in Pune district vide its notification No. 434/MH-HP/2024 08.03.2024. In view of same, there is no substance in all the Original Applications and the same are liable to be dismissed.

26. I have carefully gone through the pleadings, annexures, relevant and important correspondence, reports and

the impugned orders. In these three Original Applications, the undisputed facts are as follows:-

- (i) (a) The applicant in O.A.No. 205 of 2024 namely Smt. Varsha Landge is a State Government employee and working as Deputy Collector/Sub Divisional Officer (under suspension) Purandar, Dist. Pune, Revenue and Forest Department. At the relevant time she was working as a Deputy Collector/Sub Divisional Officer, Purandar, Dist. Pune.
- (b) The applicant in O.A.No. 206 of 2024 namely Shri Vikram Mahajan Rajput is a State Government employee and working as Tahsildar (under suspension), Purandar Dist. Pune, Revenue and Forest Department. At the relevant time he was working as Tahsildar- Purandar, Dist. Pune.
- (c) The applicant in O.A.No. 207 of 2024 namely Shri Tanaji Dilip Barade is a State Government employee working as Sub-Divisional Police Officer at Bhor, Saswad, Pune Rural (under suspension) within the Home Department. At the relevant time he was working as Sub Divisional Police Officer, Bhor, Saswad, Pune Rural with the Home Department.

(ii) 40-Electoral Voting Machines i.e. EVMs (CU-40, BU-40 and VVPAT-40) were allotted on 07.12.2023 to 202-Purandar Legislative Assembly Constituency in Pune District for Voters awareness and Publicity.

(iii) These machines were kept in strong room at Tahsil Office, Purandar at Pune.

(iv) On 05.02.2024, it was found that the lock of the aforesaid strong room was broken. After conducting a preliminary enquiry and after examining the CCTV footage, it was revealed that 1 CU (Sr.no. BCUEL41601) was stolen from the strong room by the thieves at 3.43 am on 05.02.2024.

(v) On the basis of complaint filed by the Naib Tahsildar Purandar, Crime No. 38/2024 for the offence punishable under sections 454, 457 und 380 of IPC came to be registered at Police Station Saswad on 05.02.2024.

(vi) On 05.02.2024, the Collector and District Election Officer, Pune had submitted the detailed report in this regard to Chief Electoral Officer, Maharashtra State, Mumbai.

(vii) The Chief Electoral Officer, Maharashtra State, Mumbai had submitted detailed report by letter dated 06.02.2024 to the Election Commission of India.

(viii) By letter dated 06.02.2024, the Election Commission of India had directed the Chief Secretary of Maharashtra State that the Sub-Divisional Officer, Tahsildar and Sub-Divisional Police Officer concerned be placed under suspension immediately and a disciplinary proceedings be initiated against them.

(ix) By issuing two separate orders dated 09.02.2024, Under Secretary, Revenue and Forest Department, Government of Maharashtra has suspended the applicant namely Smt. Varsha Landge, Deputy Collector/Sub Divisional Officer, Purandar, Dist. Pune in O.A.No. 205/2024 and applicant namely Shri Vikram M. Rajput, Tahsildar Purandar Dist. Pune in O.A.No. 206/2024. The Deputy Secretary, Maharashtra State, Home Department has suspended the applicant namely Shri Tanaji D. Barade, Sub Divisional Police Officer, Bhore, Pune Rural in O.A.No. 207/2024 by order dated 08.02.2024.

27. In the backdrop of these admitted facts, it is important to note here that all the applicants came to be

suspended merely on the basis of directions issued by the Election Commission of India in this regard. The respondent Election Commission of India by communication/letter dated 06.02.2024 has directed the Chief Secretary, Government of Maharashtra, Mumbai that Sub-Divisional Officer, Tahsildar and Sub-Divisional Police Officer concerned be placed under suspension immediately and disciplinary proceedings be initiated against them. On careful perusal of the said communication/letter dated 06.02.2024 issued by the Election Commission of India, I find that there is a reference to letter No. EVM 2023/C.R.701/23/33 dated 06.02.2024 of the Chief Electoral Office, Maharashtra enclosing therewith letter No. PEE-2/KA VI/40/2024 dated 05.02.2024 of the Collector and District Election Officer, Pune regarding theft of Control Unit of EVM from strong room in Pune District. It further appears from the tenor of the said communication/letter dated 06.02.2024 that in terms of facts mentioned in the above referred letters, the Commission has directed to suspend the officers as detailed above. It is also directed in the said communication/letter to call for an explanation from the District Election Officer, Pune and Superintendent of Police (Rural), Pune for not ensuring security

protocols of 'Training and Awareness' strong room as contained in para 6(a) of the Commission's letter dated 11.11.2021.

28. I have carefully perused the letters referred in the communication/letter dated 06.02.2024 issued by the Election Commission of India directing Chief Secretary, Government of Maharashtra to suspend the officers/applicants herein. The communication/letter dated 05.02.2024 is merely a report by the Collector/District Election Officer, Pune to the Chief Electoral Officer, Maharashtra State, Mumbai informing therein the incidence of theft.

29. It appears that merely on the basis of the incidence of theft reported by the Collector /District Election Officer and the Chief Electoral Officer, Maharashtra State, the respondent Election Commission of India has hastily issued communication/letter dated 06.02.2024 directing thereby the Chief Secretary, Government of Maharashtra to suspend the officers as mentioned in the said letter immediately.

30. It is a part of record that thereafter, by communication/letter dated 06.02.2024, the Collector/District Election Officer, Pune has given all the details of the incidence to Chief Electoral Officer, Maharashtra State and the persons/staff

members responsible for the said incidence of theft in his opinion. The District Election Officer, Pune along with the Superintendent of Police, Pune Rural has personally visited the spot of incidence. On careful perusal of the said letter, I find that there is no whisper against the applicants herein about their negligence in any manner or the dereliction of duties in connection with the said theft. It is also a part of record that accordingly the Superintendent of Police, Pune Rural vide order letter dated 05.02.2024 has communicated that the offence has been registered and investigation is being carried out and responsibility has been fixed on the police guard. It is further a part of record that the Superintendent of Police, Pune Rural submitted a report to the Director General of Police and on 07.02.2024 as per the said report, two accused were identified and arrested. The stolen control unit no. BCUEL41601, 5 paper reams and stationary were seized from them.

31. It is further a part of record that the Superintendent of Police, Pune Rural has submitted the detailed report on 13.02.2024 and as per his report the incidence of house breaking and theft took place at Tahsil Office, Purandar and as seen in the CCTV cameras, three unidentified persons were seen entering in the above mentioned premises by climbing the tree and entered

into premises. They broke the lock and entered into the strong room and took away the stationery and one Control Unit No. BCUEL41601, stored in strong room. The Superintendent of Police, Pune Rural in the said report further submitted that from the investigation it appears that breaking into the Taluka Treasury and stealing cash seems to be the motive of the thieves.

32. In view of letter/communication dated 06.02.2024 issued by the Election Commission of India, the Government of Maharashtra, General Administration Department has appointed two members committee under the chairmanship of Divisional Commissioner (Revenue), Pune vide G.R. dated 07.02.2024. The Chief Electoral Officer, Maharashtra State has directed the said committee to enquire into the theft of Control Unit from EVM Strong Room in Pune District and submit the report before 12.02.2024 and further it is allowed to submit report latest by 14.02.2024. The two members committee has submitted the report on 14.02.2024. On careful perusal of the said report which is a part of record it appears that the said two members committee has visited the strong room at Tahsil Office, Purandar at Pune. The committee has observed the arrangement made in the strong room and also perused CCTV footage. The said committee has observed that the strong room was found in good

condition and the certificate of Deputy Engineer regarding suitability of strong room is on record. It is also observed by the committee that the arrangement of double lock system, CCTV, fire extinguisher etc. is made available as per the guidelines of ECI. The visit book and EVM movement register (in/out register) is found in place. It is also observed in the report that the Sub-Divisional Officer, Purandar and Tahsildar, Purandar after receiving of the EVMs from the District Election Officer (DEO), have carried out the procedure for the storage of EVMs. They have obtained certificate from PWD for creating strong room at Tahsil Office, Purandar. The Sub-Divisional Officer headquarter and Tahsil headquarter both are located at Purandar. The Sub-Divisional Officer has instructed Tahsildar and the Tahsildar in turn has given instructions to Police Inspector, Saswad Police Station to provide security for the strong room at Tahsil Office, Saswad. Both SDO and Tahsildar have visited the strong room from time to time.

33. It further appears from the said report that the committee has, however, observed that regarding the safety and security of EVMS received for awareness and training, the SDO has directed to the Tahsildar vide letters dated 05.12.2023 and 15.12.2023 to ensure appropriate police security for EVMs.

However, the strength of security personnel to be provided has not been mentioned in these letters. The Tahsildar has communicated to the Police Inspector, Saswad Police Station vide letters dated 06.12.2023 and 18.12.2023 to provide for security personnel. However, in the said communication dated 18.12.2023, the Tahsildar has asked the Police Inspector, Saswad to provide 24X7 one police staff for the security of EVMs. The said committee thus concluded that it is not in accordance with ECI guidelines to provide for minimum half section of armed police of 24X7 security.

It is also observed by the committee that the Sub-Divisional Police Officer, Bhor has done written communication to Police Inspector, Saswad to provide appropriate police security for the strong room at Tahsil Office, Saswad. However, the strength of security personnel to be provided is not mentioned in the letter. He has visited the strong room from time to time but has not taken any action on the inadequate number of security personnel i.e. half section mandated as per ECI guidelines.

34. In this context the committee has, however, observed that the security aspect of EVMs is the major issue that needs to be taken into consideration. The concerned officers i.e. Sub-

Divisional Officer, Tahsildar, Sub-Divisional Police Officer, Police Inspector have taken into consideration some aspects of the ECI guidelines on security and safety arrangement for EVM warehouse/strong room, however, they have not followed the guidelines in totality.

35. In the backdrop of aforesaid conclusion drawn by the two members committee as referred above, I have carefully gone through the manual of the EVM prepared and issued by the Election Commission of India. Chapter -I of the said manual prescribes the guidelines about the '**storage of EVMs and opening of EVM warehouse during Non-election period and emergency-movement/shifting of EVMs**'. In para No. 1.1, various types of EVM storages have been referred and in clause 1.1.b (iii), the reference is about the 'Training and Awareness Strong Room' means the designated room/hall having EVMs pertaining to Training & Awareness. In para No. 1.3., the Non-Election Period i.e. mentioned in the bracket (After C+45 days), it does mean that counting and 45 days thereafter. So far as the storage of EVMs as prescribed in the para No. 1.3.1 is concerned, there is no dispute, but the same has been followed scrupulously in the instant case. Further in terms of para No. 1.3.2, there is no dispute about the security and safety arrangements for EVM

Warehouse/strong room pertaining to double lock system, installation of CCTV Camera, log book for each entry and exit, adequate fire safety and fire alarm system etc. So far as clause No. (ii) of said para No. 1.3.2 is concerned, it speaks about the minimum half section of armed police for 24X7 security (only Government security personnel). Home Guards Security as an exception when regular police cannot be posted.

36. It is clear from the aforesaid guidelines as per manual, the said arrangement about the security and safety has been prescribed for and during the Non-election period (after C+45 days).

37. I have carefully perused the Chapter -5 of the said manual which prescribes the guidelines for **'Training and Awareness of EVMs'**. Chapter -5 of the manual was not initially placed before this Tribunal. Learned counsel for the applicants has placed the same before this Tribunal and the authenticity of the said chapter -5 of the manual has not been denied by the other side.

38. Chapter -I of the said manual prescribes the guidelines about the **'storage of EVMs and opening of EVM warehouse during Non-election period and emergency-**

movement/shifting of EVMs'. Clause No. (ii) of para No. 1.3.2 of chapter-I and para Nos. 5.5 and 5.6 respectively of chapter-5 of the said manual which prescribes the guidelines for **'Training and Awareness of EVMs'** are reproduced herein below:-

"1.3.2 Security & Safety arrangements for EVM Warehouse/strong room:

- ii) Minimum Half Section of Armed Police for 24X7 security (only Government Security Personnel). Home Guards Security as an exception when regular police cannot be posted.

"5.5 Protocol of EVM/VVPAT for Training and Awareness:

- (a) For the purpose of Training and Awareness (T&A), District Election Officers shall take out EVMs keeping the overall **upper ceiling of 10%** of the total number of polling stations in the district. **Awareness EVM shall be used only for the innovative physical outreach mode described in para 5.2 and 5.3.**
- (b) It shall be ensured that only First Level Checked OK EVMs shall be used for the aforesaid purpose.
- (c) The **representatives of National and State Recognized Political Parties** shall be invited to witness the process from opening and closing of the warehouse/strong room for the purpose of taking out the EVMs under videography.
- (d) The **list of such EVMs** shall be provided with acknowledgment to the National and State Recognized Political Parties. This list shall also be shared with acknowledgment to the candidates/their agents, as and when they are finalized.
- (e) A **yellow color sticker** mentioning "Training/Awareness" shall be affixed on such EVMs and also on their carrying cases without fail.

- (f) There shall be **no distinction** between Training and Awareness EVMs. The machines marked for Training/Awareness could be used interchangeably between Training and Awareness purpose inter-changeably.

5.6 Storage Protocol:

- (a) The abovementioned EVMs (Training & Awareness) shall be stored in a **separate designated warehouse**, not below the subdivision headquarters with proper security and lock.
- (b) In no case, EVMs pertaining to Training and Awareness shall be kept in FLC Strong Room.
- (c) For opening and closing of Training and Awareness designated warehouse, there is **no need** to invite the representatives of the recognised political parties. However, the opening and closing of the designated warehouse shall be done by the authorized officer nominated by the DEO.
- (d) A proper log-book shall be maintained for proper account of EVMs pertaining to Training and Awareness.
- (e) Such EVMs shall be given only to the authorized officials deputed by the District Election Officer.
- (f) After the conclusion of daily training and awareness programs, these machines shall be stored in the **designated warehouse only.**”

39. It appears that the protocol of EVM/VVPAT (i) during Non-election period and emergency-movement/shifting of EVMs with proper security and safety arrangement of EVMs warehouse/strong room and (ii) The protocol of EVM/VVPAT for training and awareness and storage protocol are different. In

terms of clause No. (a) of para No. 5.6, which is titled as '**Storage Protocol**', the EVMs (Training & Awareness) shall be stored in a **separate designated warehouse**, not below the sub-division headquarters with proper security and lock. It appears that the strength of security has not been specifically directed and it is only prescribed as proper security and lock. Unfortunately, the applicants have been made prima-facie responsible for the lapses on their part in not following the security protocol, which is not meant for the EVM/VVPAT for training and awareness.

40. It is well settled that the Government servant should not be suspended without their being any sufficient justification. The Disciplinary Authority should exercise their discretion with utmost care and caution. The general principle is that ordinarily the suspension should not be ordered unless the allegations made against the Government servant are of serious in nature and on the basis of evidence available there, a prima-facie case is made out for their dismissal or removal. It is also settled position that the suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of

his position. In the instant case it appears that all the applicants have been suspended without any reasons and justification. The Election Commission of India has exercised the powers arbitrarily without application of mind. Prima-facie, no case is made out against the applicants for dereliction of duties and/or the negligence in performing the duties. In the given set of allegations, it is very unlikely that the case is made out against the applicants about their dismissal or removal. In the given set of allegations, if the departmental enquiry is initiated against the applicants, their suspension is not necessary in the aid of the departmental proceedings as there is no question that the applicants may gain custody or control of papers or take any advantage of their respective positions.

41. In the instant case, by any stretch of imagination, the applicants cannot be said to be a part of incidence of theft. It has been reported by the Superintendent of Police, Pune Rural that from the investigation it appears that breaking into the Taluka Treasury and stealing cash seems to be the motive of the thieves. In my considered opinion, the Election Commission of India has hastily directed the Chief Secretary, Government of Maharashtra to suspend the applicants. The said direction issued by respondent Election Commission of India appears to be

without application of mind. The affidavit in reply filed by the respondent Election Commission of India particularly paragraph No. 10 is reproduced herein below:-

“10. That the Answering Respondent submits that the incidence of the theft of the EVMs, is an offence under the Criminal law. It is highly sensitive issue, more so the circumstances and the timing of the theft have taken place when the Lok Sabha elections are round the corner. This would create a wrong impression in the eyes of the public and would have a negative impact on the forthcoming elections. It is also been the Election Commission’s endeavor to ensure that all elections are done without any fear or favour. This theft has the capability to tarnish the reputation of the Commission which it is maintain unblemished. Further, the suspension order which is a subject matter of the application does not tantamount to punishment. It is temporary and subject to further investigation.”

42. It appears from the aforesaid paragraph that the Election Commission of India has directed the suspension of the officers to ensure that all the elections are done without any fear and favour and further to erase the negative impact on the forthcoming elections and also to maintain the reputation of the Commission. It appears that the Election Commission of India has issued suspension orders of the applicants for extraneous reasons by way of victimization. I agree with the submissions made on behalf of the applicants that the applicants have been made scapegoat in the entire process. To my mind, the impugned orders of the suspensions are punitive in nature. This

is an arbitrary exercise of powers by the Election Commission of India, leave apart, that whether the Election Commission of India has power to direct the suspension of the officers when Section 28-A of the Representation of the People Act, 1951 prescribes that the Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under this part or any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation on Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers, shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

43. The provisions of Section 13CC of the Representation of the People Act, 1950 cannot be made applicable to the facts and circumstances of the present cases. Consequently, the direction so issued by the Election Commission of India about the suspension of the officers is also contrary to the provisions of Section 28-A of the Representation of the People Act, 1951. Even assuming that the Election Commission of India can issue the

said directions, however, the same appears to be an arbitrary exercise of powers.

44. So far as the case laws relied upon by the learned counsel for the respective parties, it is not necessary to give detail reference to each and every case separately. There are guidelines and principles laid down by the Hon'ble Apex Court and even by this Tribunal to consider the scope and ambit of the suspension orders. The said legal position is not disputed.

45. In view of above discussion and considering the entire facts of the applications, these Original Applications are deserves to be allowed. Hence, the following order:-

ORDER

The Original Application Nos. 205 of 2024, 206 of 2024 and 207 of 2024 are allowed in the following terms:-

- (A) The impugned suspension order dated 09.02.2024 issued by Under Secretary, Revenue and Forest Department, thereby suspending the applicant in O.A.No. 205/2024 viz. Smt. Varsha Landge, Deputy Collector/Sub Divisional Officer, Purandar, Dist. Pune is hereby quashed and set aside and the respondents are hereby directed to reinstate the

applicant Smt. Varsha Landge on the original post of the Sub Divisional Officer, Purandar, Dist. Pune forthwith.

(B) The impugned suspension order dated 09.02.2024 issued by Under Secretary, Revenue and Forest Department, thereby suspending the applicant in O.A.No. 206/2024 viz. Shri Vikram Mahajan Rajput, Tahsildar, Purandar, Dist. Pune is hereby quashed and set aside and the respondents are hereby directed to reinstate the applicant Shri Vikram Mahajan Rajput on the original post of the Tahsildar, Purandar, Dist. Pune forthwith.

(C) The impugned suspension order dated 08.02.2024 issued by Deputy Secretary, Home Department, thereby suspending the applicant in O.A.No. 207 of 2024 viz. Shri Tanaji Dilip Barade, Sub Divisional Police Officer, Bhor, Pune Rural is hereby quashed and set aside and the respondents are hereby directed to reinstate the applicant Shri Tanaji Dilip Barade on the original post of the Sub Divisional Police Officer, Bhor, Pune Rural Saswad, Tal. Purandar forthwith.

- (D) In the circumstances, there shall be no order as to costs.
- (E) The Original Applications are accordingly disposed of.

PLACE : Aurangabad.
DATE : 02.04.2024

(Justice V.K. Jadhav)
Member (J)

KPB /SAS S.B. O.A. No. 205, 206 & 207 all of 2024 (Mumbai)