(2007) 04 MP CK 0056

In the Madhya Pradesh High Court

Narain Lal — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 3 MPHT 128 : (2007) 2 MPLJ 467

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.

Challenging the order dated 4-3-03 Annexure P-1 passed by the Board of Revenue and the order Annexure P-2, dated 28-11-2004 passed by Additional Commissioner Chambal Division, Morena with regard to appointment of Patel of Village Har Gangoli, petitioner has filed this petition.

When a post of Patel in Village Har Gangoli, District Morena fell vacant in the year 1996, the Collector granted permission on 13-8-96 to fill up the post, accordingly, in pursuance to the order passed by the Collector, Sub Divisional Officer Jaura, the Competent Authority initiated proceeding for appointment of Patel. On the basis of proclamation issued, five persons namely Ajmer Singh respondent No. 5, Ramswaroop respondent No. 6, Narain Lal petitioner, Devilal and one Dhaniram submitted their applications, as Ramswaroop, Devilal and Dhaniram failed to appear in spite of notice their applications were not considered. Application of petitioner Narain Lal and respondent No. 5 Azmer Singh was sent to the Tehsildar for enquiry and submission of his report by 20th December, 1999. From the records it is seen that Tehsildar submitted the report only on 27-11-01 and pointed out that in the election held in accordance with rules respondent No. 5 Azmer Singh has received more votes. However after this report was received on 27-11-01 petitioner submitted an objection on 6-12-01 and pointed out that on 26-6-2000 by a registered sale deed respondent Azmer Singh has sold all his property situated in the village and as he is no more a recorded Bhoomiswami of any land in the village, he is not eligible to be appointed as Patel. Enquiry was conducted into the matter and finding respondents Azmer Singh is to have sold his entire land and finding him not to be a Bhoomiswami. Vide order dated 21-1-02, Sub Divisional Officer appointed the petitioner Narain Lal as Patel of the village. Being aggrieved by this order of appointment Annexure P-4 appeal was filed before the Additional Collector, Morena by respondent No. 5 Azmer Singh. Appellate Authority found that the order of appointment passed by Sub Divisional Officer is in accordance with the statutory provision and dismissed the appeal, on further appeal being filed u/s 44 of the M.P. Land Revenue Code to the Additional Commissioner, Additional Commissioner has held that on the date of submission of the application as Azmer Singh was a Bhoomiswami the subsequent sale of land by him is of no consequence and by relying upon a judgment of the Board of Revenue in the case of Dhansram v. Mayaram and Ors. 1975 RN 449, held that Azmer Singh is eligible to be appointed as Patel as he has acquired more votes than the petitioner. Accordingly appointment of petitioner made by the Sub Divisional Officer and affirmed by the Additional Collector was quashed and respondent No. 5 Azmer Singh was directed to be appointed as Patel. Being aggrieved by this order dated 28-11-02 Annexure P-2 passed by the Additional Commissioner further revision filed before the Board of Revenue which having been dismissed, petitioner has filed the present petition before this Court.

Shri M.P. Bhatnagar, learned Counsel for the petitioner inviting my attention to the provision of Section 222 of the M.P. Land Revenue Code and Rules relating to appointment of Patel as notified by State Government submitted that it is only a person recorded as Bhoomiswami who is eligible to be appointed as Patel and as respondent No. 5 Azmer Singh was not a Bhoomiswami, the Additional Commissioner and Board of Revenue have committed error in the matter and accordingly he seeks for interference.

Shri R.S. Sharma representing respondent No. 5 Azmer Singh submits that against the order of appointment passed the present writ petition is not maintainable. The Board of Revenue having exercised jurisdiction in accordance with law. It is submitted that a petition under Article 226 now is not maintainable in the matter of appointment of Patel. Shri R.S. Sharma, learned Counsel for respondent No. 5 taking me through the orders passed by Additional Commissioner and Board of Revenue argued that the order being in accordance with law no case for interference is made out.

I have heard learned Counsel for parties at length and perused the records. From the records it is seen that the SDO and the Additional Collector have recorded finding that after the land was sold by the respondent No. 5 Azmer Singh he is not eligible to be appointed as Patel, as he is not recorded as Bhoomiswami at the time of appointment, the Additional Commissioner and the Board of Revenue placing reliance to a judgment of Board of Revenue in the case of Dhansram (supra) have held that a person if he is recorded as a Bhoomiswami on the date of submission of the application, he can be appointed as Patel and subsequent sale of land is of no consequence. Applying this principle Additional Commissioner have interfered in the matter. Now question is as to whether reasons indicated by the Board of Revenue and the Additional Commissioner is in accordance with law and can be said to be correct.

Section 222 of the M.P. Land Revenue Code contemplates a provision for appointment of Patel by the Collector in accordance with rules that may be framed u/s 258. Rules regarding appointment of Patel, remuneration payable, duties is to be performed and removal and punishment of Patel have been framed under Rule 2 of these Rules. A person is not eligible for appointment to the post of Patel, if the 11 disqualification for appointment of Patel as indicated in the said Rule, i.e., Rules 2 (i) to 2 (xi) are attracted, Rule 2 (ii) which is relevant for the present case reads as under:

(ii) is not recorded as a Bhoomiswami in the Land Records of the village concerned.

From the aforesaid rule is clear that no person is eligible for appointment as Patel if he is not recorded as Bhoomiswami in the land records of the village concerned, in the present case when the applications were invited respondent No. 5 Azmer Singh was holding certain land in the village in question and at that point of time he was recorded as Bhoomiswami, however when the enquiry into the matter as contemplated under Rule 4 to Rule 10 was in progress he sold the land by a registered sale deed dated 26-6-2000, the applications submitted by various persons were forwarded to the Tehsildar and when the Tehsildar submitted his reply on 27-11-01 for consideration to the Sub Divisional Officer respondent No. 5 had already sold his land and was not recorded as a Bhoomiswami. Accordingly, when the petitioner submitted an objection on 6-12-01, it was proved that respondent No. 5 Azmer Singh was not recorded as Bhoomiswami and therefore, when the appointment was to be made finding the disqualification contemplated under Clause 2 (ii) to be existing in the case of respondent No. 5 he was found to be ineligible for appointment and the petitioner being the sole applicant was appointed. The question therefore, is as to whether disqualification contemplated under Clause 2 (ii) of the Statutory Rules is to be considered at the time of submission of the application or at the time of making the appointment.

A bare perusal of the rule as reproduced hereinabove reveals that a person who is not recorded as Bhoomiswami in the land records of the village is not entitled to be appointed as Patel. There is nothing in the rules to indicate the point or the stage when the disqualification is to be made applicable or considered. The simple meaning of the rule is that for a person to be eligible for appointment as Patel, he has to be recorded as Bhoomiswami in the revenue records of the village concerned. There is nothing in the rules to suggest that this eligibility criteria is to be determined with reference to a particular date, i.e., at the time of submission of application or any other stage. That being so it has to be held that if at the time of appointment a person is found to be disqualified for any of the reason indicated in Rule 2, appointment of that person cannot be made. Once a disqualification or negligibility clause is incorporated in a rule prescribing the conditions for appointment or otherwise the same has to be considered with reference to the position as is existing on the date when the appointment is to be made, a person may be eligible for appointment at a particular stage or time prior to making of the actual appointment but at a time of actual appointment he may acquire some disqualification and once disqualification is acquired a person under the rules becomes disentitled to seek appointment. For example Rule 2 (ix) contemplates that if a person is mentally or physically unfit he cannot be appointed as Patel. A case may arise where on the date fixed for submission of application a person is physically and mentally fit but he may acquire the disqualification pertaining to his mental or physical fitness at the time of actual appointment in such eventually, it would not have been the intention of the rule makers to hold such a person eligible for appointment. The eligibility of a person for appointment to the post is to be determined with reference to the date when the appointment is made and not with reference to the date when the application is submitted unless the rules contemplates so specifically.

If the principle laid down by the Board of Revenue in the case of Dhansram (supra) is applied, it would mean that a person who at the time of appointment is disqualified for appointment as Patel will be held to be qualified only because on a previous date, i. e., on the date of submission of the application he was qualified. This could never be the intention of the rule makers. The intention and purpose of the rules is that none of the disqualification contemplated under Rules 2 (i) to (ix) should be existing for appointment of a Patel and if this is the intention of Rule makers, then the principles laid down by the Board of Revenue is not correct. There may be instances wherein a person may be entitled to be appointed as Patel when the application is submitted but when the process for appointment as contemplated under the rules are in progress he may acquire some disqualification and if such a person is appointed it would not be in confirmity with the rules, it can never be the intention of the rule makers to approve appointment of a person who has acquired a disqualification at the time of appointment.

While interpreting a rule, the legislative intent and purpose becomes a valid consideration to find out the true meaning of the rule. In the present case Rule 2 (ii) contemplates that no person is eligible to hold the office of Patel if he is not recorded as a Bhoomiswami in the land records of the village. For examining the purpose for which this provision is incorporated, the rule, it is proper to consider the duties which a Patel has to perform under the M.P. Land Revenue Code and the Rules framed thereunder. The duties of Patel are provided u/s 224 and the duties include collection and payment into the District Panchayat Fund and other related tax and cesses payable through him and deposit of the same in the

Government treasury. Similarly Rule 11 (ii) requires the Patel to collect cesses and tax imposed by the Gram Panchayat. It is therefore, clear that the Patel in the discharge of his statutory duties is required to collect land revenue, tax, cess etc. and to deposit the amount after collection in the treasury or the Gram Panchayat. Once he is required to collect revenue it is necessary that he is owner of land in the village so that in case of any default, misconduct or defalcation committed by him in the matter of discharge of his duties the amount of loss caused can be recovered by attachment of his property. It is for this purpose that Rule 2 (ii) has been incorporated and if this purpose is to be fulfilled then the person to be appointed as Patel should own some land on the date of appointment. Under such circumstances it would never be the intention of the legislative to appoint a landless person as Patel the purpose of incorporating Rule 2 (ii) would be frustrated if a landless person is permitted to be appointed as a Patel.

Accordingly the principles laid down by the Board of Revenue in the case of Dhansram (supra), followed by the Additional Commissioner and Board of Revenue does not reflect the correct position of the rule nor is it in conformity with the legislative intent. Respondent No. 5 Azmer Singh having sold his land on 26-6-2000 was disqualified from seeking appointment on the post of Patel as on the date of appointment, i.e., 21-1-2002 as he was not recorded as Bhoomiswami, Sub Divisional Officer and the Additional Commissioner rightly held that he is not entitled for appointment. The principles laid down by the Additional Commissioner and Board of Revenue on the basis of eligibility determined with reference to the date of application being inconsistent to the statutory provision cannot be upheld by this Court, accordingly this petition is allowed order Annexure P-3, dated 28-11-02 passed by the Additional Commissioner and order dated 4-3-03 Annexure P-1 passed by the Board of Revenue are quashed, appointment of petitioner made by the Sub Divisional Officer vide Annexure P-4, dated 21-1-02 and approved by Additional Collector vide Annexure P-3, dated 16-8-03 are upheld.

Accordingly the petition is allowed and disposed of with the aforesaid, without any order as to cost.

