

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.866 OF 2013

Shri Vijay Dattaram Parab

Age: Adult,

R/o. A/p Upale,

Taluka: Vaibhavwadi,

Dist. Kolhapur

.....Petitioner

V/s.

1 State of Maharashtra

Through

Department of Rural Development

Having its office at Mantralaya,

Mumbai-32.

2 Collector & District Magistrate,

District: Sindhudurg.

3 Sub-Divisional Magistrate,

Sub-Division: Kankavli

Dist: Sindhudurg.

4 Sachhidanand Balkrishna Palande

Age: Adult,

R/o. A/p Upale

Tal: Vaibhavwadi,

Dist: Sindhudurg.

5 Ramesh Waman Upade

Age: Adult,

R/o. A/p Upale,

Tal: Vaibhavwadi,

Dist. Sindhudurg.

6 Ravindra Atmaram Upade

Age: Adult,

R/o. A/p Upale,

Tal: Vaibhavwadi,
Dist. Sindhudurg.

7 Bhaskar Sonu Upade
Age: Adult,
R/o. A/p Upale,
Tal: Vaibhavwadi,
Dist. Sindhudurg.

.....Respondents

Mr. Chetan G. Patil , Advocate for Petitioner.
Mr. Vishal Thadani, AGP for Respondent Nos.1 to 3.
Mr. Vaibhav V. Ugle, Advocate for Respondent No.4.
Mr. A.M.Savagave, Advocate for Respondent Nos.6 and 7.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

RESERVED ON : June 8, 2017

PRONOUNCED ON : June 21, 2017.

JUDGMENT (Per Shri Sandeep K. Shinde, J.) :

Rule.

2 Rule made returnable forthwith. With consent of the learned counsel for the Parties, the matter is taken up for final hearing.

3 The Petitioner Original Applicant, before the Maharashtra Administrative Tribunal (hereinafter referred to

as the '**MAT**'), has challenged the order dated 24.1.2013 passed in the Original Application No.299 of 2011 whereby his application was dismissed. Aggrieved by it, this Petition is filed under Articles 226 and 227 of the Constitution of India.

The Petitioner would challenge selection process of Police Patil, which is subject to the provisions of Maharashtra Village Police Act, 1967 (In short '**Said Act**') and the Maharashtra Village Police Patil (recruitment, pay, allowances and other Conditions of Service) Order, 1968. (In short '**Said Order of 1968**') The Respondent No.3 herein had issued a proclamation dated 6.8.2010 for selection of Police Patil in the Village: Upale, Taluka: Vaibhavwadi. The proclamation apart from stating requirements for the said post also stated that written examination of 40 marks and oral examination of 10 marks will be conducted. The Petitioner applied to the said post along with the necessary annexures. He had submitted a certificate of residence and his good conduct, certified by Sarpanch. Respondent Nos.4 to 7 had also applied for the said post. It appears the Respondent Nos.4 to 6 had

received a communication from the office of the Respondent No.3 intimating that written examination was scheduled on 3.4.2011. The Petitioner did not receive such intimation. The Respondent No.7 had received intimation informing that he was not qualified to be appointed to the post of Police Patil. The Petitioner, therefore, approached Respondent No.3 and requested to issue necessary intimation to enable him to appear for the written examination. On 2.4.2011, the Petitioner was informed by the Respondent No.3 that 105 villagers of Upale Village reported to the Collector, Sindhudurg that the Petitioner was involved in the case of misappropriation of funds of one Shri Siddha Gangeshwar Panchakroshi Sahakari Patsanstha Limited, Upale and that since he was involved in the serious case, he may not be appointed as Police Patil. The Petitioner was, therefore, informed by the Respondent No.3 that in view of the complaint by villagers and that he being Complainant in Crime No.03 of 2007, he has not been considered for the post of Police Patil. Upon receiving this intimation, he brought to the notice of Respondent No.3 that most of the complainants/signatories

were neither residents of the said village nor were members of the said society, and that complaint was also signed by the Respondent No.4 and his family members. He tried to persuade that complaint was set up against him by the Respondent No.4 as well as by Respondent No.5 and his relatives. It appears that the Petitioner was orally assured by Respondent No.3 that he would be permitted to appear for the examination and letter to that effect would be issued. It appears the Respondent No.3 took the cognizance of the complaint of the Petitioner and vide communication dated 6.4.2011 informed him that enquiry would be conducted through Special Executive Magistrate and Police Inspector, Vaibhavwadi and that upon receiving the report, he would be informed and necessary steps would be taken.

Be that as it may, Sub-Inspector Mr. Gosavi submitted enquiry report to the Police Inspector Vaibhavwadi on 11.11.2010 and reported;

- (1) That secret enquiry disclosed there was no consensus among the villagers about his (Petitioner) good reputation.

(2) That Petitioner's character and behaviour in the village appears to be good.

He further reported there was no hindrance and/or impediment, in appointing Petitioner and Respondent Nos.4 to 6, as Police Patil.

4 It is the Petitioner's case that in spite of report submitted by the Police Inspector, Vaibhavwadi, the Respondent No.3 continued with the selection process excluding him, which prompted him to approach the MAT wherein he prayed that the entire selection process for the post of Police Patil including the written examination conducted on 3.4.2011 be quashed and the Respondents be directed to initiate process afresh by issuing a fresh proclamation.

On 3.5.2011, the MAT granted interim relief whereby, the Respondents were restrained to take any further steps in furtherance to selection process of Police Patil.

5 The Application was resisted by the State-Respondents as well as by the Respondent Nos.4 to 6. The MAT after perusing the pleadings by order dated 24.1.2013 dismissed the application of the Petitioner which he has assailed before this Court in the present Writ Petition.

6 Heard learned counsel for the Petitioner, the learned AGP for the State and the learned counsel for the contesting Respondents.

7 The learned counsel for the Petitioner would urge;

 That in terms of the provisions of Clause 3(e) of the said Order of 1968, authority under the Police Act is required to form an opinion that the candidate is suitable for employment as Police Patil; which he could form either by conducting summary enquiry or otherwise. The learned counsel would submit that no such enquiry was conducted. He submitted that even if discreet enquiry was conducted, there is substantial variance in the opinion formed by the authority and the factual report.

In support of his contention, he has taken us through communication dated 2.4.2011. Vide this letter, he was informed that in view of the complaint by villagers and his alleged involvement in the case of misappropriation of funds of village co-operative credit society, he could not be appointed as Police Patil.

Admittedly, this communication makes reference to complaint by villagers addressed to the District Collector. We have gone through the complaint dated 7.9.2010 wherein allegations were made against the Petitioner for misappropriating funds of the village co-operative credit society. The learned counsel for the Petitioner, however, pointed out to us that most of the signatories/complainant are neither residing in the said village nor they were members of the said society. He has pointed out that complaint was signed by the relatives of one of the candidates who is Respondent No.4 herein. He pointed out at Serial Numbers 89 to 95 relatives of the Respondent No.4 had signed the complaint. The Respondent-State could not counter these submissions. It is, therefore, evident that this complaint was a got up

complaint at the instance of the Respondent No.4, who was competing with the Petitioner for the said post. Besides, relatives of the Respondent No.5 had also signed the said complaint. In view of this fact, we hold that the communication dated 2.4.2011 which based on the complaint of the villagers was issued by the Respondent No.3 without verifying facts and contents thereof. It further appears from the record and pleadings, it is the Petitioner, who had filed complaint against the office bearers of the co-operative credit society which was registered as Crime No.03/07 for misappropriating funds of the village co-operative credit society. The learned counsel has also brought to our notice a statement of one Baliram Sadashiv Palande wherein he admitted certain amount of the society was lying in his hands and for that, he was responsible. The learned counsel has also brought to our notice private complaint filed by him on behalf of the said society against one Baliram Sadashiv Palande, Suryakant Baliram Palande and Manoj Raghunath Parab under Sections 406, 408, 417, 418, 419 and 420 read with Section 34 of the IPC in the Court of J.M.F.C. Oras, Sindhudurg being Regular Civil Suit

No.70/07. The learned counsel has also pointed out and brought to our notice other proceedings initiated by him as Secretary of the said society.

That after going through the aforesaid documents and the proceedings initiated by the Petitioner on behalf of the society, it is clear that the Petitioner had taken all required steps against the persons who had caused loss to the society and, therefore, communication dated 2.4.2011 holding Petitioner ineligible on account of complaint by the villagers was totally unfounded and required to be quashed and set aside. The learned counsel further pointed out report submitted by Police Sub-Inspector, Mr. Gosavi on 11.11.2010 whereby he opined that reputation and behaviour of the Petitioner and all other Respondents with the villagers was good and as such, no impediment in appointing Petitioner as Police Patil.

We have perused the report dated 11.11.2010, communication dated 2.10.2010 by Police Inspector to Respondent No.3 and such other documents as referred to here-in-above. These documents cumulatively established fact (i) that the Petitioner was not involved in crime or

offence; (ii) he was complainant in Crime No.03/07; (iii) he had taken all the possible steps to recover the loss caused to the society and (iv) villagers carried good opinion about him. That under these circumstances, the Respondent No.3 had committed an error by not permitting the Petitioner to appear for the examination. We, therefore, hold decision of Respondent No.3, elimination of Petitioner from selection process was arbitrary.

8 The learned counsel has rightly pointed out that enquiry under Clause 3(e) of the said order of 1968 contemplates either, authority has to adjudge character of the candidates after summary enquiry or to form opinion before holding unsuitable for employment as Police Patil. Admittedly, in the case in hand, there was no enquiry by the Competent Authority in-as-much as communication date 2.4.2011 was not founded on the enquiry but based on complaint by the villagers as referred here-in-above. In fact situation, we are of the opinion that Respondents authorities failed to hold enquiry as required under the provisions of the aforesaid order of 1968.

9 The learned counsel for the Petitioner further submitted that memorandum issued by the Respondent No.3 for selection of Police Patil contemplates written examination of 40 marks and interview of 10 marks. He would submit written examination of 100 marks was held and it amounts to material change in the conditions of the Notification and as such, entire selection process stands vitiated.

So far as this contention is concerned, we are of the opinion since the Petitioner had not participated or rather was not afforded opportunity to appear for the written examination, it would be academic to deal with this contention raised by the Petitioner.

10 We have perused the order passed by the MAT. It appears the learned Member of the MAT was impressed by the report of the police dated 11.11.2010 and 2.10.2010. We have discussed the report of the police dated 2.10.2010. We have discussed the report of the PSI Mr. Gosavi dated 11.11.2010 submitted by him to the Police

Inspector, Vaibhavwadi on the basis of which inspector attached to Vaibhavwadi Police Station submitted a report to Sub-Divisional Officer, Kankavli on 2.10.2010. This report of 2.10.2010 refers to a fact that the Petitioner Mr. Parab was complainant in Crime No.03/07. It also reports that villagers did not carry good opinion about the Petitioner. So far as opinion on the part of the villagers is concerned , the State could not point out as to on what basis such report was submitted. We have already discussed here-in-above that first communication dated 2.4.2011 by the Respondent No.3 was based on the complaint by the villagers. We have held that the said communication was without any foundation. Equally, the report dated 2.10.2010 on which the MAT relied upon is without any foundation and substance and as such, in our view, finding recorded by the MAT that since villagers were not carrying good opinion about the Petitioner is incorrect. The learned MAT recorded factually incorrect finding that since there were serious allegations against the Petitioner about committing irregularities in the affairs of the society that itself was sufficient to hold him ineligible to the post of

Police Patil. We have already discussed various proceedings adopted by the Petitioner against the persons who had committed irregularities in the affairs of the society. We have concluded that the Petitioner had taken all possible steps in law against said officers of the society. It is he who had filed criminal proceedings against the office bearers/employees of the society. Under these circumstances, in our view, finding recorded by the MAT in paragraph 6 of its order are contrary to the evidence on record.

In the circumstances, the Petitioner has successfully shown and established that his elimination from selection process of Police Patil by the Respondent No.3 was arbitrary, being contrary to the provisions of the said order of 1968 and equally contrary to the facts as borne out from the records and discussed here-in-above. The State could not justify correctness of communication dated 2.4.2011, whereby the Petitioner was not ineligible to appear for examination scheduled on 3.4.2011. That resultantly, the order dated 24.1.2013 is hereby quashed and set aside and the Original Application is allowed in terms of prayer clause

(a) therein.

11 It appears that in terms of the provisions of the said Act and clause 3 of the said order of 1968, no person below 25 years of age or over 45 years of age at the time of appointment shall be eligible for being appointed as Police Patil. The Petitioner as well as contesting Respondent Nos.4 to 6 informed across the bar that all the contesting candidates have crossed age upper limit. In this fact situation, though the Petitioner has succeeded in establishing that decision of Respondent No.3 to exclude the Petitioner from selection process, was arbitrary, there is an impediment for him to apply and to be considered for the post of Police Patil. However, in peculiar facts and circumstances and also the fact that selection process was stayed by MAT by interim order dated 3.5.2011 and the fact that interim relief was continued during the pendency of this petition, the Petitioner and/or the contesting Respondents may make an appropriate representation to the State for relaxing age limit in case, a fresh memorandum is issued by the State for appointing Police Patil in Village: Upale. That if such representation is made,

the State may consider the same as it deems fit and proper. With this direction, the Petition is allowed and the order dated 24.1.2013 passed by the MAT in O.A.No.299 of 2011, is hereby set aside. The Petition is made absolute in aforesaid terms .

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)