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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
WRIT PETITION NO. 449 OF 2017

Atul Ramdas Dabare ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Satyavrat Joshi i/b Mr.Balwant Vittal Salunke for
the Petitioner
Mr.K.V.Saste, APP for the respondent Nos.1 and 2

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 16, 2017

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned counsel for the petitioner and the learned APP for the first and second respondents. The prayer in this petition under Article 226 of the Constitution of India is for quashing the FIR registered for the offences punishable under section 7A, 13(1)(e) read with section 13(2) of the Prevention of Corruption Act,1988 (for short 'the said Act'). The petitioner is a Police Patil appointed under the Maharashtra Village Police Act,1967 (for short "the said Act of 1967"). The challenge in this petition under Article 226 of the Constitution of India is mainly on the ground that the petitioner is not a public servant within a meaning of clause(c) of section 2 of the said Act.

2 The submission of the learned counsel for the petitioner is that considering the order of

appointment of the petitioner and considering the fact that the Police Patil is not entitled to receive any salary, he cannot be a Government Servant within the meaning of the said Act. Relying upon a decision of Full Bench of this Court in the case of Rajeshwar s/o Hiranman Mohurle (in Jail) Vs. State of Maharashtra¹, he submitted that it is held that the Police Patil is not a Police Officer. He submitted that Rule 7 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968 (for short "the said Order") provides for payment of honourium to the Police Patil. Moreover, Clause 7 of the said Order does not provide for payment of remuneration by the State Government or on behalf of the State Government. His submission is that it cannot be said that the Police Patil performs any public duty or is authorised to perform any public duty especially in the light of the fact that he is not a Police Officer. We may also note here that in the petition there are certain grounds taken on merits such as there was never any demand for any amount by the petitioner.

3 The learned APP submitted that the Police Patil is a Public Servant within the meaning of the said Act. He urged that no interference is called for at this stage.

4 We have considered the submissions. As far as the submissions on merits are concerned,

1 Criminal Appeal No.315 of 2003 decided on 10th June 2009

it is a case of trap. The investigation is going on and hence, at this stage, no finding can be recorded on the question whether any offence is made out against the petitioner.

5 The main question is whether the Police Patil appointed under the said Act is a public servant as defined under clause(c) of section 2 of the said Act. Clause(c) of section 2 of the said Act reads thus:

“(c)”public servant” means,-

(I) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(II) any person in the service or pay of a local authority;

(III) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(IV) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(V) any person authorised by a Court of justice to perform any duty, in connection with the administration of justice, including

a liquidator, receiver or commissioner appointed by such Court;

(VI) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of justice or by a competent public authority;

(VII) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(VIII) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(IX) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 z(1 of 1956)

(X) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf

of such Commission or Board;

(XI) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(XII) any person who is an office-bearer or an employee of an educational, scientific, social cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1 – Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 – Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

6 Section 3 of the said Act of 1967 deals with the administrative control and direction of village police. It provides that administration of the village police throughout each district shall be under the control and direction of the State

Government and the Commissioner. The said power is exercisable by the District Magistrate who has a power to delegate to any Sub Divisional Magistrate or Taluka Magistrate including the power to appoint Police Patil under section 5 of the said Act of 1967. Section 5 of the said Act of 1967 is very relevant which reads thus:

"5 (1) The State Government shall appoint one or more Police Patils for a village or group of villages.

(2) The village police in each village shall be under the charge of the Police Patil, and where there are more than one, under the charge of such Police Patil as the State Government may direct.

(3) The recruitment, remuneration and other conditions of service of Police Patils shall be such as may from time to time, be determined by the State Government by general or special order.

(4) The powers of the State Government under sub-sections (1) and (2) may be exercised also by the District Magistrate:

Provided that, the number of Police Patils appointed by the State Government for any village or group of villages shall not be exceeded, without the previous sanction of the State Government."

7 Thus, the appointing authority for the post of Police Patil is the State Government. The State

Government has been empowered to determine the mode of recruitment, remuneration and other conditions of service of the Police Patils by issuing a general or a special order. Sub-section 4 of section 5 provides that power of the State Government to appoint Police Patils can be exercised by the District Magistrate. Sections 6 to 8 are relevant which deal with the duties and powers of the Police Patils which read thus:

"6 Subject to orders of the District Magistrate, the Police Patil shall-

(i) act under the orders of any Executive Magistrate within whose local jurisdiction his village is situated;

(ii) furnish such returns and information as may be called for by such Executive Magistrate;

(iii) constantly keep such Executive Magistrate informed as to state of crime and all matters connected with the village police and the health and general condition of the community in his village;

(iv) afford every assistance in his power to all Police Officers when called upon by them in the performance of their duty;

(v) promptly obey and execute all orders and warrants issued to him by a Magistrate or Police Officer;

(vi) collect and communicate to the Station Officer intelligence affecting the public peace;

(vii) prevent within the limits of his village the commission of offences and public nuisances and detect and bring offenders therein to justice;

(viii) perform such other duties as are specified under other provisions of this Act, and as the State Government may, from time to time, by general or special order specify in this behalf.

7 The Police Patil shall have authority to require all village servants in whatever capacity ordinarily employed, to aid him in performing the duties entrusted to him; and it shall be the duty of the Talathi of the village to frame all written returns and proceedings for the Police Patil.

8 The Police Patil shall dispose of the village establishment so as to afford the utmost possible security against robbery, breach of the peace and acts injurious to the public and to the village community, and shall report to the Executive Magistrate all instances of misconduct or neglect committed by any member of the said establishment."

(underlines supplied)

8 On plain reading of the sections 6 and 7, it is apparent that a person who is appointed as a Police Patil, by virtue of holding the office of the Police Patil is authorised to perform various public duties as specified in section 6. Moreover, it is his obligation to perform duties which are in the nature

of public duties provided in section 6. Section 9 deals with the imposition of penalty on a Police Patil who is guilty of negligence in discharge of his duty or is guilty of any misconduct. The authorities which can impose penalties as specified in section 9 are the Executive Magistrates and the Sub Divisional Magistrates.

9 Section 12 provides that if a crime has been committed within the limits of any village and the perpetrator thereof has escaped or is not known, the Police Patil is under an obligation to immediately forward information to the Station Officer and he himself is under an obligation to proceed to investigate the matter by obtaining procurable evidence. Even sub-section 1 of section 13 imposes a duty on a Police Patil when there is an unnatural sudden death within any village or when a dead body is found in the village. In such a case, the Police Patil is required to investigate the cause of death after calling for two or more intelligent persons belonging to the village. Sections 12 and 13 show that a limited power is conferred on the Police Patil to investigate. Section 14 confers power on the Police Patil to apprehend a person within the limits of the village who he may have reason to believe has committed any serious offence.

10 Considering the nature of the duties assigned to the Police Patil under the said Act of 1967, surely, sub-clause (VIII) of clause(c) of section 2 of the said Act is squarely attracted as the Police

Patil is required or is authorised to perform several public duties by virtue of his office.

11 The State Government has exercised the power under sub-section 3 of section 5 of the said Act by issuing the said Order. Sub clause(c) of clause 2 of the said Order defines Competent Authority to mean the State Government or the District Magistrate or any Officer who is competent to make appointment of Police Patil. Clause 5 of the said Order provides for the procedure to be followed for selection of Police Patil. The Competent Authority is conferred with the power to make appointment of a Police Patil. Clause 7 provides for remuneration payable to the Police Patil. It is obvious that considering the provisions of the said Act of 1967, the remuneration is payable by the State Government. Clause 12 of the said Order provides that the State Government may by an Order make applicable to Police Patils, Civil Services Rules applicable to the State Government employees which are not inconsistent with the said Act of 1967. Thus, in our view, a Police Patil will also fall in sub-clause (I) of sub clause(c) of section 2 of the said Act.

12 The decision in the case of Rajeshwar s/o Hiranman Mohurle (supra) only holds that a Police Patil under the said Act is not a Police Officer for the purpose of section 25 of the Indian Evidence Act, 1872. The issue whether a Police Patil is a public servant is not at all dealt with in the said decision. We, therefore, hold that the Police Patil

is a public servant within the meaning of the said Act.

13 As regards the submissions on merits are concerned, the same cannot be gone into at this stage when investigation is in progress. However, the said contentions will remain open to the petitioner which can be agitated at appropriate stage before the appropriate Court.

14 Subject to what is observed above, writ petition is rejected.

(ANUJA PRABHUDESSAI,J.)

(A.S.OKA,J.)