

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.942 OF 2020

DISTRICT : NASHIK

Shri Pankajkumar Suresh Pawar.)
Aged : Adult, working as Tahasildar,)
Dindori, District : Nashik and residing at)
303, Larac Apartment, Gangapur Road,)
Nashik.)...**Applicant**

Versus

1. The Divisional Commissioner,)
Nashik Division, Nashik.)
2. The State of Maharashtra.)
Through Addl. Chief Secretary)
(Revenue), Revenue & Forest Dept.,)
Mantralaya, Mumbai – 400 032.)
3. Shri Kailas Pawar.)
Aged : Adult, Working as)
Tahasildar (Establishment) in the)
office of Divisional Commissioner,)
Nashik Division, Nashik.) ...**Respondents**

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

Mrs. K.S. Gaikwad, Presenting Officer for Respondent Nos.1 & 2.

Mr. C.T. Chandratre, Advocate for Respondent No.3.

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

DATE : 25.08.2020

JUDGMENT

1. The Applicant has challenged the transfer order dated 18.09.2019 whereby he was transferred from the post of Tahasildar, Dindori, District: Nashik to Assistant District Supply Officer, Nashik and transfer order dated 18.09.2019 whereby Respondent No.3 is posted in his place as Tahasildar, Dindori, District Nashik invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving in the cadre of Tahasildar (Group 'A'). He was posted as Tahasildar, Dindori, District : Nashik in view of his promotion and posting order dated 07.09.2019 passed by Respondent No.2 - Government and in consequent to it, assumed charge of Tahasildar, Dindori, District : Nashik immediately. However, abruptly, Respondent No.1 - Divisional Commissioner, Nashik Division, Nashik transferred him by order dated 18.09.2019 as Assistant District Supply Officer, Nasik and posted Respondent No.3 in his place as Tahasildar, Dindori, District Nashik. The Applicant has challenged his transfer inter-alia contending that it is in blatant violation of Section 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) and Divisional Commissioner has no authority or competent to effect such mid-term and mid-tenure transfer.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant in reference to grounds raised in O.A. sought to assail the impugned transfer order contending that once Respondent No.2 - Government has posted the Applicant by order dated 07.09.2019 as Tahasildar, Dindori, District Nashik, it was not open or legally permissible to Respondent No.1 - Divisional Commissioner to effect his mid-term and mid-tenure transfer as Assistant District Supply Officer, Nashik at his level and even

if such transfer was necessitated in view of guidelines of Election Commission of India, as Respondent pleaded the Government was only competent authority. But there being no such approval of highest competent transferring authority as contemplated under Section 4(5) of 'Transfer Act 2005', the impugned transfer order is *ex-faciat* illegal. He further pointed out that the composition of Civil Service Board (CSB) constituted by Divisional Commissioner at his level which recommended for the transfer of the Applicant is also not in consonance with Government Resolutions dated 31.01.2014 and only to favour Respondent No.3 – Divisional Commissioner transferred the Applicant. He further highlighted that there was no recommendation for transfer of Respondent No.3 in place of Applicant by CSB and on that count also, the transfer of Respondent No.3 in place of Applicant is unsustainable in law.

4. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer in reference to reply filed by Respondent No.1 – Divisional Commissioner sought to contend that, though initially, the Applicant was posted as Tahasildar, Dindori, District : Nashik by Government on 07.09.2019, later the Government by letter dated 16.09.2019 authorized Divisional Commissioner to make required changes if necessitated for compliance of guidelines of Election Commission of India and on the basis of it, the Divisional Commissioner having found that as the Applicant had already worked for more than three years in Nashik District, he could not be continued as Tahasildar and Assistant Returning Officer, Dindori, and therefore, in pursuance of recommendation made by CSB, transferred him as Assistant District Supply Officer, Nashik. As regard composition of CSB, the learned P.O. submits that the composition of CSB is in pursuance of direction given by the Government by virtue of letter dated 16.09.2019. She, therefore, submits that the transfer of Applicant was necessitated for compliance of guidelines of Election Commission of India and it cannot be faulted with.

5. In view of aforesaid controversy Respondent No.2, State of Maharashtra was required to make its stand clear by filing affidavit-in-

reply. However, it chooses not file affidavit-in-reply which also gives rise to adverse inference against Respondent No.2. Be that as it may, I proceed to decide legality of the impugned transfer order on the basis of reply filed by Respondent No.1, Divisional Commissioner and submission advanced at Bar.

6. In view of the pleadings and submissions advanced at bar, the crux of the matter is whether the Respondent No.1, Divisional Commissioner, Nashik is competent in law to effect mid term and mid tenure transfer of the Applicant.

7. Indisputably, the Applicant is serving in the cadre of Tahasildar (Group 'A') and Respondent No.2, Government is competent authority for his transfer. There is no denying that initially by order dated 07.09.2019 (page 22 of P.B.) on promotion the applicant was posted as Tahasildar, Dindori, District Nashik and assumed the charge. However, hardly, after 10 days abruptly Respondent No.1, Commissioner, Nashik transferred him as Assistant District Supply Officer, Nashik. The fulcrum of the stand taken by the Divisional Commissioner, Nashik is the letters dated 16.09.2019 issued by the Deputy Secretary, Government of Maharashtra, (page 40 and 41 of P.B.). These letters are the only foundation on which entire edifice of the Respondents is based. It is therefore, necessary to see the contents of the letters.

The contents of the letter dated 16.09.2019 at page 40 are as follows :-

“प्रति,
सर्व विभागीय आयुक्त,
महोदय,

मा. भारत निवडणूक आयोगाने संदर्भाधिन पत्रांन्वये दिलेल्या सुचनांनुसार महसूल विभागातील तहसिलदार तथा सहायक निवडणूक निर्णय अधिकारी (ARO), यांच्या बदल्या / पदस्थापना करण्याचे आदेश निर्गमित करण्यात आले आहेत.

सदर बदली आदेशानंतरही आपल्या विभागातील फक्त विधानसभा निवडणुकीशी संबंधित पद कोणत्याही कारणास्तव रिक्त असल्यास कामकाजाशी संबंधित नसलेल्या जिल्ह्यांतर्गत/ विभागांतर्गत पात्र अधिका-यांमधून पदस्थापना देऊन असे पद भरण्याबाबत संबंधित विभागीय आयुक्तांना प्राधिकृत करण्यात येत आहे.”

Similarly, the contents of the letter dated 16.09.2019 at page 41 are as follows :-

“प्रति,
सर्व विभागीय आयुक्त,
महोदय,

मा. भारत निवडणूक आयोगाने संदर्भाधिन पत्रांन्वये दिलेल्या सुचनांनुसार महसूल विभागातील उपजिल्हाधिकारी तथ निवडणूक निर्णय अधिकारी (RO) व तहसीलदार तथा सहायक निवडणूक निर्णय अधिकारी (ARO), यांच्या बदल्या / पदस्थापना करण्याचे आदेश निर्गमित करण्यात आले आहेत.

२. तदनंतर संदर्भाधीन क्र.५ व ६ अन्वये निवडणूकीशी संबंधित उपजिल्हाधिकारी तथा निवडणूक निर्णय अधिकारी व तहसीलदार तथा सहायक निवडणूक निर्णय अधिकारी (ARO) यांची रिक्त पदे भरण्याच्या अनुषंगाने आपणांस प्रधिकत करण्यात आले आहे.

३. मा. भारत निवडणूक आयोगाने संदर्भाधिन पत्रांन्वये दिलेल्या निकषाप्रमाणे आपल्या विभागातील सर्व बदलीपात्र अधिका-यांच्या बदल्या झाल्या असून बदलीने पदस्थापना देण्यात आलेले अधिकारी निकषाप्रमाणे आहेत, याची तपासणी करण्यात यावी. तसेच महसूल विभागातील उपजिल्हाधिकारी तथा निवडणूक निर्णय अधिकारी (RO) व तहसीलदार तथा सहायक निवडणूक निर्णय अधिकारी ही सर्व पदे भरण्यात आली आहेत हे सोबत जोडलेल्या नमुन्या प्रमाणे प्रमाणित करण्यात यावे, ही विनंती.”

8. Thus, the perusal of the letters reveals that in pursuance of the guidelines issued by the Election Commission of India in view of ensuing State Legislative Assembly Elections, the Government asked the Divisional Commissioners' to verify if there is any vacant post, then it should be filled-in. Besides, it was also directed that Revenue Commissioner should verify as to whether all the posts are filled-in and should certify the same in prescribed format attached to the letter. As such the plain and unambiguous meaning of the letter is to the effect to fill in the vacant posts, if any, in view of the ensuing State Legislative Assembly Elections. Material to note that it does not speak about the mid-term transfer of any Government servant. Suffice to say all that by letter dated 16.09.2019 the Divisional Commissioners were asked to fill-in the vacant posts, if any, so that no posts relating to the Election work should remain vacant in view of the ensuing Elections. However, Respondent No.1, Divisional Commissioner, Nashik interpreted this letter to construe that as if he is authorized to make transfer at his level and under such assumption he transferred the applicant on the ground that he has already worked in Nashik, District for three years, he should not be continued as Tahasildar and Returning Officer, Dindori, District Nashik. As in fact the Applicant was posted as Tahasildar, Dindori by Government by virtue of order dated 07.09.2019 there is no denying that the transfer order dated 18.09.2019 is mid-term and mid-tenure.

9. The crucial question would be how the Divisional Commissioner, Nashik is competent in law to effect such mid terms and mid tenure transfer taking shelter of letter issued by the Deputy Secretary, Government of Maharashtra dated 16.09.2019 referred to above. Indeed, initially, the Divisional Commissioner, Nashik on receipt of letter dated 16.09.2019 having noticed that the applicant could not have been posted as Tahasildar, Dindori, District Nashik having worked for more than 3 years in Nashik District, made reference to the Government by letter dated 17.09.2019 (page 65 and 66 of P.B). Thus, the Divisional Commissioner of Nashik had brought this aspect to the notice of the Government meaning thereby the Government was to modify the applicant's transfer order dated 07.09.2019. However, without waiting for the orders of Government, the Divisional Commissioner, Nashik at his level transferred the Applicant by impugned order dated 18.09.2019 as Assistant District Supply Officer, Nashik and in his place posted Respondent No.3 as Tahasildar, Dindori, District Nashik.

10. As stated above, it being mid term and mid tenure as rightly pointed out by learned Advocate for the Applicant it must have been in compliance of Section 4(5) of 'Transfer Act 2005' which *inter alia*, empowers highest competent transferring authority to transfer the Government servant before completion of his tenure in special case after recording reasons in writing and with prior permission of immediate preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005'. There is no denying that competent transferring authority for Group-A Officer is the Minister incharge in consolidation with the Secretary of the concerned Department and for mid tenure transfer the Chief Minister is the only competent transferring authority. However, in present case, the Divisional Commissioner usurped the powers of the Government taking shelter of the letter dated 16.09.2019. As stated above, letter dated 16.09.2019 does not speak to effect the transfer and it speaks only to fill in the vacant posts. As the posts of Tahasildar and Assistant Returning Officer, Dindori has been already

filled-in by none other than the Government of Maharashtra in terms of posting of the Applicant by letter dated 07.09.2019, the question of transfer of the Applicant did not arise. However, taking shelter of letter dated 16.09.2019 issued by the Deputy Secretary, Government of Maharashtra, the Divisional Commissioner transferred the Applicant on the ground that the applicant having served for more than three years in Nashik District, he could not have been posted by the Government in terms of order dated 07.09.2019. Indeed the Divisional Commissioner, Nashik was required to bring this aspect to the notice of Government and then it was for the Government to effect mid tenure transfer of the Applicant taking recourse of Section 4(5) of 'Transfer Act 2005'. As the Applicant had already completed more than three years in Nashik District his transfer definitely could have been categorized and qualified as special case under Section 4(5) of 'Transfer Act 2005' and he should have been transferred with approval of the Hon'ble Chief Minister. However, the Divisional Commissioner, Nashik usurped the power of the Government under misconception that letter dated 16.09.2019 empowers him to effect mid tenure transfer of the Government servant.

11. Needless to mention that now the transfers are governed and regulated by the provisions of 'Transfer Act 2005' and where transfers are necessitated on account of guidelines of Election Commission of India it could have been legally done by the Government alone. The letters dated 16.09.2019 (page 40 and 41 of P.B.) cannot be termed or construed as legal delegation of powers to Revenue Commissioner. There could be no delegation or authorization of such powers in contravention of Section 4(5) of 'Transfer Act 2005'. The letter dated 16.09.2019 needs to be considered in *juxtaposition* with express mandatory provision contained in Section 4(5) of 'Transfer Act 2005' which provides to follow certain procedure mandatorily. It cannot be circumvented by issuance of letter dated 16.09.2019 under the signature of Deputy Secretary, Government of Maharashtra. Such authorization cannot be done without suitably amending the provisions of 'Transfer Act 2005'. Suffice to say, the course adopted by the Divisional Commissioner, usurping the authority of the

Government is in total contravention of Section 4(5) of 'Transfer Act 2005'.

12. As a matter of fact except placing the letter dated 16.09.2019 on record Respondents have not brought any other material on record to show the source of power or authority for issuance of letter dated 16.09.2019. There is nothing on record to indicate the procedure followed by the Deputy Secretary, Government of Maharashtra while issuance of letter dated 16.09.2019. Be that as it may. Letter dated 16.09.2019 cannot be construed valid delegation of power to Divisional Commissioner to affect mid tenure transfer. If such course of action adopted by the Divisional Commissioner, Nashik is allowed, it would circumvent the mandatory provisions of 'Transfer Act 2005' and render law in nugatory.

13. Learned P.O. for the Respondents made feeble attempt to justify the impugned transfer order relying upon the decision of Hon'ble High Court Bench at Aurangabad in ***Writ Petition No.6051/2017 & Ors. Mahendra Eknath Mali Versus The State of Maharashtra & 3 Ors.*** I have gone through the judgment and in my considered opinion it is hardly of any assistance to the Respondent, in the facts of the present matter. In that case transfer seems to have been done by the Divisional Commissioner on the basis of delegation of powers to Divisional Commissioner under Government Resolution dated 22.06.2016. The State Government seems to have issued G.R. on 22.06.2016 delegating the powers to the Commissioner to effect transfer of the Officers of the cadre of Tahasildars. The transfers were done by the Divisional Commissioner in compliance of guidelines issued by the Election Commission of India. It is in that the context order by Divisional Commissioner on the basis of G.R. dated 22.06.2016 was upheld. Whereas in present case, the Divisional Commissioner had effected mid-term and mid-tenure transfer on the basis of letter dated 16.09.2019 which has no sanctity in law.

14. Curiously the Divisional Commissioner, Nashik transferred the Applicant in view of guidelines of Election Commission of India as the Applicant has already worked for more than three years in Nashik District but the same yardstick is not applied to the Respondent No.3. There is no denying that since 23.08.2018 Respondent No.3 was working as Tahasildar, Deola, District Nashik and Special Executive Magistrate, Aurangabad. Admittedly, in pursuance of the said order applicant had worked at Tahasildar (Establishment) Divisional Commissioner office, Nashik. Respondent No.3 was Tahasildar at Deola, District Nashik since 04.11.2015. This being the position there is no denying that Respondent No.3 had worked for more than three years in Nashik District and therefore he could not have been continued in Nashik District but the Divisional Commissioner by order dated 18.09.2019 transferred Respondent No.3 in place of Applicant as Tahasildar, Dindori, Nashik. True, in transfer order dated 18.09.2019 the post held by the Applicant is shown Special Executive Magistrate, Ahmednagar. However, his posting by virtue of order dated 23.08.2018 (page 42 of P.B.) was Tahasildar (Establishment), Divisional Commissioner Office, Nashik and charge of Special Executive Magistrate, Ahmednagar was also seems with him. Divisional Commissioner tried to mis-represent by showing his post as Special Executive Magistrate, Ahmednagar in impugned order dated 18.09.2019 while transferring him in place of applicant. During the course of argument when specific query was raised about the working of Respondent No.3, it was fairly conceded that Respondent No.3 also worked as Tahasildar (Establishment) Divisional Commissioner Officer, Nashik since 23.08.2018 which is also evident from minutes of CSB (page 73 of P.B.). This being factual position Respondent No.3 was ineligible for posting as Tahasildar, Dindori, but Divisional Commissioner obliged him for the reasons best known to him.

15. Shri C.T. Chandratre, learned Advocate for the Respondent No.3 submits that the guidelines issued by Election Commission of India it being constitutional authority should prevail and applicant cannot take advantage of illegality cropped up in the transfer of Respondent No.3.

There is no dispute that instructions given by Election Commission of India were required to be followed for free and fair Election but for that purpose one cannot be allowed to trampled upon the express provisions of Transfer Act 2005 and Divisional Commissioner cannot usurp the powers of mid tenure transfer.

16. Material to note that initially the Civil Services Board had recommended to transfer the Applicant as Tahasildar (General Administration) Collector office, Nashik and Smt. Rachana M. Pawar was recommended for posting as Tahasildar, Dindori, Nashik as seen from minutes of CSB (page 68 to 70 of P.B.). Curiously Respondent No.3 in his capacity as Tahasildar (Establishment) Divisional Commissioner Office, Nashik was one of the Member of CSB. However, later the Divisional Commissioner at his level changed the recommendation of CSB and posted Respondent No.3 as Tahasildar, Dindori, District Nashik in place of Smt. Rachana M. Pawar and transferred the applicant as Assistant District Supply Officer, Collector Officer, Nashik instead of Tahasildar (General Administration) Collector Officer, Nashik (as seen from page 73 of P.B.). The posting were changed by interpolation and overwriting over the proposed recommendations of CSB as evident from record. Thus the Divisional Commissioner at his level inserted the name of Respondent No.3 in the proposal that too without placing the matter of transfer of Respondent No.3 before CSB. Needless to mention that placing of matter before CSB in view of decision of Hon'ble Supreme Court in ***Writ Petition (Civil) No.82/2011 (T.S.R. Subramanian & Ors. Vs. Union of India & Ors.) dated 31st October, 2013***, is mandatory requirement but the Divisional Commissioner did not place it before the CSB which also render the transfer of Respondent No.3 as Tahasildar, Dindori, Nashik unsustainable in law. There is clear violation of the guidelines issued by Hon'ble Supreme Court in ***T.S.R. Subramanian's case (supra)***.

17. Insofar as composition of CSB constituted by Divisional Commissioner at his level is concerned the said aspect indeed has become academic, in view of the aforesaid discussion and findings that

the Divisional Commissioner was not competent to effect mid-tenure transfer of the applicant it being in contravention of 'Transfer Act 2005'. However since the submissions are advanced it needs to be dealt with.

18. True, initially the Government had issued Government Resolution dated 31.01.2014, whereby CSB at Government level was constituted for transfer of Group A Officers. However, later the Government had issued letter dated 22.06.2015 (page 53 of P.B.) directing Divisional Commissioner to constitute separate CSB at their level for transfer of Tahasildar and Deputy Collector within Division/ District. It is in pursuance of this letter dated 22.06.2015, the Divisional Commissioner, Nashik has constituted CSB presided over by Divisional Commissioner, Revenue Nashik as seen from order dated 07.07.2015 (page 159 of P.B.). As such even if initial G.R. dated 31.08.2014 provides for constitution of CSB for Group-A Officer at Government level, later instructions were issued to Divisional Commissioners to constitute CSB at their level to effect transfers. All that requirement is to have recommendation of CSB in view of decision of Hon'ble Apex Court and matter of composition of CSB is left to the Government. Government in it's wisdom and convenience issued fresh instruction giving discretion of Divisional Commissioner about composition of CSB at their level. It cannot be termed illegal. True, letter dated 22.06.2015 speaks about the constitution of CSB for regular transfer, whereas in present case, the transfer is mid-tenure, but this aspect is insignificant as there is no separate CSB for mid-tenure transfer. The same CSB was to function for general transfer as well as for mid tenure transfer. Suffice to say, I find no illegality in the composition of CSB constituted by Divisional Commissioner.

19. The necessary corollary of aforesaid discussion leads me to conclude that the impugned transfer orders dated 18.09.2019 are in blatant infringement of Section 4(5) of 'Transfer Act 2005' and liable to be quashed.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 18.09.2019 transferring the applicant as Assistant District Supply Officer, Nashik and transferring Respondent No.3 as Tahasildar, Dindori, Nashik are quashed and set aside.
- (C) Applicant be reposted on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER-J

Mumbai

Date : 25.08.2020

Dictation taken by :

S.K. Wamanse.

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