

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.142 OF 2017

DISTRICT : NASHIK

Shri Shivaji Madhukar Pawar.)
Age : 38 Yrs., Occu.: Nil,)
R/at : Dubgule, At post Malegaon,)
Tal.: Malegaon, Dist : Nashik.)...**Applicant**

Versus

1. The District Collector.)
Old Agra Road, Nashik 422 002.)
2. The Sub Divisional Magistrate,)
Sub Division Malegaon,)
Malegaon Camp, Malegaon,)
Dist : Nashik – 422 002.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Resps.1 & 2.

Mr. A.S. Gaikwad, Advocate for Respondent No.3.

PER : SHRI J.D. KULKARNI (VICE-CHAIRMAN)

DATE : 31.01.2018

J U D G M E N T

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant, Ms. S.T. Suryawanshi, the learned Presenting Officer for Respondents 1 & 2 and Shri A.S. Gaikwad, the learned Advocate for Respondent No.3.

2. The Applicant and Respondent No.3 applied for the post of Police Patil for Village Dubgale, Taluka Malegaon, District Nashik in pursuance of the Advertisement issued for the post (Annexure 'E', Page 20). Admittedly, the Applicant got 54 marks and in view of the merits, the Respondent No.3 was appointed as Police Patil. The Applicant has challenged the appointment of Respondent No.3 for the post of Police Patil of Village Dubgale only on the ground that the Respondent No.3 is not the resident of Dubgale.

3. According to the Applicant, after the merit list was published, the Applicant filed objection with the Respondent No.2 and stated that the Respondent No.3 is not the resident of Village Dubgale and, therefore, he shall not be appointed. His objection, however, was rejected and the Respondent No.3 was appointed. The Applicant, has therefore, prayed that the appointment order in respect of Respondent No.3 dated 4.01.2017 issued by the Respondent No.2 on the post of Police Patil of Dubgale be quashed and set aside and similarly, the order passed by the Respondent No.2 on 4.01.2017 whereby

the complaint of the Applicant dated 23.05.2016 was rejected, be also quashed and set aside and the Respondent No.2 be directed to appoint the Applicant to the post of Police Patil at Dubgale.

4. The Respondent Nos.1 and 2 denied the Applicant's allegation and stated that due enquiry was made in which it was found that the Respondent No.3 was the resident of Village Dubgale, and therefore, he has been appointed to the post of Police Patil. The Respondent No.3 also files filed Affidavit reply and denied that, he is not the resident of Village Dubgale. On the contrary, it is stated that the Applicant himself is not the resident of Village Dubgale. The Affidavit-in-rejoinder is also filed by the Applicant wherein it is reiterated that the Applicant is the resident of Village Dubgale whereas the Respondent No.3 is not the resident of Village Dubgale.

5. The only material point to be considered in this O.A. is whether the Respondent No.3 is the resident of Village Dubgale and if yes, whether his appointment to the post of Police Patil of the said Village is legal and proper.

6. The learned Advocate for the Applicant has invited my attention to some documents such as Certificate issued by Tahasildar, Malegaon (Exh. 'L', Page 40), Aadhaar Card (Exh. 'M', Page 41), Property Card (Exh. 'N', Pages 42 and 43), Election list of Gram Panchayat (Exh. 'O', Page 44).

7. The learned Advocate for the Applicant submitted that the documents at Page Nos.40 to 48 (both inclusive) show that the Respondent No.3 is the resident of Village Nimgule and not of Village Dubgale. He has also invited my attention to Ration Card showing that the name of the Applicant is in the Ration Card of Nimgule. The Respondents denied all the allegations and submitted that the Respondent No.3 is the resident of Village Dubgale.

8. The learned P.O. has invited my attention to the Affidavit reply filed by Respondent Nos.1 and 2. In Para No.9 of the reply affidavit, it is stated that on receiving the complaint from the Applicant, the Tahasildar, Nimgule was directed to make enquiry into the complaint and it was found that the Respondent is the resident of Dubgale whereas the Applicant is the resident of Chaukatpade, Taluka Malegaon. Para No.9 of the reply will make the things clear and for that purpose, the same reply is reproduced as under :

“9. With reference to para 6.13, I say as follows : the contentions of this para are not true and correct, hence not admitted by these Respondents. It is submitted that, on receipt of the Complaint Exhibit “H”, this Respondent No.2 by its Letter dated 02.06.2016 has directed to the Tahasildar, Malegaon for conducting inquiry as to the allegations made by the Applicant. It is submitted that, during the

course of inquiry the Respondent No.3 had denied the allegations made by the Applicant, and in support of his say the Respondent No.3 has submitted the 7/12 extract of his Landed Property bearing Gat No.15/2 situated at village Dubgule, Tal. Malegaon, the House Property Extract situated at village Dubgule, Tal. Malegaon, the Resident Certificate issued by the Gramsevak of village Dubgule, Tal. Malegaon. It is submitted that, on perusing the Report dated 08.03.2017 submitted by the Tahasildar, Malegaon, it has transpired that, the Applicant is resident in his Landed Property being Gat No.95/2 situated at village Chaukatpade, Tal. Malegaon. Further there is group Grampanchayat comprising village Nimgule (K), Nimgule (B) and Dubgule. Further, on perusal of the Residential Certificate issued by the Grampanchayat of said village, it has transpired that, the Respondent No.3 is the resident of village Dubgule, Tal. Malegaon. Hence, this Respondent No.2 by his order dated 04.01.2017 Exhibit 'J' has rejected the objection of the Applicant and by Order dated 04.01.2017 Exhibit 'I' has appointed the Respondent No.3 as Police Patil of the village Dubgule, Tal. Malegaon. It is submitted that, the Orders passed by this Respondent No.3 are true, legal and correct."

9. The learned Advocate for the Applicant though stated that the Aadhaar Card and other documents produced show that the Respondent No.3 is the resident of Nimgule and not of Village Dubgule, his own Identity Card issued by Election Commissioner of India shows that he is the resident of Nimgule, Tal. Nashik. It seems that the Village Nimgule and Village Dubgule seem to be group grampanchayats and the Respondents as well as the Applicant owns landed property in Village Dubgule. The Respondent No.3 has stated in his statement before the competent authority this fact. After due enquiry, the Tahasildar has come into conclusion that the Respondent No.3 is the resident of Village Dubgule. The possibility that the Applicant and Respondent No.3 might have property at various places, so also at Dubgule cannot be ruled out. No malafides are alleged against the report given by Talathi in respect of enquiry as regards residential proof of Applicant and Respondent No.3, and therefore, in such circumstances, it will not be proper to suspect the outcome of the enquiry made by the Tahasildar.

10. The most important point to be considered in this case is that the Applicant as well as Respondent No.3 appeared for the competitive examination in which the Applicant got 54 marks whereas the Respondent No.3 got 62 marks. Had it been a fact that the Applicant wanted to challenge the appointment of Respondent No.3, he would have taken objection at the preliminary stage before initiation of

recruitment process. He allowed the Respondent No.3 to participate in the process and when found that the Respondent No.3 got more marks and was likely to be appointed on merits, he filed objection before the Respondent No.2. The Respondent No.2 has got that the enquiry done through Tahasildar and on the basis of report submitted by the Tahasildar, the Respondent No.2 came to the conclusion that the Respondent No.3 is the resident of Dubgule and since the Respondent No.3 got more marks than the Applicant, the Respondent No.3 was considered for appointment. I do not find any illegality in the report submitted by Tahasildar. The said report has not been challenged before the competent revenue authority.

11. In the result, I do not find any merit in this Original Application. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

**Sd/-
(J.D. Kulkarni)
Vice-Chairman
31.01.2018**

Mumbai
Date : 31.01.2018
Dictation taken by :
S.K. Wamanse.