

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.799 OF 2016

DISTRICT : NASHIK

Smt. Suchitra D. Tambe.)
Age.: 36, Occu.: Nil, R/o. At Gonde,)
Taluka : Sinnar, District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. District Collector, Nashik.)
3. Sub-Divisional Magistrate, Niphad)
Sub-Division, Nashik.)
4. Jyoti B. Tambe.)
Age : 30, Occu.: Nil, R/o. At Gonde,)
Tal.: Sinnar, District : Nashik.)...**Respondents**

Mr. P.S. Pathak, Advocate for Applicant.

Ms. S. Suryawanshi, Presenting Officer for Respondents 1 to 3.

Mr. K.S. Tambe, Advocate for the Respondent No.4.



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

DATE : 05.04.2017

JUDGMENT

1. The Applicant having failed to get appointed despite having been short-listed for the post of Police Patil of Village Gonde in Taluka Sinnar, District Nashik which post by the impugned order dated 13.6.2016 (Exh. 'A', Page 9 of the Paper Book (PB)) went to the 4th Respondent is aggrieved thereby and is up before me by way of this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985.

2. An advertisement which in Marathi is called "Jahirnama" came to be published on 17.2.2016 for a few posts of Police Patils in Sinnar Taluka of Nashik District. The Applicant and the 4th Respondent were the candidates therefor along with others including Smt. Vidyalaxmi A. Tambe. In accordance with the relevant Rules, copies whereof are submitted on record, 80 marks were earmarked for Written Test and 20 for Interview which in itself had several other criteria to which to the extent necessary, a reference may have to be made. The Written Examination was held on 24.4.2016. The Applicant, the 4th Respondent and Smt. Vidyalaxmi named above, came



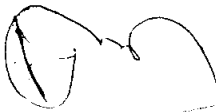
out successfully so as to reach the next stage of interviews. The interviews were held during 10.5.2016 and 13.5.2016. At the end of the day, the Applicant, the 4th Respondent and Smt. Vidyalaxmi were evaluated and marks were given to them. As per the Chart at Page 44 of the PB, Smt. Vidyalaxmi scored 44 marks in Written Test and 11 marks in Interview, thus totaling 55. The Applicant got 55 marks in the Written Test, 14 in Interview, thus totaling 69. The successful candidate, the 4th Respondent scored 55 marks in Written Test, 15 in Interview, thus totaling 70. It is, therefore, very clear that one mark separated the 4th Respondent and the Applicant and the 4th Respondent carried the day.

3. As per Exh. 'B' (Page 10 of the PB), the breakup has been given in accordance with the relevant provision of the Advertisement as well as G.R. etc. In so far as the credit given to the three candidates under the various heads is concerned, it may now not be necessary for me to discuss the details in respect of Smt. Vidyalaxmi and I shall only concentrate on the Applicant and the 4th Respondent. It appears from Exh. 'B' that both of them scored 8 marks each out of 8 for S.S.C. Examination that they cleared. They scored one out of one for having cleared 12th Examination. The Applicant got one mark for



graduation and the 4th Respondent scored none. Both of them scored nothing for the Post Graduate qualification, out of one mark and also got nothing for Sports Competition, M.S.C, N.C.C and N.S.S. The Applicant got one mark for MS-CIT and the 4th Respondent got nothing. Similarly, for Typing, the Applicant got one mark and the 4th Respondent got nothing. Now, in the column of the 'Knowledge' with regard to the Village in question, which was Village Gonde, the Applicant got nothing and the 4th Respondent got 2 marks. For decision making ability and practical qualities, the Applicant got nothing while the 4th Respondent got one mark. Similarly, for physical ability and self-confidence, the 4th Respondent got one mark and the Applicant got nothing. Both of them got 2 marks each from the Interview Committee which comprised five Senior Officials headed by the 3rd Respondent – Sub-Divisional Magistrate, Niphad. These were the details of the marks scored by the Applicant and the 4th Respondent. As already mentioned above, they were separated by just one mark with the 4th Respondent having the advantage. She was appointed vide Exh. 'A' (Page 9 of the PB) dated 13.6.2016 which is what is impugned herein.

4. I have perused the record and proceedings and heard Mr. P.S. Pathak, the learned Advocate for the

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Applicant, Ms. S. Suryawanshi, the learned Presenting Officer (PO) for the Respondent Nos.1 to 3 and Mr. K.S. Tambe, the learned Advocate for the Respondent No.4.

5. It was pointed out on behalf of the Applicant and it is also pleaded that the Applicant was asked just three questions in her interview about the name of the Gramsevak, name of the Talathi and Population of the Village. The Applicant also made a grievance about the fact that she got zero mark in the Column for knowledge of the Village. According to her, the fact that she was better qualified as must have become clear from the above discussion, was not given any significance at all. The Applicant had also lodged a complaint vide what is Exh. 'H' at Page 45 of the PB, dated 23rd May, 2016 wherein she questioned the move of the authorities to let the 4th Respondent compete from the category of the heirs of the Ex-Police Patil. According to the Applicant, the 4th Respondent was the daughter-in-law, and therefore, related by marriage, and therefore, not an heir to her ascendant. She also made a grievance of the fact that the higher percentage of marks scored by her in 10th and 12th Standard when compared with the 4th Respondent was not adequately rewarded. She, therefore, questioned the validity of one mark being given to the 4th Respondent in

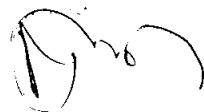


the Interview. Herein also, it needs to be noted that the Applicant's residence at Village Gonde was furiously contested by the 4th Respondent and some other Villagers. This aspect of the matter was got enquired into the by the authorities and I shall presently deal therewith.

6. Vide the GR issued by the Home Department on 23rd August, 2011 for the post of Police Patil is a 5 Member body chaired by the Sub-Divisional Magistrate. The 3 Members are the Sub-Divisional Police Officer, Welfare Officer and Tribal Project Officer with the Tahsildar of the said Taluka being the Member Secretary. There is no dispute that in the present matter as well, this was the Committee that came to be constituted. It met and evaluated the Applicant and the 4th Respondent accordingly. There has to be compelling reasons to rush to the conclusion that the discretion exercised by these 5 highly placed Officials was tainted for or against this or that candidate, that is that all the 5 minds must act in one particular way. Needless to say that there is no presumption, one way or the other, and therefore, the presumption enshrined in the relevant provisions of the Indian Evidence Act that the official functions were properly performed would be there to take note of. In rebuttal, it was always possible for the Applicant to adduce



material to show to the contrary, in which event, a serious note would have been taken. However here, what is found is that the Applicant has made self-drawn, self-serving conclusion and has tried to read bias where none is proved to have been there. There is no violation of any of the stipulation either in 'Jahirnama' or any of the GRs. In so far as the marks for the Interview aspect of the matter is concerned, again in the absence of compelling material, this Tribunal exercising the jurisdiction of judicial review of administrative actions, cannot rush in to uphold the case of the Applicant. Granting all latitude to the Applicant, even if those three questions were put to her, there is nothing on record to show as to what was the nature of questions that were put to others including the 4th Respondent. Needless to say, no such details are forthcoming in case of the 3rd candidate, who was eliminated as mentioned above. The process of interview differs from person to person and Committee to Committee. That precisely is the reason, why it is a multi-headed body. The one that fails to make it, will naturally be aggrieved and I for one would use no strong words against that party for it may be natural, but that does not as of necessity mean that question marks could be raised on the ability and competence of the Committee comprising Senior Officials. Incidentally, even those questions that were



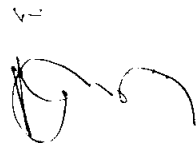
supposedly put to the Applicant were by no means irrelevant because after-all, the knowledge of the Village is one factor which is necessary to be tested in the candidates, if one were to carefully read the 'Jahirnama' and the provisions of the GR of Home Department, dated 22nd August, 2014 (Exh. 'E', Page 18 of the PB).

7. This now brings me to consider yet another aspect of the matter about the residence of the Applicant herself. There are documents which tend to suggest that the Applicant is permanent resident of Sinnar and not Gonde. As already indicated above, there were complaints against the Applicant being the resident of Sinnar and not of the said Village. This aspect of the matter as would become clear from the Minutes of the Meeting dated 14.7.2016 at Page 88 of the PB is relevant to be considered. The 5 Member body met on that date. The report pertains to several Villages. In so far as the aspect relevant hereto is concerned, I think I had better reproduced a passage in Marathi therefrom. Before I did that, it may also be mentioned that this meeting was held to consider 'फेरमुलाखती' which is to have another interview. Now, I must quote what I have discussed above.



“तसेच मौजे गोंदे ता. सिन्नर येथील तक्रारदार सौ. सुचित्रा ज्ञानेश्वर तांबे या देखील स्थानिक रहीवासी नसल्याबाबतचा तहसिलदार सिन्नर यांचेकडील अहवाल क्रमांक कुळकायदा/कावि/३६७/२०१६ दिनांक २५/०६/२०१६ हा कमिटी समोर ठेवण्यात आलेला आहे. त्यामध्ये मंडळ अधिकारी सिन्नर यांनी अगदी स्पष्टपणे त्या सिन्नर मध्ये राहत असलेबाबत अभिप्राय देवून सिन्नर येथील त्यांचे वास्तव्याचे पुरावे देखील सादर केलेले आहे. मंडळ अधिकारी नांदुरशिंगोटे यांनी केलेल्या पंचनाम्यात जरी त्या गोंदे येथे राहत असल्याचे नमूद असले तरी त्यांना त्यांचे अहवालात गोपनीय मत नोंदवितांना त्या सिन्नर येथेच राहत असल्याचे नमूद केलेले आहे. सबब तक्रारदार सुचित्रा तांबे या स्थानिक रहीवासी नसल्याने त्यांची तक्रार निकाली काढणेबाबत सर्व समितीच्या सदस्यांमध्ये एकमत झालेले आहे. सबब मौजे पिंपरवाडी व गोंदे या गांवी निवड झालेले उमेदवार व गोंदे येथील तक्रारदार हे दोघेही स्थानिक रहीवासी नसल्याने, भरती प्रक्रीयेसाठी प्रसिध्द करण्यात आलेल्या दिनांक १७/०२/२०१६ रोजीचा जाहीरनामा यातील अट क्र.३ याचा भंग होत असल्याने पिंपरवाडी येथील निवड रद्द तर गोंदे येथील सौ. सुचित्रा ज्ञानेश्वर तांबे यांची तक्रार जाहीरनाम्यातील अटी शर्तीचा भंग होत असल्याचे तसचे महाराष्ट्र ग्राम पोलीस आदेश १९६८ मधील पात्रतेचे निकष पुणे करीत नसल्याने त्यांची तक्राद फेटाळण्यात आलेली आहे. तसेच सौ. विद्यालक्ष्मी अमितकुमार तांबे यांना लेखी परीक्षेतच निवड झालेल्या उमेदवारापेक्षा तसेच तक्रारदारांपेक्षा ११ गुण कमी असल्याने त्यांची फेरतपासणी करण्याची आवश्यकता नाही असे समितीचे एकमत झाल्याने सदरची तक्रारदेखील निकाली ठेवून निवड समितीने यापुर्वी दिनांक १३/०५/२०१६ रोजी सौ. ज्योती बाळासाहेब तांबे यांची केलेली निवड योग्य असल्याने त्यात बदल न करण्याचे निश्चित करून त्यांना नियुक्ती आदेश देण्याचे एकमताने ठरविण्यात आले.”

8. Now, it does appear that this aspect of the matter was required to be enquired into because of eligibility criteria for the post of Police Patil. The details may be immaterial, but the fact remains that the nature of the



duties to be performed by a Police Patil is such that, he or she must have the detailed knowledge of the state of affairs prevailing in the said Village. The crux of the matter is that, at the time of the meeting, the above quote was made. The significance of this aspect of the matter was present in the minds of the Members and they got it enquired into by an Official. That in my opinion, is somewhat clinching because after-all, it would not have been possible to enter a concrete finding about the residence of the Applicant and the basis of the Leave and License Agreement only. That is because it is always possible that the residence of a particular place might acquire property elsewhere and deal therewith in accordance with law. That by itself is not suggestive of any conclusive finding. But here, in my opinion, there is convincing official evidential material to show that the Applicant may not have been residing at Village Gonde. In the context of these facts, in my view, it was necessary for the Applicant to adduce at least some material to show that the Applicant was a permanent resident of Village Gonde. On behalf of the Applicant, some reference was made to her Aadhaar Card and such other documents being there bearing address of Village Gonde, but then those documents even in the form of copies have not been produced and in that view of the matter, therefore, I have no hesitation to conclude that



there is substance in the allegations made by the 4th Respondent against the Applicant and that is an added circumstance to hold against the Applicant. In this view of the matter, therefore, I refrain from closely examining the Panchanama and the Leave & License Agreement, etc.

9. The learned PO Ms. S. Suryawanshi relied upon an unreported Judgment of the Hon'ble Supreme Court in **Civil Appeal No.9092/2012 (Ashok Kumar and Anr. Vs. State of Bihar and Ors, dated 21st October, 2016)**. I have carefully perused the said Judgment and I find that the law laid down is that even if there was midcourse change of procedure and rules, if one competes thereunder and allows the process to go on and participates in it, cannot be allowed to turn around and start questioning it, if he failed to make it. The questioning of procedure is forbidden. However, if the procedure itself was not implemented properly, may be in that event, the actual implementation would be on a different pedestal, but here, going by the law laid down by the Hon'ble Supreme Court, I think, the Applicant cannot be allowed to raise question marks such as she has been wanting to do.



10. The upshot is that, there is no merit in this Original Application and the same is hereby dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
05.04.2017

05-04-17

Mumbai

Date : 05.04.2017

Dictation taken by :

S.K. Wamanse.

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