

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 11623 OF 2015**

The State of Maharashtra	..	Petitioner
versus		
John s/o. Shabaji Kharat & Ors.	..	Respondents

Mr. A. B. Vagyani – G.P. with Mr. C. P. Yadav – AGP for State -
petitioner.

Mr. Shantanu Chandratre for respondent no. 2.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.**

Date of Reserving the Judgment : 30 March 2016

Date of Pronouncing the Judgment : 02 April 2016

JUDGMENT :

1] By this petition under Articles 226 and 227 of the Constitution of India the petitioner – State of Maharashtra challenges the judgment and order dated 16 April 2015 made by the Maharashtra Administrative Tribunal (MAT) in original application no. 823 of 2011, instituted by respondent no.1 herein.

2] The respondent no. 1, by instituting original application no. 823 of 2011 had, in fact, challenged the validity of the appointments of respondent nos. 2 to 4 as State Information Commissioners, apart from seeking a declaration as to his own entitlement for selection to the post of State Information Commissioner.

3] By the impugned judgment and order dated 16 April 2015, MAT for reasons stated, has declined to set aside appointments of respondent nos. 2 to 4 or to issue any declaration with regard to eligibility of respondent no. 1 to be considered for the post of State Information Commissioner. Therefore, the substantive reliefs, prayed for by respondent no. 1 in original application no. 823 of 2011, came to be denied to respondent no. 1. The petitioner – State of Maharashtra is obviously not aggrieved by this portion of impugned judgment and order dated 16 April 2015. Mr. Vagyani, learned Government Pleader in fact made a statement that the tenure of appointments of respondent nos. 2 to 4 has already concluded and therefore, the said respondents no longer continue as State Information Commissioners.

4] Mr. Vagyani, learned Government Pleader however submitted that the MAT lacked jurisdiction even to entertain the original application no. 823 of 2011, since, any matters relating to the appointment of State Information Commissioners under the provisions of the Right to Information Act 2005 are not '*service matters*' as defined under section 3(q) of the Administrative Tribunals Act, 1985.

5] Mr. Vagyani, learned Government Pleader further submitted that the petitioner – State of Maharashtra, in any case, is aggrieved by the general directions issued by MAT in paragraphs 63 and 64 of the impugned judgment and order dated 16 April 2015. Mr. Vagyani submitted that MAT exceeded the bounds of its jurisdiction in directing the State not only to frame rules and regulations, but, further, directing what must be included in such rules and regulations. Mr. Vagyani submitted that rule making is within the province of the State of Maharashtra and in case, such rules are determined as invalid or unconstitutional, MAT may interfere with the same. However, MAT

cannot direct the State Government to frame rules in a particular manner.

6] We have perused the impugned judgment and order dated 16 April 2015 made by MAT. The original application no. 823 of 2011, instituted by respondent no. 1, has virtually been dismissed, in as much as, no reliefs have been granted to respondent no. 1 either with regard to appointments of respondent nos. 2 to 4 or with regard to declaration of eligibility of respondent no. 1. Further, tenure of respondent nos. 2 to 4 has also concluded and they no longer hold the post of State Information Commissioner. In this view of the matter, there is no necessity, at least at this stage, to decide as to whether MAT indeed had jurisdiction to decide the matters relating to appointment of State Information Commissioners under the provisions of Right to Information Act, 2005. The issue is however kept open to be decided in an appropriate case.

7] In so far as Mr. Vagyani's second contention is concerned, we note and clarify that observations in paragraphs 63 and 64 of the impugned judgment and order dated 16 April 2015 are not and need not be construed as any '*directions*'. The same are in the nature of recommendations made by MAT for guidance of the State Government. A perusal of the recommendations indicates that most of them are in the context of the decision of the Hon'ble Apex Court in ***Union of India vs. Namit Sharma***¹. In view of this clarification, there is no necessity to interfere with the impugned judgment and order dated 16 April 2015.

1 Review Petition (C) No. 2309/2012 in Writ Petition (C) No. 210/2012 (Union of India vs. Namit Sharma with Review Petition (C) No. 2675/2012 in Writ Petition (C) No. 210/2012 (State of Rajasthan and another vs. Namit Sharma, dated 30th September, 2013).

8] Mr. Vagyani stated that the necessary rules in the matter of appointment of State Information Commissioners are under preparation and the State of Maharashtra will obviously comply with the statutory provisions as applicable as also applicable observations in **Namit Sharma's** case (supra). Mr. Vagyani also stated that the State is not averse to taking into consideration suggestions in the impugned judgment and order as long as it is made clear that observations in paragraphs 63 and 64 are only suggestions or recommendations, but not binding directions. From perusal of the observations made in paragraphs 63 and 64, we are satisfied that the same are only suggestions or recommendations and not directions. In any case, we hereby clarify this position.

9] In view of the aforesaid clarifications, there is no necessity to either entertain the present petition or to make any further orders therein. We therefore dispose of this petition in the aforesaid terms.

10] There shall be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)