

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 656/2015.

- 1) Dhanaji Bhonaji Tayade,
Aged about 68 years,
Occupation- Service,
R/o Tembhi, Tq. Motala, Distt. Buldhana.
- 2) Santosh Sitaram Tandulkar,
Occ-Social Worker,
R/o Nipana, Tq. Motala, Distt. Buldhana.
- 3) Uttam Dhanaji Tayade,
Aged about 36 years,
Occupation-Agriculturist,
R/o Tembhi, Tq. Motala, Distt. Buldhana.

Applicants.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The District Collector,
Buldhana.
3. Sub-Divisional Officer,
Malkapur, Distt. Buldhana.
4. Anmolsingh Jaychandra Rajput,
R/o Tembhi, Tq. Nakodi,
Tq. Motala, Distt. Buldhana.
5. The State Election Commission, Maharashtra,
1st floor, New Administrative Building,
Hutatma Rajguru Chowk, Madam Cama Road,
Mumbai-32 through its Commissioner.

Respondents.

Smt. Smita Dashputre, Adv. holding for Shri P.B. Patil, the learned counsel for the applicants.

Smt. S.V. Kolhe, the Ld. P.O. for the respondents 1 to 3 & 5.

None for respondent No.4.

**Coram:- The Hon'ble Shri S.S. Hingne,
Vice-Chairman**

Dated: 21st December 2016.

ORDER

The applicants have filed this O.A. challenging the selection of respondent No.4 as Police Patil of village Tembhi on the ground that the process is conducted when the code of conduct was in force.

2. Heard Smt. Smita Dashputre, Adv. holding for Shri P.B. Patil, the learned counsel for the applicants and Mrs. S.V. Kolhe, learned P.O. for respondent Nos. 1 to 3 and 5. None for respondent No.4.

3. The applicant Nos. 1 and 3 are the residents of village Tembhi, District Buldhana whereas applicant No.2 is a resident of village Nipana. The Sub-Divisional Officer, Malkapur (R.3) has issued a proclamation dated 30.9.2015 (A.1, P.17) for appointment to the post of Police Patil for the above said villages. The time table of the process was laid down in the proclamation. The list of selected candidates was published on 30.9.2015 (A.5, P.22).

4. The State Election Commission vide communication dated 28.9.2015 (A.6, P.24-A) has also declared the programme of

election of Gram-Panchayats. As per clause-7, code of conduct came into force from midnight i.e. 12.00 o'clock of 28.9.2015. Applicants' case is that as per clause-22 of the order of code of conduct dated 29th December 2011 (A.7, P.25), the S.D.O. should not have conducted written examination and interview and declared the results of the post of Police Patil. Clause-22 runs as under:

“आचारसंहितेच्या कालावधीमध्ये नेमणूका / भरती करण्याच्यादृष्टीने जाहिराती देणे, मुलाखती घेणे व प्रत्यक्ष नियुक्त्या करणेबाबत - आचारसंहितेच्या कालावधीमध्ये शासन सेवेत तसेच निमसरकारी संस्था, शासकीय मंडळे / महामंडळे सार्वजनिक उपक्रम इ. संस्थांमध्ये भरती करण्याच्या दृष्टीने जाहिरात देणे, मुलाखती घेणे इ. करण्यात येवू नये. आचारसंहिता लागू होण्यापूर्वीच पत्रे पाठविले असल्यास लेखी परिक्षा घेण्यास हरकत नाही. तथापि, त्याचा निकाल जाहिर करता येणार नाही. तसेच मूलाखती व प्रत्यक्ष नेमणूका याबाबतची कार्यवाही आचारसंहिता कालावधीत करता येणार नाही. महाराष्ट्र लोकसेवा आयोगामार्फत करण्यात येणा-या सेवा भरतीसाठी ही अट लागू असणार नाही.”

5. According to the respondents, the applicant No.3 has secured less marks than respondent No.4 who is appointed as Police Patil and, therefore, he has filed this O.A. which is in the nature of Public Interest Litigation. Applicant Nos. 1 and 2 are not concerned with the process, as they had not applied. The notification of election of village panchayat was published on 30.9.2015, subsequent to the proclamation issued to fill up the posts of Police Patil. The post of Police Patil is unclassified. All the stages of the process of

appointment of Police Patil were completed before publication of the notification dated 30.9.2015.

6. According to the applicants, the code of conduct came into force from midnight of 28.9.2015. Thus, the S.D.O. should not have conducted interviews on 29.9.2015 and the select list is prepared on 30.9.2015. Thus, the interviews are conducted and the select list is prepared when the code of conduct was in force.

7. So far as the above factual aspects are concerned, there is no much dispute. As per clause-22, there cannot be an advertisement, interview, written examinations or declaration of results for appointment in Government service, semi-Government institutions, Govt. Boards or Corporations or public service, when code of conduct is in force. According to the respondents, the post of Police Patil is not classified and the said post does not fall in any of the categories mentioned in Clause-22 and, therefore, no breach of provisions is committed. If the case is considered in the light of the above provisions, submission cannot be thrown away.

8. The matter does not end there. If any breach of provision is occurred,, remedy is available to the applicants to approach the higher authorities and accordingly the applicants have made a complaint to the concerned authority on 3.10.2015 (A.9, P.51) and the compliant is sent to the State Election Commission. The code

of conduct order with the clause that if there is a breach of code of conduct, the competent authority can take action and submit the report to the Election Commission. The election programme of six Gram-Panchayats only of Buldhana district was declared. Thus, this is not a case that it was a general election of all the Gram-Panchayats in the district.

9. Not only that but the applicants have miserably failed to show how their rights are thereby affected so as to hold that they have locus to challenge the selection process on that point. In the light of the same, contention of the respondents that due to village politics, applicant Nos. 1 and 2 and respondent No.4 being not succeeded in the process, have filed this O.A., cannot be thrown away easily.

10. If there is a violation of any provision and thereby rights of any person are affected, he can certainly knock the doors of the Court. However, when the alternative and efficacious remedy is available to take action against the officer and that recourse is taken by the applicants, I am of the considered view that the applicants cannot make the ground to challenge the appointment.

11. Viewed from any angle, it cannot be said that the applicants have made out a case for intervention at the hands of this

Tribunal. The case propounded by the applicants is devoid of any merit and deserves to be rejected.

12. In the result, the O.A. is rejected with no order as to costs.

(S.S.Hingne)
Vice-Chairman

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