



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3320 OF 2024

Balaji Ganpati Maske

.. Petitioner

versus

The State of Maharashtra & others

.. Respondents

Mr. S. G. Karlekar, Advocate for the Petitioner.
Mr. P. K. Lakhotiya, AGP for Respondent Nos. 1 to 4.
Mr. B. L. Sagar Killarika, Advocate for Respondent No. 6.
Mr. Alok Sharma, Advocate for Respondent No. 7.
Mr. A. B. Kadethankar, Advocate for Respondent No. 8.

**CORAM : RAVINDRA V. GHUGE
AND
R. M. JOSHI, JJ.**

RESERVED ON : 08th APRIL, 2024
PRONOUNCED ON : 12th APRIL, 2024

PER COURT : (Per Ravindra V. Ghuge, J.)

1. The Petitioner has approached this Court to challenge the order dated 26.02.2024, vide which, the transfer order dated 02.02.2024, issued to Respondent No. 6, has been stayed by the Under Secretary and he is permitted to continue as the Chief Officer, Ausa Municipal Council, despite he being entrusted with the Parliamentary Election duties. The Petitioner has put forth the following prayers :-

B) By issuing writ of mandamus and/or any other appropriate writ in like nature thereby hold and declare that the impugned communication/order dated 26.02.2024 issued by the State Government thereby staying the transfer order of Respondent No. 6 -Mr. Ajinkya Randive is illegal, arbitrary and bad in law and liable to be quashed and set aside and for that purpose issued necessary order.

C) By issuing Writ of mandamus and/or any other appropriate writ in the like nature, order or direction under Article 226 of the Constitution of India direct Respondent nos. 1 to 4 to immediately implement the transfer order dated 02.02.2024 issued by State Government and thereby direct Respondent No. 6 - Mr. Ajinkya Randive to join at place of transfer i.e. to Himayatnagar Nagarpanchayat in Nanded District and for that purpose issue necessary orders;

D) Hold and declare that, the impugned letter/order dated 30/01/2024 issued by Respondent No. 4-S.D.O. Ausa-Renapur appointing Respondent No. 6 – Mr. Ajinkya Randive as a nodal officer for ensuing Parliamentary Election is illegal, arbitrary and bad in law so also contrary to order dated 31.07.2018 (Exh-A) & 21.12.2023 (Exh-B) of Election Commission of India and for that purpose issue necessary orders.

2. We have heard the learned Advocates for both the sides, extensively on 03.04.2024 and 04.04.2024 and have gone through the petition paper-book with their assistance.

SUBMISSIONS OF THE PETITIONER

3. The Petitioner contends that he is interested in contesting the Parliamentary elections from Dharashiv Lok Sabha constituency. His name appears on the electoral rolls of the said constituency. The Petitioner has tendered details in respect of Writ Petition No. 10938/2022, filed by him in this Court. It is further contended that even in the previous elections in connection with the Local Authorities, Respondent No. 6 was assigned election work by retaining him as the Chief Officer at Ausa and though his place of work is in his home district, he was not transferred. It is an admitted position that he is working in Ausa for the last 8 years. This Court (Coram: Nitin W Sambre and S G Chapalgaonkar, JJ), considered his Writ Petition and passed an order expressing serious displeasure regarding the manner in which the orders were passed by the Collector. It was observed in the order as under :-

“1. Heard Mr. Deshmukh, learned senior counsel appearing for the petitioner, who has invited our attention to the directions/orders issued by the

respondent-State Election Commission on 28th February, 2022. According to him, an officer, who has completed the tenure of three years on an existing post or four years in the district is not suppose to be given the assignment in relation to the election of the Local Bodies. He would invite our attention to the order of the Tahsildar, Ausa delivered on December 8, 2022, wherein respondent no. 6, who is working as Chief Officer of the Municipal Council, Ausa and is assigned a duty of Controlling Officer/Area Officer in the matter of election of the sixty gram Panchayats in the Ausa Taluka.

2. In response to the aforesaid, though the learned in-charge Government Pleader has pointed out that the appropriate steps shall be taken in the matter of complying with the aforesaid directions of the State Election Commission pursuant to the communication dated September 16, 2022 issued by the State Election Commission, we are shocked noticing that the assignment given to the said officer vide communication dated December 8, 2022 referred supra.

3. The aforesaid direction of the Tahasildar dated December 8, 2022 goes contrary to the directions dated 28th February, 2022 issued by the State Election Commission particularly Clause 8.1(iii), page no. 45.

4. *In view of the aforesaid, Mr. kale, learned in-charge Government Pleader in response to the Court's query submits that an affidavit sworn by the Collector, Latur shall be placed on record, in any case by 15th March, 2023.*

5. *Leave to place on record an additional affidavit is granted.*

6. *Stand over to 16th March, 2023.*

The Collector had filed an affidavit-in-reply before this Court tendering an apology for assigning election duty to the very same officer for the said Gram Panchayat election inspite of making statement about not allotting any such work.

4. The Petitioner before us submits that Respondent No. 6 hails from the area which is covered by the Parliamentary Constituency of Dharashiv (erstwhile Osmanabad) and inspite of being allotted work directly in connection with the ensuing Elections, he has been retained in Ausa as the Chief Officer. A grievance is also put forth that, when he was transferred in due consultation with the Election Officer vide order dated 02.02.2024, the Under Secretary, Mantralaya, without any authorisation and admittedly without any

consultation with the Election Commission, has stayed the said order on 26.02.2024. It is conceded before us by the learned AGP, on instructions, that the Chief Election Officer has not been consulted when the impugned order staying the transfer, was passed.

5. The Petitioner relies upon the instructions issued by the Election Commission of India, which mandate that no officer connected directly with the election shall be allowed to continue in the present district (revenue district), if it is his home district or if he has completed three years in the said district during the last four years or would be completing three years on or before 30th June, 2024.

6. The learned Advocate for the Petitioner contends that the transfer order had been passed strictly in accordance with the mandate of the Election Authorities. However, the manner in which the order cancelling the work of election assigned to Respondent no.6 has been passed, the documents placed on record explicitly create grave suspicion and doubt about the conduct of the Respondent-State Authority. It is claimed that even otherwise, without consultation with the Election Commission of India, no order could

have been passed by the concerned authority for staying the transfer order. It is further argued that a record is sought to be created to indicate to the Court that, the earlier work as a Nodal Officer allotted to Respondent No. 6, was cancelled by order dated 09.01.2024. He, however, submits that the final order dated 27.03.2024 indicates even today, that he is directly connected with the election work and the same has not been cancelled till date.

SUBMISSIONS OF THE ASSISTANT GOVERNMENT PLEADER

7. The learned AGP contends that the order dated 27.03.2024 does not pertain to the election work. These are some directions to Respondent No.6, only in his capacity as Chief Officer of Ausa Municipal Council and that the said letter issued to him does not make out any other meaning. He has strenuously tried to justify various orders passed in the present case, to oppose the Petition and prayed that this Petition be dismissed with costs.

SUBMISSIONS OF THE ELECTION AUTHORITIES

8. The learned advocates Shri Alok Sharma and Shri A B Kadethankar, have submitted that Respondent No.6 was included in

the list of officers to be transferred, since he was appointed as a Nodal Officer for the ensuing Lok Sabha elections. These authorities were not consulted by the Under Secretary who has passed the impugned order staying the transfer order, and it was not on the advice of Respondent Nos.7 and 8, that the transfer of Respondent No.6 has been stayed.

SUBMISSIONS BY RESPONDENT NO. 6

9. The learned Advocate for Respondent No. 6 has raised dual objections with regard to the maintainability of this Petition on the ground of locus standi and the availability of a purported alternate statutory remedy. It is contended that the Petitioner is not a voter from Dharashiv Parliamentary Constituency and his name is registered at Killari. This was immediately responded to by the learned Advocate for the Petitioner by stating that as far as Dharashiv Constituency is concerned, the Petitioner would be contesting from the said constituency and his name is found in the electoral rolls.

10. Respondent No. 6 further contends that the statutory remedy available to the Petitioner is to approach the

Maharashtra Administrative Tribunal, in view of Section 3(a) of the Administrative Tribunals Act. The Petitioner can not approach the High Court to challenge the impugned order of stay to the transfer of Respondent No. 6.

11. He further submits that Respondent no.6 has not been entrusted with election duties. Though he was issued with the order dated 12.12.2023 appointing him as a Nodal Officer, the said order has been cancelled by order dated 09.01.2024. As on date, he is not entrusted with any election responsibility. The Writ Petition is misconceived and deserves to be dismissed with costs.

ANALYSIS OF THE SUBMISSIONS OF THE PARTIES AND

OUR CONCLUSIONS

LOCUS-STANDI

12. With regard to the locus-standi of the Petitioner, it is well settled that an aggrieved person can approach this Court by filing a Writ Petition. A Writ of Mandamus would reach out to a person who is remediless as regards statutory authorities under the State, covered by Article 12. Nevertheless, this cannot be a thumb rule and each case has to be considered on its own facts, pleadings and

circumstances. The Petitioner had earlier approached this Court in Writ Petition No. 10938/2022. The order passed by this Court has been reproduced hereinabove in paragraph no.3.

13. The learned AGP and Respondent no.6 contend that the Petitioner has no cause of action for filing this Petition. In somewhat similar circumstances, we have recently dealt with Writ Petition No. 2662/2024, Naser Nahdi Mohammed Yahya Nahdi vs. The Chief Election Commissioner and others, wherein the Petitioner had approached this Court stating that he was intending to contest the Lok Sabha elections from the Chhatrapati Sambhajnagar constituency. We dismissed the Petition vide order dated 11.03.2024, on the ground that, (a) the concerned officer of the Municipal Corporation was never entrusted with the election duties, even remotely and (b) the Election Commission took a clear stand before us that no election duties were allotted to him so as to mandate his transfer.

STATUTORY REMEDY

14. With regard to the statutory remedy of approaching the Tribunal, the learned AGP and Respondent no.6 contend that the

Petitioner should be directed to approach the learned Maharashtra Administrative Tribunal. It is undisputed that the Petitioner is not in Government service. He is before this Court as a citizen to point out that he is interested in contesting the Lok Sabha elections from the Dharashiv Constituency and that, Respondent No. 6 is entrusted with election duties and yet, is retained in Ausa, where he has been working for the last 8 years. He has pointed out that this would be contrary to the directions of the Election Commission and Respondent No.6 cannot be continued in Ausa.

15. In this regard, we would refer to a judgment dated 03.04.2024 delivered by this Court in Chetansingh Kalyansingh Rajput vs. The State of Maharashtra & others, Writ Petition No. 3236/2024, wherein we have concurred with the view of the Tribunal and considering the relevant provisions of the Administrative Tribunal Act, 1985, and considering the definition of 'service matters' under Section 3(q) r/w Section 15 of the Act, we ruled that the definition of an 'aggrieved person' as mentioned in Section 19, cannot be expanded. Hence, we agreed with the view taken by the Tribunal that the proceedings before the Tribunal were untenable. The Petitioner claims to be interested in contesting election from

Dharashiv Parliamentary Constituency. Thus, he cannot be said to be unconcerned with the issue raised in the Petition, though he would not be an aggrieved person in order to relegate him to the jurisdiction of the Tribunal, in view of **Chetansingh Kalyansingh Rajput (supra)**.

16. In these peculiar facts and circumstances, the Petitioner cannot be rendered remediless. We, therefore, do not find any merit in the objections raised by Respondent No.6 regarding the maintainability of the Petition.

MERITS OF THE PETITION

A] IMPUGNED ORDER STAYING THE TRANSFER ORDER

17. The record indicates that Respondent No. 6 is working as Chief Officer, Ausa Municipal Council, since 13.08.2016. On 12.12.2023, an order was passed and he was allotted election duties by appointing him as a Nodal Officer. Since he was allotted election related work, his name was included in the list of officers to be transferred out of Dharashiv (Osmanabad) district, under the instructions of the Election Commission. This transfer order dated

02.02.2024, as per its contents, reveals that it was passed after due consultation with the Election Commission.

18. However, on 26.02.2024, an order was passed by the Under Secretary, Government of Maharashtra staying the transfer order dated 02.02.2024, without there being any mention as regards consultation with the Election Commission. The learned AGP has stated on instructions that he cannot point out from any document or noting, that the Election authority was consulted. He is also unable to state on the basis of the record and instructions, as to whether the Under Secretary was empowered to stay the transfer order. This sole factual aspect is enough for us to conclude that the impugned order dated 26.02.2024, is without jurisdiction and is non-est.

19. There cannot be any dispute with regard to the fact that Solapur is the home district of Respondent No. 6 and that Tq. Barshi from Solapur District and AUSA i.e. place of work of Respondent No. 6, both form a part of the Parliamentary Constituency of Dharashiv. Though it is sought to be canvassed on behalf of Respondent No. 6 that the Parliamentary Constituency of Madha, District Solapur would be the constituency relevant for Respondent No. 6, we find

that, Tq. Barshi from Solapur District forms a part of Dharashiv Constituency.

20. In this regard, it would be apposite to take note of the directives issued by the Election Commission of India which are reproduced as under :-

2. The Commission has been following a consistent policy that officers directly connected with conduct of elections in an election going State/UT are not posted in their home districts or places where they have served for considerably long period.

3. Hence, the Commission has decided that no officer connected directly with elections shall be allowed to continue in the present district (revenue district) of posting :

(i) if she/he is posted in her/his home district.

(ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 30th June, 2024.

While calculating the period of three years, promotion to a post within the district is to be counted.

21. What is relevant for the purpose of the application of this policy is that the person connected with the election duties, is not posted in the home district. It is insignificant as to whether he works

at a district place or any area as like a taluka in the said district. Once admittedly taluka Barshi comes within the Parliamentary Constituency of Dharashiv, we do not find any reason for not applying the said policy laid down by the Election Commission of India, to the present case. Moreover, even if this aspect is assumed to be ignored, Respondent no.6 has been working in AUSA since 2016. Having completed more than 3 years at that place, he cannot be retained if election duties are entrusted to him. Such directives of the Election Commission cannot be ignored.

B] ELECTION DUTY

22. The significant question is as to whether any election work has been allotted to Respondent No. 6. The material placed on record clearly indicates that, by order dated 12.12.2023, he was allotted the work of Parliamentary election. Thereafter, another order is issued on 07.01.2024, whereby Respondent No. 6 is indicated as a Nodal Officer with relation to the elections. However, subsequently, by order dated 09.01.2024 (**without an outward Number**), the previous orders dated 12.12.2023 and 07.01.2024 were cancelled. By order dated 02.02.2024, along with other officers, with the approval of the competent authority, Respondent No. 6 was transferred from AUSA to

Himayatnagar, Nanded. By order dated 26.02.2024, the Under Secretary, stayed the transfer order of Respondent No. 6.

23. In the meanwhile, by order dated 05.02.2024, orders dated 12.12.2023, 07.01.2024 and 30.01.2024 were revoked. The order dated 09.01.2024 placed before us is without an outward Number, appointing another officer to perform the election work in place of Respondent No. 6. One more order dated 27.03.2024 (**without an outward Number**), reiterates that election work has been assigned to Respondent No. 6.

24. All these documents/orders placed on record, intrigue us. More particularly, the order passed on 05.02.2024, indicates revocation of the order dated 12.12.2023, but, there is no order indicating cancellation of the order dated 27.03.2024, whereby the appointment of Respondent No. 6 as a Nodal Officer is explicit. In fact, the said order indicates that the officers who have been entrusted with election duties, should not falter, or else, strict action would be initiated u/s 134 of the Representation of the People, Act.

25. Section 134 reads as under :-

134. Breaches of official duty in connection with elections.—

(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(1A) An offence punishable under sub-section (1) shall be cognizable.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the district election officers, returning officers, assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

26. The learned AGP, on instructions from the concerned District Collector, through S.D.O., has tried to argue that the order dated 27.03.2024 does not pertain to the election work and that Respondent No. 6 was amongst those persons i.e. head of the departments, who were only asked to serve communications on concerned employees in their respective departments. We are,

however, unable to accept his said submission which is, not only abstruse, but a strange attempt to contend diagonally opposite to the contents of the said order. The order dated 27.03.2024 clearly shows that Respondent No.6 along with others has been appointed as a Nodal Officer. The said communication also mentions that non-compliance of directions would attract action under Section 134 of the Representation of People Act, 1951. The said order is in force even today. This clearly shows that, as on date, election work has been assigned to Respondent No. 6.

27. It is, thus, clear that unless the work related to the election is assigned, no person can be subjected to action under Section 134 of the Act. We cannot turn a blind eye to the unusual and legally unacceptable conduct of higher officers of the State, to ensure that Respondent No. 6 is not transferred. Even earlier, an issue with regard to Respondent no.6 was before this Court. In this regard, reference can be made to the order passed by a Co-ordinate Bench in Writ Petition No. 10983/2022, which records as, *“we are shocked noticing that the assignment given to the said officer vide communication dated 08.12.2022 when a specific statement was made that no such election related work would be allotted to him”*.

28. Even in the present case, the documents sought to be relied upon by the Respondent-authorities show that orders without outward numbers are placed on record. We have perused the outward registers related to election for period from 29.09.2021 onwards. In one register, entries are taken from 29.09.2021 till 01.01.2024. Without recording any reason, when half of this register is unused blank pages, a new register is opened from 01.01.2024, purportedly for the elections. Even in this register, there are several typed notes in respect of the weekly summary, that have been pasted on various pages. Perusal of the previous register shows that it was never a practice to paste the summary. The weekly summary used to be written by the person who used to maintain the said record. We, therefore, feel that the contention of the learned Advocate for the Petitioner that, a doubtful record has been placed before this Court, could be true. We, however, refrain from making any further observations in this regard.

29. Be that as it may, *prima facie*, there is enough material before us to indicate that Respondent No. 6 has been allotted election related work and that the Parliamentary Constituency in which he is

presently posted, is his home district and he has been working there since 2016. Consequently, he cannot be retained in AUSA. So also, the manner in which the authorities of the State Government have acted and orders have been passed, especially the impugned order of staying the order of transfer of Respondent No. 6, to ensure that Respondent No. 6 is not transferred, less said the better. The fact that the State is unable to indicate that the Under Secretary was empowered to stay the transfer order, renders the impugned order unsustainable.

30. We believe that holding free and fair elections is the backbone of a democratic setup of a Country. The conduct and action of State authorities, not only needs to be beyond any shadow of doubt, it must also appear to be unquestionable. Any act or action which would give a reason to any stakeholder or a citizen to lose faith in the purity of the election process, needs to be corrected forthwith.

31. In view of the above, **this Writ Petition is partly allowed**. The impugned order dated 26th February, 2024, staying the transfer of Respondent No. 6, is held to be illegal and without authority/jurisdiction and stands quashed and set aside. We further

direct the Election Commission of India to take a call on the aforestated facts and to issue appropriate directions to the Chief Secretary of the State of Maharashtra to initiate appropriate steps to inquire into the passing of the impugned order, by following the due procedure laid down in law.

32. No order as to costs.

33. A compliance report shall be placed before the Court, by the Chief Secretary, State of Maharashtra, within 90 days from today.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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