

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 836 OF 2019

DISTRICT : PALGHAR

Shri Subhas M. Jadhav)
Working as Inspector, State Excise,)
Flying Squad, Thane.)
R/o: Adarsh Nagar, Mahim Road,)
Palghar.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032)
2. The Commissioner,)
State Excise, [M.S], Mumbai.)
Having office at Old Custom)
House, 2nd floor, Fort, Mumbai.)
3. The Divisional Dy. Commissioner)
Thane.)
4. The Superintendent,)
State Excise, Thane.)
5. The Superintendent,)
State Excise, Palghar.)
6. The Director, [Enforcement &)
Vigilance in the office of)
Respondent no. 2.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : **Shri A.P Kurhekar (Member)(J)**

DATE : **21.02.2020**

J U D G M E N T

1. The applicant is seeking directions to the Respondents to implement the order dated 25.5.2018 issued by Respondent no. 2, Commissioner, State Excise, Mumbai so that he could exercise his jurisdiction as Excise Inspector, Thane-II covering territorial area, C-Division, Vasai, Palghar, Dahanu, Bhiwandi and Wada.

2. The controversy falls for determination in this Original Application has arisen in view of bifurcation of District Thane into two Districts, namely, Thane and Palghar. The State of Maharashtra, by notification dated 31.7.2014 had created Palghar District having carved out from Thane District. In pursuance of the said Notification issued by Government of Maharashtra, later Respondent no. 1, issued G.R dated 30.6.2016, whereby transferring in all 64 posts of various cadres including Excise Inspector working in Thane District to the establishment of Superintendent, State Excise, Palghar. The applicant was serving as Excise Inspector, Thane-II. As such, by virtue of G.R dated 30.6.2016, the post of Flying Squad No. 2, Thane was brought under the control of Superintendent, State Excise, Palghar and the said Flying Squad was renamed as District Flying Squad, Palghar with its headquarters at Palghar. Respondent no. 2, Commissioner, State Excise, accordingly issued order dated 22.5.2018 for implementation of G.R dated 30.6.2016.

3. In 2016, while applicant was serving as Excise Inspector, Thane, he was suspended by order dated 18.6.2016 in view of registration of crime under the Prevention of Corruption Act against him. The applicant

has challenged the suspension order in O.A 1015/2016, which was allowed by order dated 20.2.2017 and the directions were issued to reinstate the applicant within four weeks. In pursuance of the decision, applicant was reinstated in service on the post of Excise Inspector, State Excise, Flying Squad, Thane-2 by order dated 22.9.2017. The applicant, however, contends that he is not allowed to exercise jurisdiction as Excise Inspector, State Excise, Flying Squqd, Thane-II over the areas namely, C-Division, Vasai, Palghar, Bhiwandi, Dahanu and Wada. He has made representation dated 29.9.2018 requesting Respondent no. 2 that in view of his reinstatement in service, by order dated 22.9.2017, he be allowed to work as Excise Inspector, State Excise, Flying Squad, Thane-2 covering the area C-Division, Bhiwandi and Thane. However, the representation was not responded. Hence the applicant has filed the present Original Application.

4. Respondents opposed the Original Application by filing affidavit in reply on behalf of Respondents no 2 and 6 interalia denying the entitlement of the applicant to the relief claimed.

The sum and substance of the defence is that in view of bifurcation of Thane District in to Thane and Palghar District, Home Department, by G.R dated 30.6.2016 had transferred the post of Excise Inspector, Flying Squad, Thane to the establishment of Superintendent, State Excise, Palghar and its jurisdiction is confined to Palghar District only. Respondent no. 2 submits that the proposal of reorganization of the territorial jurisdiction of State Excise Department has been also approved by the Hon'ble Minister in its meeting dated 4.9.2018, whereby the Excise Inspector, Flying Squad, Palghar, will work and function for Palghar District only, and the jurisdiction from Thane which was earlier with Flying Squad, Thane-II will be with State Excise Department, Thane District. With these pleadings, Respondents prayed to dismiss the Original Application.

5. Heard Shri A.V Bandiwadekar, learned advocate for the applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

During the course of final hearing, learned P.O produced the original file of meeting dated 4.9.2018.

6. The issue posed for consideration in the present O.A is thus about the administrative decision of the Respondents to restrict territorial jurisdiction of State Excise, Flying Squad, Palghar, for Palghar District only. True, before bifurcation, Flying Squad, State Excise, Thane-2 had territorial jurisdiction over C-Division, Vasai, palghar, Dahanu, Bhiwandi and Wada, being Talukas from Thane District, as seen from order dated 17.2.2005, (page 62 of Paper Book) and order dated 5.6.2012, (page 63 of the Paper Book). However, later position was changed in view of bifurcation of Thane District and creation of Palghar District carving out its territorial jurisdiction from Thane District.

7. Admittedly, by G.R dated 30.6.2016, 64 posts from the establishment of Thane District were assigned and transferred on the establishment of Superintendent, State Excise, Palghar. Para 2 & 3 of the G.R dated 30.6.2016, (page 65 of the Paper Book) is material, which is as follows:-

“२. पालघर जिल्ह्याचे क्षेत्र विचारात घेऊन उपरोक्तप्रमाणे वर्ग केलेल्या पदांवर मनुष्यबळ वर्ग करण्याची कार्यवाही आयुक्त, राज्य उत्पादन शुल्क यांनी करावी. भरारी पथक क्र.२, ठाणे हे अधीक्षक, राज्य उत्पादन शुल्क, पालघर यांच्या नियंत्रणाखाली “जिल्हा भरारी पथक, पालघर” या नावाने कार्यरत राहिल व त्याचे मुख्यालय पालघर राहिल, तसेच उपअधीक्षक, राज्य उत्पादन शुल्क (गट-ब), वसई यांचे मुख्यालय ठाणे ऐवजी पालघर राहिल.

३. उपरोक्तप्रमाणे ६४ पदे नवनिर्मित पालघर जिल्ह्याकडे वर्ग करण्यात आल्यामुळे अधीक्षक, राज्य उत्पादन शुल्क, ठाणे यांनी सदर पदांच्या वेतन व भत्त्याचे अनुदान वित्तीय नियमांचे पालन करून अधीक्षक, राज्य उत्पादन शुल्क, पालघर यांच्या कार्यालयाकडे वर्ग करण्याची कार्यवाही करावी.”

8. In pursuance of it, Respondent no. 2, Commissioner, State Excise, had also issued order dated 22.5.2018, (page 69 of the Paper Book). However, Respondent no. 2, again issued another letter dated 25.5.2018 (page 70 of the Paper Book), stating that despite issuance of G.R dated 30.6.2016, the territorial jurisdictions of Flying Squad, Palghar will also extend to C-Division, Bhiwandi, Vasai, Palghar and Dahanu. This letter

issued by Respondent no. 2, Commissioner, State Excise, has been heavily relied upon by the learned counsel for the applicant to substantiate that the applicant's territorial jurisdiction is inclusive of C-Division, Bhiwandi, Vasai, Palghar and Dahanu.

9. However, material to note that letter dated 25.5.2018 is not the ultimate position as again Respondent no. 2 had issued another order dated 6.9.2018 reiterating the contents of G.R dated 30.6.2016 affirming the position that jurisdiction of State Excise, Palghar will be restricted to Palghar District only. Para 4 of the order dated 6.9.2018 is material, which is as follows:-

“४. शासन निर्णय दिनांक ३०.०६.२०१६ अन्वये निरीक्षक, भरारी पथक, पालघर यांचे कार्यक्षेत्र संपूर्ण जिल्हा असेल. त्यानुसार ठाणे जिल्हयासाठी स्वतंत्र भरारी पथक व पालघर जिल्हयासाठी स्वतंत्र भरारी पथक असेल. तसेच निरीक्षक, भरारी पथक, पालघर यांनी त्यांचे कार्यक्षेत्रातील परंतु ठाणे जिल्ह्यात येत असलेले तालुके निरीक्षक, भरारी पथक, ठाणे यांचेकडे हस्तांतरीत करण्यात यावेत.”

10. Indeed the letter dated 25.5.2018, issued by the Commissioner, State Excise, which has been heavily relied by the learned counsel for the applicant is quite understandable and not palatable in view of G.R dated 30.6.2016, issued by the Government, whereby 64 employees working in the establishment of Thane District has been transferred and assigned to Palghar District. As such, it is letter dated 25.5.2018 issued by the Commissioner, State Excise, has given leaver to the applicant to agitate that his jurisdiction is inclusive of C-Division, Thane, Bhiwandi, Vasai, Palghar and Dahanu. In my considered opinion, one need to go by the decision taken by the Government in terms of G.R dated 30.6.2016 and approval given by the Hon'ble Minister for reorganization of territorial jurisdiction in its meeting dated 4.9.2018, which will be dealt with little later.

11. Needless to mention that it is the prerogative of the Government to formulate a particular policy and it falls within the domain of the executive alone. The efficacy cannot be questioned before the Tribunal if it does not violate the Statute or Constitution. The Tribunal or Court

cannot sit in judgment over the policy of the executive. Furthermore, in order to challenge the administrative action, applicant needs to establish that executive decision is contrary to mandatory provisions of law or violative of fundamental rights including being in violation of guarantee of fairness. It may also be assailed on the ground of being in exercise of gross abuse of powers, arbitrary or malafide. The malafide or arbitrariness have to be shown to be patent.

12. Turning to the facts of the present case, learned counsel for the applicant was harping upon the order issued by the Commissioner, State Excise dated 25.5.2018 (page 70 of the Paper Book) and the order of reinstatement of the applicant to buttress his point that the jurisdiction of the applicant covers C-Division, Vasai, Palghar, Dahanu, Bhiwandi and Wada. He canvassed that in view of this orders particularly order passed by the Commissioner, State Excise, dated 25.5.2018 so long as it is not modified by the Commissioner himself or superseded by the Government in appropriate manner, the jurisdiction of the applicant over the said arear cannot be taken away. To say the least, his submission is misconceived and has to be rejected.

13. Once State Government had issued G.R dated 30.6.2016 transferring staff of State Excise Department then working in Thane District to the establishment of Palghar District, consequently, it has effect of transfer of the post held by the applicant to Palghar. Indeed, there is specific mention in the G.R dated 30.6.2016 that erstwhile Flying Squad, State Excise, Thane-II will be under the control of the Superintendent, State Excise, Palghar and will be known as District Flying Squad, State Excise, Palghar, with its headquarters at Palghar. This being the position, only because earlier jurisdiction of the applicant while working as Excise Inspector, Flying Squad, Thane was covering area from Thane District, it does not mean that it is continued even after issuance of G.R dated 30.6.2016. The letter issued by the Commissioner dated 25.5.2018 which has been heavily relied upon by the learned counsel for the applicant is indeed contrary to the letter of spirit of G.R dated 30.6.2016. Needless to mention that applicant have no legally

vested right in the matter of territorial jurisdiction of the post held by him and it is prerogative of the executive to determine the territorial jurisdiction.

14. Apart, in view of need of re-organization of territorial jurisdiction, Respondent no. 2, Commissioner, State Excise has constituted Committee headed by the Joint Commissioner, State Excise, (Administration) to reorganize the structure of the State Excise Department vis-à-vis its territorial jurisdiction. This was aimed for equal distribution of the work. In this behalf, perusal of the minutes dated 4.9.2018 held in the chamber of the Hon'ble Minister, State Excise, reveals that the proposal submitted by the Committee was accepted by the Hon'ble Minister. The perusal of the original file tendered by the learned Presenting Officer reveals that the recommendations made by the Committee were accepted and directions were issued to act accordingly. In-so-far as this aspect is concerned, learned counsel for the applicant sought to contend that the applicant has sought information about meeting dated 4.9.2018 under R.T.I Act and he was informed that no such proposal was submitted by the Committee to the Government. This is nothing but hair splitting exercise without any substance. Indeed, the information availed under R.T.I Act which is tendered during the course of arguments and marked as 'X' itself reveals that meeting was held on 4.9.2018 for the approval of the Hon'ble Minister, State Excise. It appears that the said proposal was not routed through the Secretary, State Excise and therefore, there is endorsement "प्रस्ताव शासनास सादर झाला नाही". Indeed, below the endorsement, there is approval of Hon'ble Minister, State Excise, stating that follow up action should be taken as per proposal submitted to the Hon'ble Minister. On the basis of it, Respondent no. 2, Commissioner, State Excise, had issued order on 6.9.2018, (Page 131 of the Paper Book) wherein, there is specific mention as below:-

“शासन निर्णय दिनांक ३०.०६.२०१६ अन्वये निरीक्षक, भरारी, पथक, पालघर यांचे कार्यक्षेत्र संपूर्ण जिल्हा असेल. त्यानुसार ठाणे जिल्हयांसाठी स्वतंत्र भरारी पथक व पालघर जिल्हयासाठी स्वतंत्र भरारी पथक असेल. तसेच निरीक्षक, भरारी पथक, पालघर यांनी त्यांचे कार्यक्षेत्रातील परंतु ठाणे जिल्ह्यात येत असलेले तालुके निरीक्षक, भरारी पथक, ठाणे यांचेकडे हस्तांतरीत करण्यात यावेत.”

15. It is thus explicit that now there are separate Flying Squad, State Excise for Thane and Palghar District and the territorial jurisdiction from Thane District which was earlier with Flying Squad, State Excise, Palghar will be handed over to State Excise, Flying Squad, Thane. As such, it leaves no doubt that the territorial jurisdiction of Palghar District and Thane District for the purpose of State Excise Department has been clearly defined and territorial jurisdiction of the concerned Flying Squad is now confined to the territorial jurisdiction of the District only. Despite this clear position, the applicant is raking up issue of territorial jurisdiction as if he has legally vested right to exercise the jurisdiction over area from Thane District forever. Such claim, in view of the above discussion deserves rejection only.

16. The totality of the aforesaid discussion, leads me to the conclusion that the Original Application is devoid of merit and deserves to be dismissed.

ORDER

Original Application stands dismissed with no order as to costs.

(A.P Kurhekar)
Member (J)

Place : Mumbai
Date : 21.01.2020
Dictation taken by : A.K. Nair.