

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.809 OF 2016

DISTRICT : NASHIK

Meena Vilas Kumbharde.

Age : 30 Yrs, Occu.: Nil, R/o. At Nandurdi)

Tal.: Sinnar, District : Nashik.

)...**Applicant**

Versus

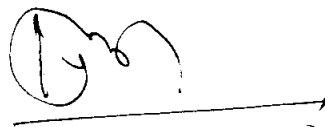
1. The State of Maharashtra.)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. District Collector, Nashik.)
Having its office at Nashik,)
Tal. & Dist.: Nashik.)
3. Sub-Divisional Magistrate.)
Niphad Sub-Division, Nashik.)
4. Asha Prabhakar Nikam.)
Age : 30 Yrs, Occu.: Nil, R/o. At)
Nandurdi, Tal.: Sinnar,)
District : Nashik.)

)...**Respondents**

Mr. Balasaheb Deshmukh, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Resps. 1 to 3.

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




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

DATE : 31.03.2017

JUDGMENT

1. Will anybody believe that in this age of socio-sociological legal set up, a lady scoring highest marks in written test for the post of Police Patil would be denied the appointment because her relatives and not herself are involved in two prosecutions, one of which has already concluded in acquittal. It indeed happened like that. Aggrieved, the Applicant is up before me by way of this Original Application (OA). She has put a mirror before me to exhibit the realities of "modern welfare state" such as it functions through its official dom. The face of each one of us is mirrored there.

2. Exh. 'K' (Page 41 of the Paper Book (PB)) is a letter dated 10.05.2016 from Police Station (P.S) Niphad to the 3rd Respondent - Sub Divisional Magistrate, Niphad (Dist. Nashik). The 1st Respondent is the State of Maharashtra in Home Department. The 2nd Respondent is the District Collector, Nashik. The 4th Respondent is successful candidate for the post of Police Patil of Village



Nandurdi, Tal.: Sinnar, District Nashik. Let me reproduce (Marathi) the said Exhibit 'K'.

“निफाड पोलीस स्टेशन,
गो.जा.क्र.३४०/२०१६,
दिनांक : १०.०५.२०१६

प्रति,
मा.उपविभागीय अधिकारी सो
निफाड विभाग निफाड यांना सविनय सादर

विषय : दाखल गुन्ह्यासंदर्भात माहिती.....

उपरोक्त विषय व संदर्भान्वये सविनय सादर की, श्रीमती मिना विलास कुंभार्डे रा. नांदुर्डी ता. निफाड यांचे विरुद्ध निफाड पोलीस स्टेशनला कोणत्याही प्रकारचा दिवाणी अगर फौजदारी स्वरूपाचा गुन्हा दाखल नाही, परंतु त्यांचे कुटुंबातील

१) पती विलास बारकु कुंभार्डे, दिर कैलास बारकु कुंभार्डे, सासरे बारकु पंढरीनाथ कुंभार्डे, सासु विमलाबाई बारकु कुंभार्डे यांचे विरोधात दिनांक ०३/११/२०१५ रोजी निफाड पोलीस स्टेशन। गुरन १५७/२०१५ भादवि कलम ३०७, ३२५, ३२३, ५०४, ५०६ प्रमाणे दाखल आहे. तसेच

२) कैलास बारकु कुंभार्डे, दिर यांचेविरुद्ध निफाड पोलीस स्टेशनला। ३१/२००५ भादवि कलम ३९९, ४०२ प्रमाणे दिनांक १५/३/२००५ रोजी दाखल आहे. सदरचे दोन्हीही गुन्हे न्याय प्रविष्ट आहे.

मा. सविनय सादर
दि. १०/०५/२०१६”

3. The accused No.2 in the second prosecution along with four others came to be acquitted on 26.11.2014 **(Sessions Case No.97 of 2007 : State Vs. Akil Balam Shaikh and 4 others)**. A typed copy of the Judgment is at Page 103 of the PB. The allegations against the accused were of preparation to commit dacoity punishable under Sections 399 and 402 of Indian Penal Code (IPC). The said offence was registered by P.S. Niphad and that very Police



Station wrote Exh. 'K' incorrectly stating that the said prosecution was pending. I refrain from using the word falsely.

4. Mr. Mahesh Patil, S.D.O. in the 3rd Respondent pleaded as follows in Paras 10 and 21 of his Affidavit-in-reply.

"10. With reference to para 6.4, I say that the contentions of this para are true to the extent of Exhibit "E" and Exhibit "F" to O.A., hence not denied. However, it is submitted that, the Applicant has not been given an appointment for the reasons as mentioned in Exhibit "K" i.e. the Criminal Case being No.158/2015 is filed against her husband mother in law, father in law & brother in law under section 307, 325, 323, 504, 506 of IPC and against her brother in law criminal case being no.31 of 2005 filed under Section 399 & 402 of IPC before the Hon'ble Sessions Court at Niphad. I say that the Applicant's appointment has also been rejected on the ground that she received less marks than other candidates in oral interview.

21. With reference to para 7(vi), I say that the contentions of this para are not true and correct,



hence not admitted by these respondents. It is submitted that, the Applicant is the member of her family and have no case of being separated from her family. It is submitted that, while discharging the duties as a Police Patil the Candidate should give the information as the commission of the criminal offences which will or may or likely to be occur in the village, in present case if the family members are facing the criminal trials there is every possibility to suppression of other criminal activity by the Applicant and the family may take disadvantage of the position of the Applicant if appointed as Police Patil, therefore considering these aspects also there is no merits in the submission of the Applicant."

5. It must have become very clear, therefore, that the Applicant was facing no prosecution and she was put to disadvantage for no fault of hers. As indicated at the outset, by the power of no authority in any manner whatsoever could the Applicant have been in the manner of speaking punished for offences having been registered against her family members howsoever close they may be. It is so simple that I find it utterly unnecessary to elaborate thereupon. In fact, going by the logic of the Respondents, the children of those whose family members are facing two prosecutions from one of which, the acquittal has resulted

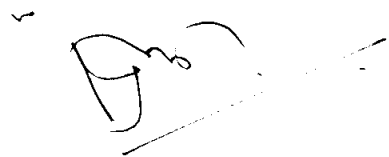


could be permanently debarred from trying to make progress in life. As a matter of fact, I am more than a little surprised that such an idea should have occurred to anybody in the Respondents. It is difficult to guess the reason for such a ridiculous idea.

6. The Applicant has raised the issue of the Respondent No.4 having not been the resident of the said Village. Now, in view of the course of action that will be adopted herein, I do not feel called upon to examine that aspect of the matter in this particular Judgment. I shall make it clear as to what the Respondents should do in this behalf.

7. The Applicant going by her application for Exh. 'E' (Page 23 of the PB) scored 69.86% marks in S.S.C., 66% in H.S.C. and 62% in B.A. (Marathi). She scored 86 marks in MS-CIT/CCC English Computer Examination. This was the standing of the Applicant on the academic front.

8. At Page 27 of the PB, in so far as the said Village Nandurdi is concerned, as already mentioned above, three candidates remained in the reckoning. The candidate Smt. Sunita K. Suryawanshi scored 42 marks in the Written Test and 14 marks in the Interview, thus totaling 56. The



4th Respondent scored 42 marks in Written Test, 16 in Interview, thus totaling 58 marks. The Applicant scored 49 marks in Written Test which was 7 marks more than the 2 other contenders including the Respondent No.4, but only 8 marks in Interview, thus totaling 57 marks. It must have become clear that the Applicant and the 4th Respondent were separated by just one mark, but quite pertinently, if one were to see what can be called the final Chart, a copy of which is at Page 11-A of the PB, the said Chart has got various columns from 1 to 15. The 1st Column is the Serial Number, 2nd is the Name of the Village, 3rd is the Name of the Candidate, 4th is for giving credit for the success of the candidate in 10th Standard, 5th was for 12th Standard, 6th was for Degree Course, 7th was for Post Graduation, 8th was for MCC/NCC/NSS participation, 9th was MS-CIT/CCC, 10th was for Typing, 11th was the credit for the knowledge of that particular Village while the 12th was for decision making capacity and the 13th was Physical Ability and Competence and the penultimate one was the credit given by the Interview Committee and the concluding column was the total of all. In so far as the Respondent No.4 and another candidate Smt. Sunita Suryawanshi were concerned, their marks were shown as 8 each for the credit for 10th Standard and then in the last column, their total score was 14 (Mrs.



Suryawanshi) and 16 (Respondent No.4). When it came to the Applicant, no marks were given at all. It was mentioned in Marathi, "पोलीस विभागातील पोलीस पाटील निवडीसंदर्भात प्रतिकूल अहवाल प्राप्त असल्याने शीट भरली नाही." Now, I cannot exactly comprehend as to whether the whole thing was reprehensible or astonishing or both or more. The various qualifications of the Applicant have already been mentioned a short while ago. I am at a complete loss to appreciate as to why those credits should not have been given to the Applicant. Giving all undue credit to the Respondents and assuming that the consequences of the two prosecutions of which only one remained at large were to be visited upon the Applicant though she was not an accused, still the credit and the score ought to have been mentioned. I have already mentioned above, that if one were to take into consideration the credit for SSC and Interview, just one mark separated, the Applicant and the 4th Respondent, while the Applicant scored 7 marks more than the 4th Respondent in Written Test. In spite of all her very best efforts, the learned PO Mrs. A.B. Kololgi could not ultimately come up with any instrument or enabling authority to support the action of the Respondents in not giving any marks under any column to the Applicant just because her close relatives were facing the said prosecution.

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9. It is, therefore, clear that if one has to take into consideration the selection process for the post of Police Patil of the said Village, the process as well as the conclusions were completely flawed. Therefore, even if the 4th Respondent has not only been appointed, but she has also assumed the charge that by itself would be no ground not to do justice to the cause of the Applicant.

10. Mr. Deshmukh, the learned Advocate for the Applicant relied upon **Manyata Devi Vs. State of Uttar Pradesh and others : (2015) 10 SCC 198**. That was a matter where the Character Certificate to a lady was denied because her husband was involved in four Criminal Cases and also because she had no knowledge of the contract works. It was held by Their Lordships that just because Criminal Cases came to be registered against the husband of the Applicant, she could not be placed at a disadvantage, especially when the acquittal was recorded. It should become very clear by careful reading of **Manyata Devi** (supra) that in the matter of such selections, the test must be very objective and clearly impartial based on facts. The employment of the criteria without the support of any authority in any form including the Government instruments would be unsupportable.

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11. Mr. Deshmukh then relied upon a Judgment of this Tribunal presided over by the Hon'ble Vice-Chairman in **OA 693/2016 (Pratibha A. Kudnar Vs. The State of Maharashtra and 2 others, dated 14.3.2017)**. There also, the Applicant was allowed to participate in the selection process and she scored highest marks. But she was denied the appointment on the ground that she was not a person of good moral character though no case was registered against her and just like in this OA, cases were pending against that Applicant's father-in-law and husband under the Prohibition Law. The eligibility criteria for the appointment to the post of Police Patil was dealt with and it was held that the kind of disability envisaged herein, as was the case in that matter was not in accordance with that Rule.



12. Mr. Chandratre, the learned Advocate for Respondent No.4 as well as the learned P.O. contended that regard being had to the duties of the Police Patil such antecedents as are to be found would be deleterious to effective functioning as Police Patil. I completely disagree and I have already set out effectively the reasons therefor hereinabove. Mr. Chandratre relied upon Clause 3(c) of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 which lays down that no person would be eligible for being



appointed as a Police Patil, if a competent authority after a summary enquiry adjudged such a person to be bad character or in the opinion of that authority had such antecedents as to render him unsuitable for employment as Police Patil. Now, in my opinion, the reliance on this particular Clause is completely out of place, if one were to go by the facts such as they are. Here, no competent authority has adjudged the Applicant to be of bad character or of antecedents as therein mentioned. Much less was there any enquiry at all, summary or otherwise. Had there been an enquiry, then perhaps the Applicant would have shot back by pointing out that she was facing no prosecution and why, in fact, one of the two prosecutions even against her relatives concluded in acquittal in 2014 itself. Despite that, the Respondents still harped on relying thereupon is regrettable and judicial eyebrows are raised on the possible reason for such a course of action.

13. As a result of the above discussion, I am very clearly of the opinion that the whole process will have to be restarted from the stage of reconsidering the claim of the three candidates viz. Mrs. Suryawanshi, the Applicant and the 4th Respondent. The Respondents 1 to 3 are directed to reconsider the present matter. They are directed to give appropriate numbers in keeping with the performance of

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the Applicant by cancelling their earlier endorsement against her name. She would be given credit for the marks obtained by her in the Written Test, credit for her performance in SSC, HSC and Degree Examination as well as MS-CIT/CCC. If the Applicant and the other two candidates have any other qualification, which was not earlier mentioned, then they would be allowed to furnish the documents in that behalf and the Respondents shall take that into consideration. Thereafter, fresh interviews will be held and fresh Chart would be prepared showing the marks obtained by each one of them. The issue of residence in the said Village as mentioned in Para 6 above, shall also be reconsidered. Compliance will be made within eight weeks from today and till that time, the 4th Respondent shall continue to function as Police Patil of the said Village and thereafter, the matter would depend upon the result of the exercise performed in accordance herewith. The time limit be scrupulously followed. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
31.03.2017

31.3.17

Mumbai

Date : 31.03.2017

Dictation taken by :

S.K. Wamanse.

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