

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1051 OF 2016**

**DISTRICT : NASHIK**

Shri Prashant Gulabrao Kadam. )  
Age : 38 Yrs, Occu. : Nil, )  
R/o. At Banganganagar, Tal.: Niphad, )  
District : Nashik. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through its Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Collector. )  
Nashik. )
3. Sub-Divisional Magistrate. )  
Niphad Sub-Division, Nashik. )
4. Shri Sunil Chimantroo Kadam. )  
Age : 41 Yrs., Occu.: Nil, )  
R/o. At Ozar-Mig (Banganganagar), )  
Tal.: Niphad, District : Nashik. )
5. Bhushan V. Shiledar. )  
Banganganagar, Post : Dikshi, )  
District : Nashik. )...**Respondents**

**Mr. M.A. Parab holding for Mr. P.S. Pathik, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 to 3.**

**Respondent No.4 and Advocate absent.**

**CORAM** : **A.P. KURHEKAR, MEMBER-J**

**DATE** : **29.11.2019**

**JUDGMENT**

1. The Applicant has challenged the impugned order dated 13.06.2016 whereby the Respondent No.4 is appointed as Police Patil of Village Banganganagar, Tal.: Niphad, District : Nashik.

2. The Respondent No.3 – S.D.O, Niphad issued Advertisement on 17.02.2016 to fill the post of Police Patil of Village Banganganagar, Tal.: Niphad, District : Nashik. In pursuance of it, the Applicant, Respondent No.4 as well as Respondent No.5 participated in the process. During the process itself, the Applicant raised objection by letter dated 19.05.2016 about the eligibility of Respondent No.4 to participate in the process. He contends that the Respondent No.4 is resident of Ozar, Tal.: Niphad and he is not residing at Village Banganganagar. However, the S.D.O. by impugned order dated 13.06.2016 appointed Respondent No.4 to the post of Police Patil who has secured highest marks.

3. The Applicant has challenged the order dated 13.06.2016 on two grounds. Firstly, the Respondent No.2 is not resident of Village Banganganagar, which was revealed during the enquiry by Circle Officer and secondly, one additional mark was wrongly given to Respondent No.2 for MSCIT Certificate but in fact, there is no such additional qualification in his favour. If one additional mark is given to Respondent No.4 is taken away then the Applicant, Respondent No.4 and Respondent No.5 will be on same page having 71 marks out of 100 marks and in that event, the appointment to the post of Police Patil is required to be made in terms of Clause No.21 of Advertisement dated 17.02.2016 wherein preferential order is set out.

4. Heard Shri M.A. Parab holding for Shri P.S. Pathak and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents 1 to 3. Respondent Nos.4 and 5 as well as their Advocates are absent.

5. In so far as the ground of resident of Village Banganganagar is concerned, the perusal of record reveals that in pursuance of complaints made by the Applicant, later enquiry was conducted by Circle Officer and accordingly, submitted report to Tahasildar, Niphad. In enquiry, he has visited Gut No.156 of Banganganagar where the Applicant claims to be residing. However, in spot Panchanama, the Circle Officer recorded that there is no residential house in Gut No.156. He has further specifically recorded that the Respondent No.4 is residing in Gut No.1642/2 at Ozar, Tal.: Niphad with his family. He, accordingly, submitted report to Tahasildar, Niphad on 27.10.2017. His report runs into 65 pages containing various documents.

6. As such, what transpires that subsequent to the passing of impugned order dated 13.06.2016 appointing Respondent No.4 to the post of Police Patil, the enquiry was conducted by Circle Officer wherein it is found that the Respondent No.4 is not resident of Village Banganganagar. The Applicant has secured these documents under RTI.

7. In so far as the documents submitted by the Applicant showing his residence of Village Banganganagar is concerned, his candidature seems to have been accepted on the basis of Ration Card, which is at Page No.57 of Paper Book. Indeed, as per contents of Ration Card, the Applicant is shown resident of Ozar. True, Banganganagar is added in the address mentioned in Ration Card. As such, this Ration Card itself cannot be conclusively accepted as a proof of resident of Banganganagar. In so far as the Certificate of Domicile produced by Respondent No.4 to show his residence is concerned, its perusal (Page

No.56 of P.B.) shows that it has been issued on the basis of Ration Card referred to above and on the basis of Leaving Certificate of School dated 04.06.1994. Needless to mention that the Leaving Certificate of School issued in 1994 cannot be accepted as a proof of residence in 2016. The Ration Card on the basis of which Domicile Certificate was issued itself has reference of Ozar.

8. In contrast, the detailed enquiry conducted by Circle Officer, *prima-facie* shows that the Applicant is not residing at Banganganar.

9. Indeed, on receipt of report of Circle Officer, SDO was required to give hearing to the parties afresh and to pass appropriate order about the eligibility of Respondent No.4. However, no such course of action was adopted.

10. Secondly, there is no document on record to substantiate that the Respondent No.4 possess any such additional qualification of MSCIT for which one additional mark was given to him. The Applicant has raised this point specifically in his O.A. that the Respondent No.4 have no such additional qualification and one mark was given wrongly. For this pleading, there is no specific denial. The Applicant had obtained information under RTI and by letter dated 16.08.2016 (Page No.16). He was informed that the Applicant has not produced MSCIT Certificate along with his application.

11. The Tribunal has, therefore, raised specific query to the learned P.O. to explain how one mark was additionally given to Respondent No.4, to which no satisfactory answer is forthcoming. *Prima-facie*, in view of information obtained under RTI, the Respondent No.4 did not submit any such MSCIT Certificate, and therefore, the question of giving additional mark to Respondent No.4 did not survive.

12. If one additional mark given to Respondent No.4 is taken away, then the Applicant, Respondent Nos.4 and 5 all will be on same page having 71 marks each. As such, if all the candidates found secured equal marks, then the SDO was required to follow instructions of Clause No.21 of Advertisement which set out order of preference.

13. In view of above, the submission advanced by the learned P.O. to remand the matter to SDO is quite reasonable, so that the SDO can look into the matter afresh and to decide the eligibility of Respondent No.4 about his residence of Village Banganganagar and also to consider as to whether one additional mark given to Respondent No.4 is correct.

14. For the aforesaid reason, in my considered opinion, the impugned order appointing Respondent No.4 is not sustainable and matter needs to be remitted back to SDO, Niphad for decision afresh. He needs to hear the Applicant, Respondent No.4 as well as Respondent No.5 afresh and to decide as to whether the Respondent No.4 is resident of Village Banganganagar in the light of material on record including report submitted by Circle Officer. If it is found that the Respondent No.4 is not resident of Village Banganganagar, then he should pass order accordingly and shall pass further appropriate order as to who should be appointed to the post of Police Patil amongst Applicant and Respondent No.5. If the Respondent No.4 is found resident of Village Banganganagar, in that event also, he is required to see whether additional one mark given to Respondent No.4 was correctly given and then pass appropriate order in accordance to Rules and Clause No.21 of the Advertisement.

15. In this view of the matter, the O.A. is allowed partly with following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 13.06.2016 is quashed and set aside.
- (C) The matter is remitted back to Respondent No.3 – S.D.O, Niphad for decision afresh within two months from today.
- (D) The Respondent No.3 – S.D.O. shall give opportunity of hearing to the Applicant, Respondent No.4 as well as Respondent No.5 and shall pass appropriate order in accordance to Rules in the light of observation made in this order.
- (E) The S.D.O. should not be influenced by the observations made in the order and shall decide the issue of residence of Respondent No.4 of Village Banganganagar independently on merit on the basis of record and in accordance to Rules.
- (F) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 29.11.2019

Dictation taken by :

S.K. Wamanse.

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