

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.509 OF 2012

Rahul s/o Bhimrao Dehade,
Age-30 years, Occu:Nil- Unemployed,
R/o-Kolambi (Manjra), Tq-Kannad,
Dist-Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary, Rural
Department, Mantralaya, Mumbai,
- 2) The Chief Executive Officer,
Zilla Parishad, Aurangabad,
- 3) The Gramsevak,
Grampanchayat, Kolambi(Manjra),
Tq-Kannad, Dist-Aurangabad,
- 4) The Project Manager,
Maha Online Limited,
10th Floor, Godrej Colisium,
Somayya Hospital Road,
Sion(E), Mumbai-22,
- 5) Shri Bhimrao Tukaram Davange,
Age-Major, Occu:Computer Operator,
R/o-Shafipur, Tq-Kannad,
Dist-Aurangabad.

...RESPONDENTS

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Mr.A.D. Sugdare Advocate for Petitioner.
Mrs.V.A. Chaudhari, A.G.P. for Respondent No.1.
Mr.V.C. Patil Advocate h/f. Mr. U.B. Bondar
Advocate for Respondent Nos. 2 and 3.
Mr. M.I. Ahmed Advocate and Mr. Sayyed
Sharifoddin Advocate for Respondent
No.4 (**Absent**).
None present for Respondent No.5 though served.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING ORDER : 27TH FEBRUARY, 2018

DATE OF PRONOUNCING ORDER: 9TH MARCH, 2018

ORDER [PER S.S. SHINDE, J.]:

1. This Petition under Article 226 of the Constitution of India, is filed with following substantive prayers:

"B. By issuing writ of mandamus or any other writ in like nature or order or directions the appointment order dated 15-11-2011 issued in favour of Respondent No.5 be quashed and set aside.

C. By issuing writ of mandamus or any other

writ the necessary enquiry be directed against the respondent No.3 and 4 in the interest of justice.

D. By issuing writ of mandamus or any other writ in like nature the respondent No.3 and 4 be directed to consider name of the Petitioner for appointment on the post of computer operator in the office of the Grampanchayat Kolambi (Manjra)"

2. It is the case of the Petitioner that he passed Higher Secondary School Examination in the year 2003, thereafter he has completed B.A. Degree from Dr. Babasaheb Ambedkar University, Aurangabad. The Petitioner has completed computer course in MSCIT and obtained A Grade Certificate approved by the Government. The Petitioner has also completed Diploma course in Agriculture. It is submitted that the Government and Tata Consultancy Services launched Maha Online portal to be a one-stop-shop with end-to-end online processing and delivery of any citizen, authorities at State, District, Taluka level head

quarters. This Maha-online will help the Government administration for the digitization process of Government files and enhance decision making and the citizen will have easy access to the information. It is submitted that the Government and Tata Consultancy Services with joint venture, established Maha-online, the Government company implementing e-governance at Panchayat level. For that purpose the Government decided to recruit Computer Operators in Gram Panchayat. The E-Panchayat project aims to increase efficiency at Gram Panchayat level and is being implemented by the State Government from 30th April, 2011. The recruitment were to be done under supervision of Block Development Officer. It is alleged that the coordinator did not adhere to the conditions laid down for recruitment of this post, particular condition that the candidate should be of the same village and have knowledge of computer.

3. It is the further case of the Petitioner that under the title and name of 'National Institute of Study Center', information was published for appointment of computer operator on contract basis through NISC. In each Gram Panchaygat for that application were invited and last date of receiving such application was 25th October, 2011. It was mentioned in the said concerned form that the said information shall be read in the meeting of Gram Panchayat. It is submitted that no such meeting was held by the Gram Panchayat, Kolambi at any point of time and therefore, this information was not made known in the village with mala fide intention. One of the clause in the application is that candidate to be selected must be from the same village. Respondent No.5 is appointed as a computer operator in Gram Panchayat Kolambi, who is resident of village Shafipur, Tq-Kannad. It is the case of the Petitioner that Respondent Nos.3 and 4 have acted arbitrarily with mala fide intention and gave

appointment to Respondent No.5. Hence this Petition.

4. Learned counsel appearing for the Petitioner submits that Central Government and State Government has introduced a scheme namely Bharat Nirman and in the said Scheme, E-Governance Scheme is also introduced by which all the Gram Panchayat in the State are to be linked on-line with the computers. He further submits that as per the provisions of the said scheme computer operators were to be appointed from each village and one of the condition for such appointment was that the candidate so selected, must be from the same village. In contravention of the provisions of the said scheme, Respondent Nos.3 and 4, in collusion with each other, appointed Respondent No.5 - Bhimrao Tukaram Davange as a computer operator in the village Kolambi, who is resident of different village i.e. village Shafipur. The fact that post of computer operator was to be

filled in, from amongst the candidates residing in village Kolambi, was not made known to the residents of village Kolambi and therefore the Petitioner could not apply for the said post. It is submitted that being local residence, preference was required to be given to the Petitioner while giving appointment as computer operator. Hence it is prayed that the Petition may be allowed.

5. Learned counsel appearing for Respondent Nos.2 and 3, referring to the affidavit in reply submits that after 73rd amendment in the Constitution of India, Article 243 gives power to the Central and State Government to implement the development scheme under Panchayat Raj. It is submitted that Central Government and State Government introduced E-Governance Scheme, under which all the Gram Panchayat in the State are to be linked on-line with the computers. As such the State Government also issued certain

directions for implementation of the said scheme at Zilla Parishad, Panchayat Samiti and Gram Panchayat level, from the year 2010. It is submitted that Government of Maharashtra issued several Government Resolutions prescribing guidelines for implementing the said scheme. It is also made clear in the Government Resolutions that, said project will be operated through Respondent No.4 - Maha On-line, which is a company working under the State Government. It is further submitted that in Government Resolution issued on 30th April, 2011, wherein it is prescribed that as Maha On-line Company is providing qualified staff for implementation of the said scheme, therefore local authorities may not appoint any employee on their own and concerned staff will be made available by said Maha On-line Company, on contract basis.

6. Learned counsel further submits that under the said scheme, computer operators are to

be appointed for implementing the said scheme at Gram Panchayat level. It is submitted that all the appointments which are to be made under the E-Governance Scheme are to be made by Respondent No.4. The said company has to provide required staff to implement the said scheme at Zilla Parishad, Panchayat Samiti and Gram Panchayat level. It is submitted that so far as the appointments are concerned, Respondent Nos.2 and 3 have no interference in the same. It is submitted that in the concerned Government Resolution, it has been made clear that all the appointments made by Respondent No.4 are to be made on contract basis and the employees who are appointed by Respondent No.4 Maha On-line Company will not claim any benefit of regular employees in future also and these appointments are purely on temporary and contract basis. It is submitted that Respondent No.4 issued letter to Respondent No.5 and asked Respondent No.3 Gram Sevak of village Kolambi to allow him to join as computer operator.

Hence it is prayed that the Writ Petition may be rejected.

7. Respondent No.4 though represented by two Advocates, at the time of hearing of this Petition, neither Respondent No.4 was present nor the counsel was present. Even no reply is filed on behalf of Respondent No.4. Though notice was duly served on Respondent No.5, he chosen to remain absent at the time of hearing.

8. We have heard learned counsel appearing for the Petitioner and learned counsel appearing for Respondent Nos.2 and 3. With their able assistance we have perused the averments in the Petition, annexures thereto and the affidavit in reply filed on behalf of Respondent Nos.2 and 3 and annexures thereto, and the various Government Resolutions, copies of which are placed on record.

9. From the perusal of the documents placed

on record, it is clear that Central Government as well as State Government has introduced "Bharat Nirman" Scheme and under the said scheme, E-Governance Scheme is also introduced with the aim and object that all the Gram Panchayats in the State of Maharashtra are to be linked on-line with the help of computers. The work to appoint staff for effective implementation of the said scheme is entrusted with Respondent No.4 - Maha On-line Company. The grievance raised by the Petitioner, in this Petition is in respect of appointment of Computer Operator.

10. Learned counsel appearing for the Petitioner invites our attention to the form published by National Institute Study Center, prescribing the conditions for appointment of Computer Operator. The qualification for appointment on the post of Computer Operator, prescribed in the said form is as under:

"उमेदवाराची पात्रता

- १) उमेदवार किमान HSC उत्तीर्ण असावा.
- २) उमेदवाराने संगणक प्रशिक्षित असावा. उदा. MS-CIT
- ३) उमेदवार त्याच गावातील रहिवाशी असावा.
- ४) उमेदवाराने आपल्या शिक्षणाच्या प्रमाणपत्रांची पूर्तता करावी."

11. Thus, one of the conditions i.e. condition No.4, stipulated in the form issued by National Institute Study Center, for appointment of Computer Operator in the village is that the candidate applying for the post of Computer Operator, must be the resident of said village only. Learned counsel further invites our attention to the communication dated 15th November, 2011 issued by Project Registrar, Maha On-line Company to the Gram Sevak, Gram Panchayat, Kolambi, Tq-Kannad, Dist-Aurangabad stating therein that the said company has appointed Respondent No.5 as computer operator on contract basis for Kolambi Grampanchayat and therefore Respondent No.5 be permitted to join his duties.

From the documents placed on record, it is clear that Respondent No.5 is a resident of village Shafipur and still he has been appointed as computer operator for village Kolambi (Manjra). Therefore, his appointment deserves to be cancelled.

12. The prayer of the Petitioner to appoint him as computer operator for village Kolambi cannot be acceded to, because without following the due process for appointment of computer operator, the appointment cannot be given to the Petitioner.

13. In the peculiar facts and circumstances, we quash and set aside the impugned appointment order dated 15th November, 2011 issued in favour of Respondent No.5 thereby appointing him as Computer Operator for Gram Panchayat Kolambi (Manjra), Tq-Kannad, Dist-Aurangabad. We further direct Respondent Nos.2 to 4, to issue fresh

advertisement for filling up the post of computer operator for Gram Panchayat Kolambi (Manjra), Tq-Kannad, Dist-Aurangabad inviting applications from eligible candidates including who are residents of village Kolambi (Manjara), as expeditiously as possible, however within FOUR WEEKS from today. After issuance of such advertisement, it will be open for the Petitioner to participate in the said recruitment process for the post of Computer Operator. We further direct Respondent Nos.2 to 4 to complete all the recruitment process, within further FOUR weeks from the date of issuance of fresh advertisement.

14. With the above observations and directions, the Writ Petition stands disposed of.

[S.M. GAVHANE, J.]

asb/MAR18

[S.S. SHINDE, J.]