

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.147 OF 2017**

Shri Suresh Dhudku Deore. )  
Age : 41 Yrs., Occu. Agriculture, )  
R/o. Village Lakhani, Post Astane, )  
Tal. Malegaon, Dist. Nashik. )...**Applicant**

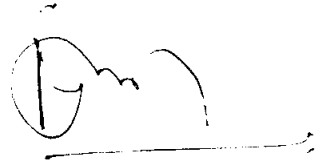
**Versus**

1. The Sub Divisional Officer-cum- )  
Magistrate, Malegaon Sub Division, )  
Malegaon, having office at Malegaon,) )  
District Nashik. )
2. The District Collector, Nashik. )
3. The State of Maharashtra. )  
Through Principal Secretary )  
(Revenue), Revenue & Forest Dept., )  
Mantralaya, Mumbai - 400 032. )
4. Shri Nitin R. Ingle. )  
Age : Adult, Occu. Business, )  
R/o. Village Zodge but working as )  
Police Patil of Village Lakhani, )  
Tal. Malegaon, Dist. Nashik. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Resp.Nos. 1 to 3.**

**Mr. C.T. Chandratre, Advocate for Respondent No.4.**



**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**


**DATE : 21.08.2017**

### **JUDGMENT**

1. This Original Application (OA) raises a dispute with regard to the appointment to the post of Police Patil of Village Lakhani, Tal. Malegaon, District Nashik (the said village) by the order dated 4.1.2017 made by the 1<sup>st</sup> Respondent – Sub Divisional Officer cum Magistrate, Malegaon Sub Division, District Nashik whereby the private party Respondent No.4 was appointed to the said post and the Applicant was not so appointed. The 2<sup>nd</sup> Respondent is the District Collector, Nashik and the 3<sup>rd</sup> Respondent is the State in the Department of Revenue.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant, Mrs. A.B. Kololgi, the learned Presenting Officer for the Respondents 1 to 3 and Mr. C.T. Chandratre, the learned Advocate for the Respondent No.4.

3. The objection to the appointment of the 4<sup>th</sup> Respondent relates to the fact that he is not the permanent resident of the said Village and that he runs a business in



seeds and chemicals in a Village called 'Zodge' situated at a distance of about 7 kms. from the said Village where he has also rented out a room from the landlord one Mr. Desle. He has also been given licenses to run the said business for which there are documents produced. According to the 4<sup>th</sup> Respondent, however, once he was appointed as Police Patil, he would hand the business over to his family (kutumb). That particular word was interpreted by Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant to mean 'wife' while the Respondents tried to interpret the said word as family member like father, brother, etc. Another aspect of the challenge is that the Respondent No.4 does not own any property in the said Village while the Applicant does own property there itself. The Respondent No.4 has relied upon the 7/12 extract to establish the fact that it was a joint family property in which the name of his father had been mentioned, and therefore, in the context, it cannot be said that he will be hit by the provision relating to holding of property.

4. This is the broad factual parameter which to work within.

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5. An Advertisement commonly called in Marathi as "Jahirnama" came to be published for the appointment of Police Patil to the said Village. The eligibility criterion *inter-alia* was that the candidate should be the permanent resident of the said Village. Clause 8 in Marathi needs to be reproduced.

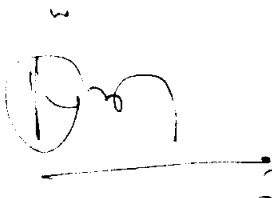
“८. उमेदवार संबंधित गावचा स्थानिक व कायमचा रहिवासी असणे आवश्यक असून संबंधित गावात उमेदवाराची स्थावर मालमत्ता आहे किंवा कसे याचा विचार करण्यात येईल.”

6. It should become very clear that, in so far as the requirement of holding property is concerned, the 'Jahirnama' simply provided that the fact of whether he held immovable property in the Village would be taken into consideration.

7. Reliance was placed by Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant on Maharashtra Village Police Patil (Recruitment, Pay, Allowance and other Conditions of Service) Order, 1968 (to be hereinafter called the said order). The 3<sup>rd</sup> Clause thereof deals with eligibility for appointment and it was in a negative form, stating out *inter-alia* and to the extent to which it is relevant for the purpose, no person shall be eligible for being appointed as a Police Patil who was not a resident of the Village

concerned. Clause 5(1) lays down that, in making the selection, the competent authority, who in this case is as per the said order the State Government or District Magistrate or any other Officer who is competent to make appointment of Police Patil. It is not disputed that, in the present matter, it is the 1<sup>st</sup> Respondent who is the competent authority. He shall take into consideration whether the Applicant was known to the villagers and was acquainted with all the circumstances of the Village and possessed of landed property in the Village. In so far as the encroachment in business or trade was concerned, Clause 8 is a non-obstante clause prevailing over the other clauses of the said order and it lays down that the Police Patil may cultivate land or engage in another local business or trade in the Village in such a manner as is not detrimental to the performance of his duties as Police Patil, but he shall not undertake any full time occupation elsewhere.

8. Mr. Bandiwadekar relied upon an unreported Judgment of the Aurangabad Bench of the Hon'ble Bombay High Court in **Writ Petition No.4977/2012 (Ishwar V. Mohite Vs. The State of Maharashtra and 3 Ors., dated 31.8.2012)**. That was an authority on this very Clause 8



and the main issue involved in this particular OA was not involved therein.

9. On the basis of material on record hereof, certain factual deductions become inescapable. It quite clearly appears that, in the test held for the said post, the 4<sup>th</sup> Respondent scored better than the Applicant.

10. In the matter of eligibility criterion, the Applicant did not suffer in any manner.

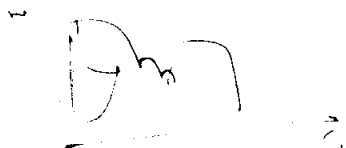
11. In so far as the Respondent No.4 is concerned, he admittedly runs a business in seeds, etc. at Village Zodge which is about 7 kms. from the said Village. I have already mentioned above that, there are licenses and other documents to show that the Respondent No.4 runs the said business. Mr. Bandiwadekar contended that, this is a business which is of specialized category and the 4<sup>th</sup> Respondent specializes in it personally, and therefore, the business is inalienable. It cannot be handed over either to the wife or any other relative of the Respondent No.4. There is material to show that the landlord of the said premises at Zodge Mr. Desle had rented out the shop premises to the Respondent No.4 for a period of five years. It needs to be mentioned, however, that there is material



on record to show that the Respondent No.4 has got the documents like Aadhaar Card, Ration Card, etc. of the said Village.

12. The Applicant made a complaint after the results were declared on the ground already mentioned above and the Circle Officer recorded the statement of the 4<sup>th</sup> Respondent. He stated that, he was basically the resident of the said Village and he stayed there only. He was going to and fro Village Zodge for the purpose of his business. If he was appointed as Police Patil, he would hand-over the business to his family and will devote full time to his work as Police Patil. This Aadhaar Card, Ration Card, Driving License, etc. were all at the address of the said Village. It was because he was having business that he was staying at the Village Zodge on rental basis. The Applicant's statement was also recorded and also the statement of a third candidate whose surname was also Mr. Ingle.

13. Upon receipt of the report from the Circle Officer, the 1<sup>st</sup> Respondent made the order which is at Exh. 'R' (Page 54 of the PB), and thereafter, by the impugned order, the 4<sup>th</sup> Respondent came to be appointed as a Police Patil for a period of five years. Let me read to the extent necessary Exh. 'R'. It is stated therein that, the



Respondent No.4 scored maximum marks in the oral examination held for the said post. The Applicant made a complaint against the 4<sup>th</sup> Respondent and the matter was forwarded to the Tahasildar, Malegaon for the purpose of making immediate enquiry into the same. The nature of the objection was then set out and also the case of the Respondent No.4 in that behalf. The 1<sup>st</sup> Respondent perused the record such as it was. It was recorded that, according to the 4<sup>th</sup> Respondent, if he was appointed as a Police Patil of the said Village, he would hand-over his business at Zodge to his family and would remain in the said Village for discharging his functions as Police Patil. The 1<sup>st</sup> Respondent referred to the fact that the Respondent No.4 had documents like Aadhaar Card, Ration Card, Driving License and the Certificates from the Talathi and Gramsevak in support of the case that the Respondent No.4 was the resident of the said Village. He was obviously impressed by some kind of an undertaking of the 4<sup>th</sup> Respondent that, if appointed as the Police Patil of the said Village, he would devote full time to the said job. The complaint was, therefore, dismissed. The 4<sup>th</sup> Respondent was held eligible to be appointed as a Police Patil and directions were given that, all concerned be intimated about the said order and as mentioned already, based thereon, the impugned order was issued.





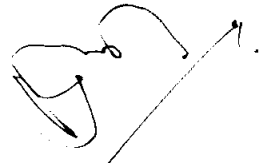
14. It needs to be quite clearly mentioned that the jurisdiction of this Tribunal is of judicial review of administrative action. The cantours of the said jurisdiction are too well known to merit any detailed narration. This much would suffice that, if the order under challenge is based on a fair reading of the record and does not have the potential to shock the conscience on the anvil of the test of the reasonable person, then such an order will have to be upheld so to say.

15. The 1<sup>st</sup> Respondent obviously did not find anything wrong about the Respondent No.4 having a business at Village Zodge and even otherwise, the 4<sup>th</sup> Respondent having been born in the year 1986 was already 31 years old at the time relevant hereto and he holds the qualifications including the one in Agriculture which even the Applicant highlighted while canvassing his case of exclusive nature of the expertise of the Respondent No.4. The Respondent No.4 could not have been expected, therefore, to just sit idle for all these years and do nothing. He competed for the post of Police Patil. He could as well have failed but by the dint of his merit, he succeeded, and therefore, I do not think, the fact that he had a business at Zodge which is hardly 7 kms. from the said Village should



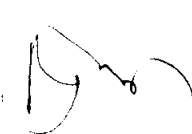
be held tightly against him. If he says, he would hand-over the business to his family members even there is nothing inherently even improbable much less is there anything impossible. The concept of residence in such matter has, in my opinion, a peculiar connotation which has to be examined in that light. The Applicant tends to give an impression that the Police Patil has to remain permanently pinned down to the said Village and he cannot leave an inch there. That quite clearly is unacceptable. It is nobody's case that the Respondent No.4 started the business at Zodge after having been appointed as Police Patil of the said Village. That business, he has already had at the time of his appointment, and therefore, I must repeat that there is nothing improbable far less impossible, if the Respondent No.4 contends that once he was appointed as a Police Patil of the said Village, he would make necessary arrangement for his business at Zodge through his 'kutumb'.

16. The material on record shows that the 4<sup>th</sup> Respondent has rented out the premises at Village Zodge, the owner whereof is Mr. Desle. Now, I do not feel called upon to discuss in detail the submission of Mr. Bandiwadekar of the business being run in the said premises requiring licenses which were in the name of the



4<sup>th</sup> Respondent and that therefore, he only could have run that business. That aspect of the matter was not very clearly brought forth and there are various possibilities in which the said premises could be dealt with. The possibility of it being used for any other business also cannot be ruled out. But this aspect of the matter is not agitated in first instance, and therefore, the Respondent No.4 could not be faulted on that score.

17. Now, as far as the ownership of the immovable property is concerned, in the first place, I find that in a Hindu Undivided Family, although there is no presumption of jointness of the property, but here there is a material to show in the form of 7/12 extract that, there is a joint property in which the name of the father of the Respondent No.4 appears and that being the state of affairs, in the contextual connotation peculiar hereto, it cannot be held that the Applicant has no right over that property. In fact, as per the Shastrik Law, as per the pre-2004 law and even post 2004 law, the Respondent No.4 has a right by birth, and therefore, he would not be hit by the said provision in the Rules already discussed above and in any case, the Rules merely provide that the issue of landed property, etc. would be considered and I do not think, the fact of the property being not there, by itself would be a ground to

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hold against the Respondent No.4. The crux of the matter is the acquaintance with the Village and villagers of the Police Patil and on that issue, I find nothing against the 4<sup>th</sup> Respondent.

18. Mr. Chandratre, the learned Advocate for the 4<sup>th</sup> Respondent relied upon a Judgment of this Tribunal rendered by the then Hon'ble Administrative Member in **OA 823/2012 (Shri Satuppa Laxman Mense Vs. The State of Maharashtra & 4 Ors., dated 10<sup>th</sup> February, 2014)**. The party whose position was akin to the 4<sup>th</sup> Respondent succeeded therein.

19. The upshot, therefore, is that there is no merit in this Original Application and there is no reason why an order based on an evaluation by the 1<sup>st</sup> Respondent of the record such as it is, should be interfered with. The Original Application stands dismissed with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**21.08.2017**

21.08.17

Mumbai  
Date : 21.08.2017  
Dictation taken by :  
S.K. Wamanse.