

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 154 OF 2017
DISTRICT : AURANGABAD**

Naseem Banu Nazir Patel,)
Age : 45 years, Occu. : Service,)
R/o : C-5/27, Snehanagar, Government)
Quarters Osmanpura, Aurangabad.)

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)

2. **The Principal Secretary,**)
Minorities Development Department,)
Room (Dalan) No.714, 7th Floor,)
Mantralaya (Extension), Madam Kama Road,)
Hutatma Rajguru Chowk, Mantralaya,)
Mumbai-32.)

3. **Joint Secretary,**)
Revenue and Forest Department,)
Madam Kama Road, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai-32.)

.. **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for
Applicant.

: Shri V.R. Bhumkar, P.O. for respondent
Authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **23.03.2023**

Pronounced on : **08.06.2023**

ORDER
(Per : Shri V.D. Dongre, Member (J))

1. The Original Application No. 154 of 2017 has been filed by one Smt. Naseem Banu Nazir Patel on 07.03.2017, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, upon being aggrieved by the order dated 03.03.2017, passed by the respondent No. 1 and issued under signature of the Joint Secretary (Revenue & Forest Department) who is respondent No. 3 placing the applicant under suspension under provisions of rule 4 (1) (a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and also challenging the departmental enquiry proposed / initiated against the applicant. Another Original Application No. 259 of 2018 too, has been filed by the same applicant on 24.04.2018 during pendency of the O.A. No. 154 of 2017, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the memorandum of charges dated 11.01.2018, issued by the respondent No. 1 and forwarded / issued under signature of the Joint Secretary (Revenue & Forest Department) who is respondent No. 3.

2. **Brief Facts of the matter-** The facts which emerge from submissions made by the two contesting sides may be summed up as follows :-

(a) The applicant is originally from revenue department of the state Government and was working as Superintendent of Land Records, Aurangabad at the relevant point of time in the present matter. She was given additional charge of the post of Chief Executive Officer, Wakf Board, Aurangabad vide order 02.09.2015.

(b) A preliminary inquiry was initiated by the respondent No. 2 i.e the Principal Secretary (Minorities Development Department) dealing with the subject of Waqf Board; against the Applicant for her alleged misconduct committed while handing the affairs of the Waqf Board in the capacity of In-charge Chief Executive Officer, Waqf Board, Aurangabad. Based on findings of the preliminary inquiry a proposal for departmental inquiry under provisions of Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 {hereinafter, referred to as, '*MCS (D & A) Rules*'} against the Applicant was prepared and approval of Hon'ble Chief Minister of the State thereto was sought. However, in the meantime, regular CEO of the Waqf Board, Aurangabad was appointed. Therefore, respondent No. 2 transferred all the related documents to the Revenue & Forest Department for further action in the matter.

(c) Orders for placing the Applicant under suspension and initiating the Departmental Inquiry against the Applicant were approved by the Hon'ble Chief Minister of the State. Accordingly, Revenue and Forest Department issued Government order bearing No. निलंबन-२५१७/प्र.क.१३ ई-४ अ, मंत्रालय, मुंबई, dated 03.03.2017 communicating Government decision to initiate departmental inquiry against the Applicant and also placing the Applicant under suspension in exercise of powers vested under Rule 4 (1) (a) of the MCS (D&A) Rules, 1979. The said order was issued with **forwarding letter** under signature of the Joint Secretary (Revenue & Forest Department), Government of Maharashtra, a copy of which has been appended by the Applicant as Annexure -14, pages 156 -157 of the paper-book, relevant parts of which read as follows:-

“ ज्याअर्थी, मस्जिद दुदाचारी, कवडा उर्फ काजापुरा, ता. जि. नाशिक या संस्थेच्या ताब्यातल्ले सर्वे नं. ९८० व १८१ मधल्ले वक्फ मालमत्ता म्हणुन नोंद असलेली मालमत्ता दि. ०४.०२.२०१६ च्या आदेशान्वये वक्फ नसल्याचे घोषित करुन गैरवर्तणुक केल्याचें बाब अल्पसंख्यांक विकास विभागाच्या प्राथमिक चौकशांमध्ये निष्पन्न झाली आणि उक्त अनियमिततेस श्रामता नसल्ला बानो पटेल, तत्कालीन प्रभारी मुख्य कार्यकारी अधिकारी,

महाराष्ट्र वक्फ मंडळ, औरंगाबाद, सध्या जिल्हा अधीक्षक भूमि अभिलेख, औरंगाबाद ह्या जबाबदार असल्याने त्यांच्या विरुद्ध विभागाय चौकशाय कार्यवाही करण्याचे योजिले आहे.

त्या अर्थी, महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम ४ (१) (अ) अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून आता उक्त श्रामत नसामा बानो पटेल यांना आदेशाच्या दिनांकापासून शासन सेवेतून निलंबित करण्यात येत आहे. श्रामत पटेल या पुढील आदेश काढले जाईपर्यन्त निलंबित राहतील.”

(d) Admittedly, impugned order of suspension is appealable under provisions of rule 16 (ii) read with rule 17 (i) of MCS (Discipline & Appeal) Rules 1979. However, the applicant directly approached this Tribunal without availing alternative remedy of appeal. From the contents of para 22 of the Original Application No. 154 of 2017 (page 20 of the paper-book) it is revealed that that the applicant has done so on the pretext that she acted as a Quasi-Judicial Officer and therefore, no departmental proceeding can be initiated against the applicant on the basis of Orders passed by her in the Quasi-Judicial capacity. The applicant has further relied upon the provisions of section 100 of the Waqf Act, 1995 and also on the provisions of the Judges (Protection) Act, 1985 and the Judicial Officers Protection Act, 1885. To quote the defense taken by the

applicant in para 22-23 of the Original Application (page 20-21) for ready reference :-

“22. The applicant submits that, as per the Provisions of the Wakf Act, 1995, the applicant acted as a Quasi Judicial Officer and, therefore, no Proceeding can be initiated against the applicant on the basis of Orders passed by her in the Quashi Judicial capacity. The applicant's act is protected by the Provisions of Section 100 of the Wakf Act, 1995. Beside it, the applicant is also entitled to get protection as ME contemplated under The Judges (Protection) Act, 1985 EPL and The Judicial Officer Protection Act, 1885. However the said legal aspects have not been considered by the respondents herein while passing the impugned Order.

23. The applicant submits that, since the applicant has acted as a Quasi Judicial Officer and the Order passed by the applicant is yet not set-aside by the Competent Court, therefore, no departmental inquiry can be initiated against the applicant. Therefore, the impugned action of the respondents herein so also the proposed departmental enquiry is also unsustainable in the eyes of law. In the given facts and circumstances, the respondents herein cannot initiate the departmental enquiry against the applicant. Therefore, the departmental inquiry proposed against the applicant deserves to be dropped and the consequential Suspension Order also deserves to be quashed and set aside.”

3. Relief Prayed for in O.A. No. 154/2017: - In O.A. No. 154 of 2017, the applicant has prayed for relief in terms of para 'H' of the original application which is reproduced verbatim for ready reference:-

"H. RELIEF SOUGHT:

- A) *The present Original Application may kindly be allowed.*
- B) *That, the record and proceeding of the Order dated 03.03.2017 (**Annexure-A-14**) passed by the respondent No.3 may kindly be called for and after examining the legality, validity and propriety thereof, the Order dated 03.03.2017 (**Annexure-A-14**) passed by the respondent No.3 may kindly be quashed and set-aside.*
- C) *That, the departmental enquiry proposed/ initiated against the applicant may kindly be declared as null and void and the said departmental enquiry may kindly be dropped.*
- D) *Pass such other orders which are necessary in the facts and circumstances of the case in favour of the applicant.*

INTERIM RELIEF SOUGHT:

- C) *That, pending hearing and the final disposal of the present Original Application, the execution, implementation and operation of the Order dated 03.03.2017 (**Annexure-A-14**) passed by the respondent No.3 may kindly be stayed and the applicant be permitted to work as Superintendent of Land Record, Aurangabad or so.*
- D) *Ad-interim relief in terms of Prayer Clause 'C'."*

4. This Tribunal [Coram: Hon'ble Justice M. T. Joshi, Member (J) heard the matter on 07.03.2017 i.e. on the day of filing of the O.A., as the Division Bench was not available, and passed oral orders, firstly, to issue notices to respondent Nos. 1 to 3 and secondly, pending service of notices on respondents, passed following ex-parte Oral Orders:-

"2. Considering the fact that the present application is discharging quasi-judicial function and that the material against her as is shown at page no. 145 is the order in such a capacity and prima-facie, it appears that, even the Waqf Tribunal has passed the similar order that can be seen from page no. 62, presently interim stay to the further proceedings in D.E. is hereby, granted until further orders."

5. When Oral Orders in O.A. No. 154 of 2017 passed on dates of 07.03.2017 is read with the oral orders dated 05.04.2017, 25.04.2018 and 28.06.2018, some significant and unusual circumstances are arising out of submissions made by parties, are observed to exist as shown bellows which do not find explanation from the records:-

*(i) **Oral Order dated 05.04.2017 [Coram: Hon'ble Justice Shri M. T. Joshi, Vice Chairman]** - "2. It is an admitted fact that, before filing of the present O.A the order of suspension of the present applicant has already came into effect. Therefore, stay to the same cannot be granted."*

*(ii) **Oral Order dated 25.04.2018 [Coram: Hon'ble Justice Shri M. T. Joshi, Vice Chairman and Shri Atul Raj Chadha,***

Member (A)] - “2. None has appeared for the applicant since long. In the circumstances, M.A. filed for grant of I.R. is dismissed without any order as to costs.”

(iii) **Oral Orders of D.B. dated 28.06.2018 [Coram: Hon’ble Justice Shri M. T. Joshi, Vice Chairman and Shri Atul Raj Chadha, Member (A)]** - “Learned Advocate for the applicant submits that the interim relief is already granted. In the circumstances, no urgency in present O.A. Hence, remove from Board and it be placed in due course of time.”

6. Relief Sought in O.A. No. 259 of 2018 :- Yet another O.A. with No. 259 of 2018 had been filed by the applicant in respect of another charge-sheet served on him during pendency of the present O.A., which has tagged and untagged with the present O.A.; reasons for which have not been on record. Relief sought in the O.A. No. 259 of 2018 is reproduced as follows for ready reference-

“H. RELIEF SOUGHT:

- A) *The present Original Application may kindly be allowed.*
- B) *That, the record and proceeding of the Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (Annexure-A-6) and Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (Annexure-A12) issued by respondent No. 2 be called for and after examining the legality, validity and propriety thereof, the above mentioned Charge Sheets and the departmental enquiry initiated against the applicant in pursuance to the said Charge Sheets may kindly be quashed and set-aside.*

- C) *Pass such other orders which are necessary in the facts and circumstances of the case in favour of the applicant.*

INTERIM RELIEF SOUGHT:

- D)** *That, pending hearing and the final disposal of the present Original Application, all further proceedings initiated in pursuance to the Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (**Annexure-A-6**) and Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, 11.01.2018 including departmental enquiry may kindly be stayed.*
- E)** *That, pending hearing and final disposal of the present Original Application, the respondents herein or anybody claiming through them may kindly be restrained from taking any coercive action against the applicant on the basis of Charge Sheet No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (**Annexure-A-6**) and Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, issued dated 11.01.2018 (**Annexure-A12**) issued by respondent No.2 by any manner whatsoever.*
- F)** *Ad-interim relief in terms of Prayer Clause 'D' and 'E'."*

7. Status of Exhausting Alternative Remedy etc.- It is not clear from any of the Oral Orders passed in O.A. No. 154 of 2017, whether the contention of the respondents that the applicant has not availed alternative remedy was ever decided despite the respondents having raised the same through their affidavit in reply. Similarly, there is nothing on record that may explain the effect of interim relief granted / not granted / removal of the matter from the Board as per request of the learned advocate for the applicant. As is evident from the Oral Orders dated

28.06.2018, this Tribunal had agreed with the suggestion of the learned advocate for the applicant that *there is no urgency in the O.A., as interim relief is already granted, the matter was ordered to be removed from the Board and was to be placed in due course of time.*

8. Rationale behind admitting another O.A. No. 259 of 2018 filed by the applicant during pendency of O.A. No. 154 of 2017- In absence of relevant details it is not possible to draw inference regarding admitting a new O.A. based on subsequent developments which are similar in nature and have same points of law for adjudication. Finally, in order to take overall view, it is on 12.02.2019 that the O.A. No 154 of 2017 was tagged together with O.A. No. 259 of 2018 for joint hearing. Though, the registry had tagged the matter for hearing on 21.07.2022 and 30.08.2022 but again untagged on 10.10.2022. During final hearing before the re-constituted Board it had been verbally submitted by the learned Advocate for the applicant that he would not press the adjudication of O.A. No. 259 of 2018 however, he would not make written submissions to that effect. Thereafter, the O.A. No. 259 of 2018 has not been mentioned in Heading of Oral Orders passed on 13.01.2023 and on subsequent dates of hearing of O.A. No. 154 of 2017. After, final hearing, only the O.A. No. 154

of 2017 has been closed for Orders and the other O.A. No. 259/2018 is still at the stage of final hearing.

9. Analysis of facts:- Following critical issues emerge from the facts of the matter on record and oral submissions made by the contesting parties :-

- a) **Whether Applicant has made compliance of S. 20 of the Administrative Tribunals Act, 1985 before filing the present O.A.?**- The respondents, in their affidavits in reply filed before this Tribunal, have raised the point that the interim relief has been granted to the Applicant by this Tribunal without looking into the fact that the applicant had neither complied with the provisions of s. 20 of the Administrative Tribunals Act, 1985 nor, has made a clear declaration in this regard. In order to ascertain the factual position in this regard, we peruse the declaration made by the Applicant in the O.A., No. 154 of 2017 and relevant provisions of the Administrative Tribunals Act, 1985. We find that:-

- (i) **Declaration made by the Applicant in O.A.-** The Applicant has made declaration on page No. 2, para 'D' of the paper book) of the O.A. No. 154 of 2017 in this regard which reads as follows-

“ D. REMEDIES EXHAUSTED:

The applicant states that, the applicant has not filed any proceeding questioning the impugned Order except the present Application.”

(ii) **Relevant legal requirement-** Legal requirement as per provisions of Section 20 of the Administrative Tribunals Act, 1985 is quoted as follows :-

“20. Applications not to be admitted unless other remedies exhausted.— (1) *A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.*

(2) *For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—*

(a) *if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*

(b) *where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*

(3) *For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the*

remedies which are available unless the applicant had elected to submit such memorial.

10. In this regard, it would be relevant to refer to the contentions raised by the applicant, in para nos. 22 and 23 of the Original Application, which is reproduced in earlier part of this judgment in para 2(d) more particularly seeking protection under Sec. 100 of the Wakf Act, which provision is as follows :-

“100. Protection of action taken in good faith.-No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.”

11. We have to also take into consideration the abovesaid contentions while dealing with the aspect as to whether the Original Application is premature and not maintainable for want of stipulation of Sec. 20 of the Administrative Tribunals Act, 1985.

12. In this regard, from the admitted facts on record, it is evident that passing of impugned suspension order and proposal to initiate departmental enquiry initiated against the applicant are emanating from the order dated 4.2.2016 (Annex. A-9) passed by this applicant under sec. 40 of the Wakf Act relating to

properties bearing No. 980 & 981 thereof holding that those properties though were registered as Wakf properties, those are not Wakf properties and because of that the applicant said to have committed misconduct actionable under M.C.S. (Discipline & Appeal) Rules, 1979.

13. In view of above, it is crystal clear that the said order dated 4.2.2016 passed by the applicant is a quasi-judicial order. There is nothing on record to show that the said order would go beyond pervue of Section 100 of the Wakf Act inviting disciplinary action. In such circumstances, it cannot be said that this Tribunal will not have jurisdiction to entertain the Original Application, which is filed for challenging the impugned suspension order and proposal to initiate disciplinary action against the applicant, though the applicant has not exhausted the remedy to file appeal against such order. Hence, we held that the Original Application is maintainable before this Tribunal in spite of non-compliance of Sec. 20 of the Administration Tribunals Act, 1985.

14. In this regard, it would be pertinent to note few relevant facts :-

(i) *The Trust namely Dudhadhari @ Kathada @ Kagzipura Masjid Trust, Nashik was initially registered as Public Trust under*

the Bombay Public Trust Act. After coming into force, the Wakf Tribunal Act, 1995, an Application dated 07.11.2007 came to be filed U/Sec. 36 of the Wakf Act, 1995 for Registration of the said Trust in which the above referred Survey Numbers i.e. 980 and 981 were shown as Wakf property. The said Application 08 came to be allowed on 17.05.2008 and Registration Certificate came to be issued in favour of the said Trust under the Wakf Act, 1995 (Annexure A-1 collectively).

(ii) The L.Rs. of deceased Nabaji Mahadu Mahale filed Wakf Application No.35/2009 challenging the Order dated 17.05.2008, passed by the Wakf Board contending therein that, their forefather i.e. Nabaji Mahadu Mahale was the protected tenant of the said lands and 32-M Certificate has been issued and thus they are the owners of the said land and it is not the Wakf Property. After hearing both the parties and after considering the evidence on record, the Learned Wakf Tribunal by its Order dated 11.12.2009 (A-2) allowed the contention of said persons and directed the Wakf Board to delete Survey No.980 and 981 from the Wakf Record. In other words, it has been held by the Learned Tribunal that, the said properties are not Wakf Properties. It appears that, thereafter the said tenants executed Agreement dated 05.03.2011 in favour of builder namely Linker Shelter Pvt.Ltd.

(iii) After a period of almost two years from the date of Order of Wakf Tribunal, the Trust filed W.P. No.2511/2011 challenging the Order dated 11.12.2009, passed by the Wakf Tribunal thereby deleting the Survey Number 980 and 987 from Wakf Record. On 04.09.2012, Rule came to be issued, however interim relief was refused by speaking Order (A-3).

(iv) *Since the interim relief was refused by the Learned Single Judge, therefore, the Trust filed L.P.A. No.13/2013 accordingly on 29.01.2013, the Learned L.P.A. Court granted interim relief for the first time. Thereafter the Developer i.e. Linker Shelter Pvt.Ltd. filed C.A. No.154/2013 in said L.P.A. for vacating of ex-parte interim relief. After hearing both the parties, the proceeding of L.P.A. came to be disposed of, vide Judgment and Order dated 10.07.2013 (part of A-4 collectively) by giving certain direction. The Learned L.P.A. Court has vacated the injunction to some extent and granted injunction restraining the concerned persons from making any construction except certain portion.*

(v) *Being aggrieved and dissatisfied by the Order dated 10.07.2013 (A-5), passed by the A Learned L.P.A. Court, the Trust preferred S.L.P. No.34727/2013, which came to be disposed of on 13.12.2013 by giving certain direction. The construction was permitted subject to the final decision in W.P. No.2511/2011. During the pendency of the said Writ Petition, the concerned respondents were restrained from transferring the possession of the Flats to the intending purchaser etc.*

(vi) *In pursuance to the Order of the Learned L.P.A. Court and the Apex Court, the Learned Single Judge disposed of the said Writ Petition, vide Judgment and Order dated 02.03.2015 (A-6). The Learned Single Judge directed the concerned parties to make an Application U/Sec. 40 of the Wakf Act before the Wakf Board and if such Application is filed then the Wakf Board was directed to take decision as to whether Survey No.980 and 981 is the Wakf Property or not. The interim Order granted by the Hon'ble Apex Court on 13.12.2013 was continued for a period of six weeks and*

liberty was given to the concerned persons to make Application for continuation of an said interim relief or for other appropriate reliefs and the Board was directed to take decision on the said Application.

(vii) It is the contention on the applicant that as per the Provisions of Wakf Act and the Resolution passed by the Wakf Board, the Chief Executive Officer has power to decide the Applications filed U/Sec. 40 of Wakf Act, 1995. Accordingly the applicant being Quashi Judicial Authority decided the proceeding filed U/Sec. 40 of the Wakf Act in respect of Land Survey No.980 and 981. Considering the evidence on record, the applicant has held that, the said lands are not the Wakf Properties.

(viii) Being aggrieved and dissatisfied by the Order dated 04.02.2016, passed by the applicant, the Trust has filed Wakf Appeal No.1/2016 before the Learned Tribunal, Aurangabad and proceeding is still the pending. Wakf said On 18.06.2016, the Learned Wakf Tribunal partly allowed an Application filed below Exhibit-5 and permitted the construction subject to outcome of the Wakf Appeal. The Wakf Tribunal has also given other certain directions. Being aggrieved and dissatisfied by the Order passed below Exhibit-5, Linker Shelter the Pvt.Ltd. Developer has i.e. filed C.R.A. No.429/2016 so also the Trust has also filed C.R.A. No.548/2016 and both the C.R.A.S. are pending before the Principal Seat at Mumbai in which no interim Order has been passed till date.

15. In the affidavit in reply jointly filed on behalf of respondent nos. 1 & 3 and separately filed on behalf of respondent No. 2, it

is specifically pleaded that the applicant while holding additional charge of CEO of Wakf Board had no inherent power to decide whether the property is Wakf or not. These powers are vested in State Board of Wakf U/s 40 of the Wakf Act, 1995 and the applicant was not legally delegated these powers by the State Board of Wakf. This fact was admitted by the applicant herself in her affidavit sworn before the Hon'ble Supreme Court of India. Therefore, the order dated 4.2.2016 issued by the applicant is prima-facie without jurisdiction and is not having force of law. The Officer like the applicant who exercises the power which she is not authorized to exercise legally is definitely liable for disciplinary action and hence to initiate the disciplinary action under M.C.S (Discipline & Apple) Rules, the applicant has been legally and correctly suspended from the general service. Moreover, as the action of the applicant is without jurisdiction, she cannot seek protection under section 100 of Wakf Act, 1995 and Judges Protection Act, 1995 & Judicial Officer Protection Act, 1985.

16. So far as contention raised by the respondents regarding alleged admission given by the applicant by swearing the affidavit filed before the Hon'ble Supreme Court of India is concerned, the learned Advocate for the applicant brought to our notice the

letter dated 21.1.2016 (Annex. A-7) addressed by Advocate Shakil Ahmed Syed practicing in the Hon'ble Supreme Court of India to the applicant stating that the affidavit prepared and sworn in by the applicant for filing before the Hon'ble Supreme Court of India does not contain the requisite certificate and therefore that was not accepted. This document rests the issue and it is a fact that the affidavit sworn in by the applicant was not accepted and it is not on record in the concerned proceedings before the Hon'ble Supreme Court of India.

17. That apart, Wakf Appeal No. 1/2016 filed by the Trust came to be decided by order dated 16.10.2020. Copy of the said order is produced on record at Pages 210 to 250 of paper book during hearing of the O.A.) thereby the said Wakf Appeal is allowed as follows :-

O R D E R

- 1] *The appeal is allowed.*
- 2] *The order dtd. 04.02.2016 passed by the Chief Executive Officer of the Maharashtra State Board of Waqf, Aurangabad in file No. MSBW/ENQ / 125/40-54-2012/539/2016 is hereby set aside and matter is remanded back to the Board to decide it as a fresh after giving an opportunity to both parties by keeping all the factual point open.*
- 3] *The Board is directed to expedite the matter and decide it as early as possible within six months.*
- 4] *Record and proceeding send back to the Board forthwith”*

18. It is a further matter of subsequent development that being aggrieved and dissatisfied by the said order dated 16.10.2018 in Wakf Appeal No. 1/2016, Civil Revision Application No. 102/2019 was filed by Linker Shelter Pvt. Ltd. (Developer) another Civil Revision Application (St.) No. 25385/2019 was filed by the Wakf and its Trustees challenging the judgment and order dated 31.8.2019 by the Tribunal in Wakf Application No. 34/2019 and seeking injunction/restraint order. The respondent in that Appeal namely Uttam s/o Nabhaji Mahale and Ors. from transferring the possession of tenements of Wakf property till four weeks after disposal of Wakf Application U/s 40 of the Wakf Act pending before the Maharashtra State Board of Wakf on the footing of protection granted by the Hon'ble Supreme Court of India.

19. Both the CRAs were disposed of by the Hon'ble High Court of Judicature at Bombay by passing order dated 8.10.2021 (pages 254 to 273 of paper book) during the pendency of the Original Application. The controversy regarding delegation of power under sec. 40 of the Wakf Act by the Wakf Board to the C.E.O. (applicant) is thoroughly dealt with the paras 10 to 17 and 21 to 23 reproduced as follows :-

“10. The impugned order dated 04/02/2016 is passed by the C.E.O. of the Waqf Board, in exercise of delegation of power fowing from the

Board itself. The controversy involved in the Civil Revision Applications can be concised and formulated, by searching it in the order of the Tribunal and the limited controversy is; whether the C.E.O. was delegated the powers to deal with the application fled under **Section 40** of the Act and whether there was resolution of the Board delegating such a power.

11. During the course of hearing of appeal before the Tribunal, the Appellant/Trust tendered a list of documents, which was exhibited as Exhibit 23 and which includes, following three documents;

- (1) Copy of Sanad of the year 1853;
- (2) Resolution dated 13/07/2013;
- (3) Resolution dated 19/12/2013

The conflict is about the document at Sr.No.3; being Resolution dated 19/12/2013. The said document came to be exhibited as 'Exh.A-12' and the said document was placed before the Tribunal and is enlisted at page 250 of the paper-book of the present Civil Revision Applications. The said document is in form of Minutes of the Board Meeting dated 19/12/2013 held at Regional Wakf Office, Haj House, Nagpur and is passed in the presence of 7 members, completing the coram. On Point No.7, the following resolution is passed.

"Establishment Section

Point No.7. Delegation of powers to the Chief Executive Officer, Member, Servants under **section 27 of the Wakf Act, 1995.**

Resolution No. 110/2013 :- It is unanimously resolved to delegate the powers of the Board as prescribed in **section 36, 37, 40, 41, 42, 43 and 70 to Chief Executive Officer for smooth functioning of the business of the Board."**

The resolution is signed by the President/Chairman of the Maharashtra State Board of Wakfs and the five members as well as by the C.E.O. of the Board. It is apparent that the said document was before the Tribunal and it was imperative for the Tribunal to have referred the same. Instead, the Tribunal proceed to record as under :-

"50. Here, it is disclosed that by the resolution dtd.19.12.2013 the Board has delegated the powers to the C.E.O. of the Board for deciding the application under **Section 40** of the Act and by virtue of the said powers the C.E.O. has passed the order. However, there is no such reference of delegation of powers in the impugned order and even the order does not speak any such power of the Board were delegated to him for deciding the application under **Section 40** of the Act. Not only this but the record and proceeding called from the Board also does not have any copy of the order in written made by the Board or the resolution of the Board under which the powers were delegated to the C.E.O."

12. The Respondent had placed reliance upon a letter of the State Government dated 16/10/2015, which is in a form of clarification addressed to the C.E.O. of the Board, when the guidance is sought by the C.E.O. about the powers to be exercised. The Government clarified that by virtue of resolution No.7 in the meeting dated 19/12/2013, the C.E.O. has been delegated the powers under Sections 36, 37, 40, 41, 42, 43 and 70 of the Act alongwith Sections 69(5), 52A(3). As per resolution No.12, the guidance is provided that in exercise of the said powers, which are delegated, the C.E.O. shall discharge the day-to-day functioning of the Board and if at all some more delegation is required, a meeting of the Waqf Board can be called for and the resolution can be passed. The said letter of the Government dated 16/10/2015 finds place at page No.248 of the paper-book.

13. As far as the said letter is concerned, the Tribunal concluded that this is not a authority letter, which would empower the C.E.O. to decide the application under Section 40(1) of the Act and even the State Government is not empowered by law to delegate the powers, which are vested with the Board, as Section 27 of the Act makes it clear that only the Board can delegate the powers to the C.E.O. or chairperson as contemplated under the said provision. Here, the Tribunal is right, as the said letter of the Government does not delegate the power because the delegation under Section 27 must come from the Board itself. After recording this, in paragraph 23 of the impugned judgment, the Tribunal observed as under :-

"53. Even the resolution of the Board dtd.19.12.2013 which is referred in the said letter is not produced on record. The surprising thing that, the Board is party but no any attempt is also made from the Board to substantiate their contention to produce the said resolution of the Board by which the powers are delegated to the C.E.O.. In short, there is no any document on record to show that the C.E.O. was delegated the powers of the Board to decide the application under Section 40(1) of the Act of petitioner."

14. The said observation of the Tribunal is clamped as perverse, as it has failed to take into consideration the resolution of the Board dtd.19/12/2013, which was placed before the Tribunal by the Appellants themselves. I agree with the said submission. The said finding is undoubtedly perverse as the Tribunal has recorded that, since the order of C.E.O. does not speak of any such resolution, nor the Government communication dated 16/10/2015 grants delegation in favour of the C.E.O. and thirdly, the resolution of the Board itself is not produced. This observation is in utter contrast to the factum of production of resolution before the Tribunal by the Appellants themselves vide Exhibit 23. Now, the Tribunal has travelled further and made the following observations in paragraph 56,

"56. Since, the order of the C.E.O. is without jurisdiction and hence the application under Section 40 of the Act is to be decided by the authority having a competent jurisdiction, particularly by the Board as per the directions of the Hon'ble

High Court and hence it is just to remand the matter with direction to decide it as a fresh by the Board."

15. True it is, that this Court directed the Board to decide the application under [Section 40\(1\)](#), but when the power of the Board is delegated to the C.E.O., necessarily the Board is denuded of its power to decide the application and the decision of the C.E.O., in exercise of the power delegated to it, cannot be said to be without jurisdiction. The Tribunal has completely omitted the relevant document, being a resolution dated 19/12/2013, which clearly delegate the power of the Board to the C.E.O. and this delegation is qua the several powers under the Act, which include the power under [Section 40](#) to conduct an inquiry.

16. Learned counsel appearing for the Respondents makes a futile attempt to justify the order by relying upon the application for production of documents, which came to be exhibited as Exhibit 36. On 18/04/2016, certain documents were sought to be produced on record of the Tribunal, which include some old revenue records and pre-independent era documents received from the Archives Department and also the letters written by the members of the Wakf Board, objecting to the delegation of powers to the C.E.O. of the Board. Alongwith the said application what is annexed is, a letter signed by the three members of the Maharashtra State Wakf Board and the subject mentioned is "withdrawal of the board's power delegated to CEO".

A careful reading of the said letter, at the most is indicative of a proposed resolution to be put up before the Board for withdrawal of power from the C.E.O., but this surely is not a resolution passed by the Board. It can be very well said that if the power has been conferred upon the C.E.O. by a resolution, it shall be withdrawn in a like manner i.e. it could have been withdrawn only by the Board by passing the resolution. A letter being addressed by the three members to the C.E.O., in no case would amount to withdrawal of powers conferred by a resolution passed by the Board on 19/12/2013. In any case, the Appellant never relied upon this document while the Tribunal dealt with the point of delegation of power to the C.E.O. by resolution of the Board dated 19/12/2013. This is probably for the reason that the counsel for the Appellants was conscious that this letter dated 21/08/2014 does not amount to withdrawal of delegation.

17. Learned counsel of the Respondents has vehemently argued that the delegation itself is improper and there cannot be a blanket delegation in light of Section 27 of the Waqf Act and she placed reliance upon a decision of this Court in case of **Shaikh Saleemuddin s/o Shaikh Ameenuddin & Ors. Vs. Baba s/o Manna Quereshi & Anr.** When the said decision is perused, it can be seen that the issue before the learned Single Judge of this Court was revolving around framing of a scheme under [Section 32](#) of the Act, which in fact was a scheme under [Section 69](#), and the argument was, the Chief Executive Officer had no powers to frame such a scheme. This judgment does not assist the parties in any way.

When Section 27 of the Act makes it clear that the Board can delegate its powers and duties under the Act to any person mentioned in the said provision and when the Board has chosen to exercise its power, being delegated to the C.E.O. to determine the question whether the subject property is waqf property and the C.E.O. accordingly has passed an order in exercise of his delegated power and, when the delegation by the resolution is never called in question, I do not see any reason to doubt the correctness of the delegation by the resolution.

21. Civil Revision Application (St) No.25385 of 2019 pose a challenge to the order dated 31/08/2019 passed by the Wakf Tribunal in Wakf Application No.34 of 2019. It is pertinent to note that by the said order, the Tribunal has quashed and set aside the order dated 18/02/2019 and order dated 02/03/2019 passed by the Wakf Board, by which it had directed continuation of the status-quo order granted by this Court till passing of further orders. In any case, the said orders were in nature of interim orders and on 31/08/2019, the Tribunal had made an order to the effect that if any transaction is made by the contesting Respondent with any purchasers for selling of fat, it shall be subject to the decision of the application filed by the Trust under Section 40(1) of the Wakf Act. Since the Application under Section 40(1) preferred by the Trust will be adjudicated upon by the Tribunal within a period of four weeks, no orders are necessary on the aforesaid Civil Revision Application, which stands disposed of.

22. Civil Revision Application No.102 of 2019 is allowed in the aforesaid term and the impugned judgment of the Waqf M.M.Salgaonkar 20/20 J CRA-102-19+1.doc Tribunal in Appeal No.01 of 2016 is set aside. The Tribunal shall adjudicate the Appeal on its own merits, uninfluenced by any observations, touching the merits of the matter.

23. In view of the disposal of the Civil Revision Applications, the Interim Applications do not survive and are disposed of.”

20. In view of the aforesaid decision of the Hon'ble High Court, in my humble opinion, order of Tribunal in Wakf Appeal No. 1/2016 is set aside thereby upholding order dated 4.2.2016 passed by the applicant. As observed earlier, the basis for suspending and initiating disciplinary action against the applicant was the order dated 4.2.2016 passed by the applicant. Once that order is upheld, the impugned action taken by the respondent No. 4 against the applicant would fall to the ground.

21. It is also a matter of record that during pendency of this Original Application, the applicant filed Writ Petition No. 4023/2017 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad assailing her suspension order dated 3.3.2017 as no interim relief of stay was granted in this O.A. No. 154/2017. The said Writ Petition No. 4023/2017 is disposed of by passing following order :-

“ORDER

- (i) *The order dt. 03.03.2017 suspending the petitioner is revoked.*
 - (ii) *Depending upon further order that may be passed by the Tribunal in Original Application No. 154/2017, the respondent may take a fresh course of action with regard to suspension of the petitioner.*
 - (iii) *The respondents are entitled to place the petitioner on any other non-administrative post of the same rank held by the petitioner at the time of suspension in the parent department. 13.*
13. *The Writ Petition is, accordingly, allowed. No costs.”*

22. In this Original Application we are dealing with legality of impugned suspension order and proposal to initiate departmental enquiry against the applicant. For the reasons mentioned in foregoing paragraphs, in my opinion, the Original Application succeeds. There is no need to take fresh cause of action with regard to suspension of the applicant, which

suspension order is already revoked. Hence, I proceed to pass the following order :-

ORDER

(I) The Original Application is allowed in following terms:-

- a) Impugned Order dated 03.03.2017 (**Annexure-A-14**) is already revoked by the Hon'ble High Court of Bombay, Bench at Aurangabad vide order passed in W.P. No. 4023/2017, which need not require fresh cause of action.
- b) The departmental enquiry proposed/ initiated against the applicant is declared as null and void and the said departmental enquiry is dropped.”

(II) There shall be no order as to costs.

MEMBER (J)

V.D.D. Kpb/D.B. O.A. No. 154/2017 & 259/2018 Departmental Enquiry / Suspension

S E P A R A T E O R D E R**(Per : Shri Bijay Kumar, Member (A))**

1. I, hereby, proceed to pass a separate order in the Original Application No. 154 of 2017 filed on 07.03.2017. In order to facilitate finalization of order as per procedure prescribed under S. 26 of the Administrative Tribunals Act, 1985, I most humbly and respectfully, put on record points on which we differ and which constitutes the basis for passing separate order in the present original application. Though, the bench is in agreement on almost all facts on record, but we differ essentially on drawing inferences / conclusions after analyzing them. Points of difference are briefly mentioned in this paragraph as follows. These points have also been elaborated in subsequent parts of this order passed in the present O.A.

(a) First point is about maintainability of the present original application seeking indulgence of this Tribunal without making compliance of provisions of Section 20 of the Administrative Tribunals Act, 1985. It may be noticed that vague statement has been made by the applicant in the O.A. in this regard whereas; the fact has been that the applicant filed this O.A. prematurely without making compliance of the aforesaid requirement. Another associated fact that is on record is that the respondents had pointed out this non-compliance in their affidavit in reply to this O.A. still there is nothing on record which

shows that the applicant ever sought waiver from the Tribunal for compliance of provisions of S. 20 of the Administrative Tribunals Act, 1985 by getting an appropriate order passed.

(b) Second point of difference on point of granting indulgence of this Tribunal at the very initial stage proposing and initiating departmental inquiry against the applicant such as the stage of issue of show cause/ memorandum of charges and statement of imputation etc. This Tribunal has powers of judicial review of administrative action in service matters but to what extent granting relief prayed for by assuming role of disciplinary authority/ inquiry officer and thereby, insulating a delinquent public servant from answering basic show cause notice and/ or, from submitting reply to memorandum of charges and statement of imputations and/ or, from facing a departmental inquiry falls within ambit of judicial review is the point of difference. In my view, analysis on this point needs to be incorporated in the order along with finding thereon.

(c) Third point of difference is regarding requirement of reading provisions of Section 3 (1) of Judicial Protection) Act, 1985 with provisions of Section 3 (2) of the said act. I notice that so far, reliance has been made by the applicant on the provisions of Section 3(1) of the Judges (Protection) Act, 1985 without reading the same along with Section 3 (2) of the said Act and this legal position has not been brought by either sides of this O.A. to the notice of this Tribunal

while passing interim orders staying departmental inquiry. While doing so, provisions of Section 3(2) of the Judges (Protection) Act, 1985 does not seem to have been read with provisions of Section 3(1) of the said act. In my considered opinion, combined reading of the two sub-sections of S. 3 of Judges (Protection) Act, 1985 is desirable in the interest of justice and the same must be done at this stage of passing final order. In addition, though reference has been made by the applicant of the Judicial Officers (Protection) Act, 1885 has been made in the O.A. , nothing has been mentioned as to how it operates as a bar on initiation of departmental proceedings against the applicant by the State Government. This too, needs to be examined and findings thereon, be taken into account while passing final order in the present O.A.

(d) Fourth point of difference is regarding admissibility of argument made by the applicant that provisions of S. 100 of the Waqf Act, 1995 prevents the respondent authorities to initiate departmental action against the applicant. The applicant has relied on provisions of s. 100 of the Waqf Act, 1995 and advanced argument that the applicant has “absolute” immunity from any departmental action initiated by State Government, which appears to have been admitted while passing interim orders dated 07.03.2017. I differ on scope of protection provided by the S.100 of the Waqf Act, 1995 to the applicant against initiation of Departmental Action by the State Government.

(e) Fifth point of difference is regarding mixing of two mutually independent issues of departmental action under Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 read with Maharashtra Civil Services (Conduct) Rules, 1979 on the ground of exercise of 'Delegated Powers' under provisions of Waqf Act, 1995 with realm of orders of the Waqf Tribunal and judgment passed by Hon'ble High Court and Hon'ble Apex Court which relate to adjudication of adversarial rights over disputed property. In my considered opinion, such inter-mixing of mutually exclusive facts and findings has created confusion about and, distraction from the core issue before this Tribunal for adjudication. This needs to be guarded against while passing final order in the present O.A. It is admittedly that issue of delegation of powers has been decided by the Aurangabad Bench of the Hon'ble High Court in Writ Petition No. 4023 of 2017, order dated 15.01.2018; however, in my considered opinion, initiating departmental inquiry on the basis of misconduct comprising of unwarranted deviations from provisions of administrative law, including those relating to preparation of detailed agenda note citing rule positions, guarding against arbitrary exercise of delegated powers and excessive delegation etc. may still constitute bonafide and admissible grounds for initiation of departmental proceedings against the applicant.

(f) Sixth point of difference is regarding unexplained inconsistencies regarding scope and import of Interim Order passed by this Tribunal. In my opinion, there are serious inconsistencies in oral orders on record creating

doubt as to whether any interim relief in respect of suspension order was ever granted to the applicant or not. This too, needs recording findings before passing final order as the same has bearing on decision on prayer clauses (B) in the present O.A. Likewise; it is, in my considered opinion, necessary to ensure that no prejudice is caused by switching decision of tagging and un-tagging of the present O.A No. 154/2017 with O.A. No. 259 of 2018. It is all the more important as no reason has been recorded while taking such decision.

Now, I proceed to pass my order in the O.A. No. 154 of 2017 as follows, as O.A. No. 259/2018 stands untagged at this stage-

2. The Original Application No. 154 of 2017 has been filed by one Smt. Naseem Banu Nazir Patel on 07.03.2017, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, upon being aggrieved by the order dated 03.03.2017, passed by the respondent No. 1 and issued under signature of the Joint Secretary (Revenue & Forest Department) who is respondent no. 3, placing the applicant under suspension under provisions of rule 4 (1) (a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 [in brief, *MCS (D&A) Rules*] and also challenging the Departmental Enquiry proposed / initiated against the applicant by the respondent authorities. It is worth mentioning that another Original Application No. 259 of 2018 too, has been filed by the same applicant on 24.04.2018 during

pendency of the O.A. No. 154 of 2017, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, upon being aggrieved by the memorandum of charges dated 11.01.2018, issued by the respondent no. 1 and forwarded under signature of the Joint Secretary (Revenue & Forest Department) who is respondent No. 3. However, this Order is in respect of O.A. No. 154 of 2017 only.

3. **Brief Facts of the matter-** The facts which emerge from submissions made by the two contesting sides in O.A. No. 154/2017 may be summed up as follows:-

(a) The applicant is originally from revenue department of the state Government and was working as Superintendent of Land Records, Aurangabad at the relevant point of time in the present matter. She was given additional charge of the post of Chief Executive Officer, Wakf Board, Aurangabad vide order dated 02.09.2015.

(b) A preliminary inquiry was initiated by the respondent No. 2 i.e the Principal Secretary (Minorities Development Department) dealing with the subject of Waqf Board; against the Applicant for her alleged misconduct committed while handing the affairs of the Waqf Board in the capacity

of In-charge Chief Executive Officer, Waqf Board, Aurangabad. Based on findings of the preliminary inquiry a proposal for departmental inquiry under provisions of Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 {hereinafter, referred to as, '*MCS (D & A) Rules*'} against the Applicant was prepared and approval of Hon'ble Chief Minister of the State thereto was sought. However, in the meantime, regular CEO of the Waqf Board, Aurangabad was appointed. Therefore, respondent No. 2 transferred all the related documents to the Revenue & Forest Department, to which the applicant belonged to, for further action in the matter.

(c) Orders for placing the Applicant under suspension and initiating the Departmental Inquiry against the Applicant were approved by the Hon'ble Chief Minister of the State. Accordingly, Revenue and Forest Department issued government order bearing No. क्रमांक: निलंबन-2517/ प्र. क्र. 13 ई-4 अ, मंत्रालय, मुंबई, dated- 03.03.2017 communicating government decision to initiate departmental inquiry against the Applicant and also placing the Applicant under suspension in exercise of

powers vested under Rule 4 (1) (a) of the MCS (D&A) Rules, 1979. The said order was issued along with a forwarding letter under signature of the Joint Secretary (Revenue & Forest Department), Government of Maharashtra, a copy of which has been appended by the Applicant as Annexure -14, pages 156 -157 of the paper-book, relevant parts of which read as follows:-

“ ज्याअर्थी, मस्जिद दुदाचारी, कवडा उर्फ काजापुरा, ता. जि. नाशिक या संस्थेच्या ताब्यातल्ले सर्वे नं. ९८० व १८१ मधाल्ले वक्फ मालमत्ता म्हणून नोंद असलेली मालमत्ता दि. ०४.०२.२०१६ च्या आदेशान्वये वक्फ नसल्याचे घोषित करून गैरवर्तणुक केल्याचो बाब अल्पसंख्यांक विकास विभागाच्या प्राथमिक चौकशांमध्ये निष्पन्न झाली आणि उक्त अनियमिततेस श्रामत नसामा बानो पटेल, तत्कालीन प्रभारी मुख्य कार्यकारी अधिकारी, महाराष्ट्र वक्फ मंडळ, औरंगाबाद, सध्या जिल्हा अधिक्षक भूमि अभिलेख, औरंगाबाद ह्या जबाबदार असल्याने त्यांच्या विरुद्ध विभागय चौकशाय कार्यवाही करण्याचे योजिले आहे.

त्या अर्थी, महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम ४ (१) (अ) अन्वये प्रदान करण्यात आलेल्या शक्तय वापर करून आता उक्त श्रामत नसामा बानो पटेल यांना आदेशाच्या दिनांकापासुन शासन सेवेतून निलंबल करण्यात येत आहे. श्रामत पटेल या पुढील आदेश काढले जाईपर्यन्त निलंबल राहतल्ले.”

(d) Admittedly, impugned order of suspension is appealable under provisions of rule 16 (ii) read with rule 17

(i) of MCS (Discipline & Appeal) Rules 1979. However, the applicant directly approached this Tribunal without availing alternative remedy of administrative appeal. From the contents of para 22 of the Original Application No. 154 of 2017 (page no. 20 of the paper-book), it is revealed that that the applicant has done so on the pretext that she acted as a Quasi-Judicial Officer and therefore, no departmental proceeding can be initiated against the applicant on the basis of Orders passed by her in the Quasi-Judicial capacity. The applicant has further relied upon the provisions of section 100 of the Waqf Act, 1995 and also on the provisions of the Judges (Protection) Act, 1985 and the Judicial Officers Protection Act, 1885. To quote the defense taken by the applicant in para 22-23 of the Original Application (page 20-21) for ready reference :-

“22. The applicant submits that, as per the Provisions of the Wakf Act, 1995, the applicant acted as a Quasi-Judicial Officer and, therefore, no Proceeding can be initiated against the applicant on the basis of Orders passed by her in the Quashi Judicial capacity. The applicant's act is protected by the Provisions of Section 100 of the Wakf Act, 1995. Beside it, the applicant is also entitled to get protection as contemplated under The Judges (Protection) Act, 1985 and The Judicial Officer Protection Act, 1885. However the said legal

aspects have not been considered by the respondents herein while passing the impugned Order.

23. The applicant submits that, since the applicant has acted as a Quasi-Judicial Officer and the Order passed by the applicant is yet not set-aside by the Competent Court, therefore, no departmental inquiry can be initiated against the applicant. Therefore, the impugned action of the respondents herein so also the proposed departmental enquiry is also unsustainable in the eyes of law. In the given facts and circumstances, the respondents herein cannot initiate the departmental enquiry against the applicant. Therefore, the departmental inquiry proposed against the applicant deserves to be dropped and the consequential Suspension Order also deserves to be quashed and set aside.”

4. Relief Prayed for in O.A. No. 154/2017: - In O.A. No. 154 of 2017, the applicant has prayed for relief in terms of para **H'** of the original application which is reproduced verbatim for ready reference:-

“H. RELIEF SOUGHT: (In O.A. No. 154/2017)

- A) *The present Original Application may kindly be allowed.*
- B) *That, the record and proceeding of the Order dated 03.03.2017 **(Annexure-A-14)** passed by the respondent No.3 may kindly be called for and after examining the legality, validity and propriety thereof, the Order dated 03.03.2017 **(Annexure-A-14)** passed*

by the respondent No.3 may kindly be quashed and set-aside.

- C) *That, the departmental enquiry proposed/ initiated against the applicant may kindly be declared as null and void and the said departmental enquiry may kindly be dropped.*
- D) *Pass such other orders which are necessary in the facts and circumstances of the case in favour of the applicant.*

INTERIM RELIEF SOUGHT:

- C) *That, pending hearing and the final disposal of the present Original Application, the execution, implementation and operation of the Order dated 03.03.2017 (**Annexure-A-14**) passed by the respondent No.3 may kindly be stayed and the applicant be permitted to work as Superintendent of Land Record, Aurangabad or so.*
- D) *Ad-interim relief in terms of Prayer Clause 'C'."*

5. This Tribunal [Coram: Hon'ble Justice M. T. Joshi, Member (J)] heard the matter on 07.03.2017 i.e. on the day of filing of the O.A., as the Division Bench was not available, and passed oral orders, firstly, to issue notices to respondent Nos. 1 to 3 and secondly, pending service of notices on respondents, passed following ex-parte Oral Orders:-

"2. Considering the fact that the present application is discharging quasi-judicial function and that the material against her as is shown at page no. 145 is the order in such a capacity and prima-facie, it appears that, even the Waqf Tribunal has passed the similar order that can be seen from

page no. 62, presently interim stay to the further proceedings in D.E. is hereby, granted until further orders.”

6. When Oral Orders in O.A. No. 154 of 2017 passed on dates of 07.03.2017 is read with the oral orders dated 05.04.2017, 25.04.2018 and 28.06.2018, some significant but, unexplained inconsistencies arising out of submissions made by parties, are observed to exist as highlighted below, which do not find explanation from the records:-

(i) **Oral Order dated 05.04.2017 [Coram: Hon’ble Justice Shri M. T. Joshi, Vice Chairman]** - “2. It is an admitted fact that, before filing of the present O.A the order of suspension of the present applicant has already come into effect. Therefore, stay to the same cannot be granted.”

(ii) **Oral Order dated 25.04.2018 [Coram: Hon’ble Justice Shri M. T. Joshi, Vice Chairman and Shri Atul Raj Chadha, Member (A)]** - “2. None has appeared for the applicant since long. In the circumstances, M.A. filed for grant of I.R. is dismissed without any order as to costs.”

(iii) **Oral Orders of D.B. dated 28.06.2018 [Coram: Hon’ble Justice Shri M. T. Joshi, Vice Chairman and Shri Atul Raj Chadha, Member (A)]** - “Learned Advocate for the applicant submits that the interim relief is already granted. In the circumstances, no urgency in present O.A. Hence, remove from Board and it be placed in due course of time.”

7. **Relief Sought in O.A. No. 259 of 2018 :-** Yet another O.A. with No. 259 of 2018 had been filed by the applicant in respect of

another charge-sheet served on him during pendency of the present O.A., which has tagged and untagged with the present O.A.; reasons for which have not been on record. Relief sought in the O.A. No. 259 of 2018 is reproduced as follows for ready reference-

“H. RELIEF SOUGHT:

- A) *The present Original Application may kindly be allowed.*
- B) *That, the record and proceeding of the Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (Annexure-A-6) and Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (Annexure-A12) issued by respondent No. 2 be called for and after examining the legality, validity and propriety thereof, the above mentioned Charge Sheets and the departmental enquiry initiated against the applicant in pursuance to the said Charge Sheets may kindly be quashed and set-aside.*
- C) *Pass such other orders which are necessary in the facts and circumstances of the case in favour of the applicant.*

INTERIM RELIEF SOUGHT:

- D) *That, pending hearing and the final disposal of the present Original Application, all further proceedings initiated in pursuance to the Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (Annexure-A-6) and Charge Sheet bearing No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, 11.01.2018 including departmental enquiry may kindly be stayed.*
- E) *That, pending hearing and final disposal of the present Original Application, the respondents herein or anybody claiming through them may kindly be restrained from taking any coercive action against the applicant on the basis of Charge Sheet No. विभाचौ-२५१८/१/प्र.क.१/ई-४३, dated 11.01.2018 (Annexure-A-*

6) and Charge Sheet bearing No. विभावी-२५१८/१/प्र.क.१/ई-४३१, issued dated 11.01.2018 (**Annexure-A12**) issued by respondent No.2 by any manner whatsoever.

F) *Ad-interim relief in terms of Prayer Clause 'D' and 'E'."*

8. Status of Exhausting Alternative Remedy etc.- It is not clear from any of the Oral Orders passed in O.A. No. 154 of 2017, whether the contention of the respondents that the applicant has not availed alternative remedy was ever decided despite the respondents having raised the same through their affidavit in reply. Similarly, there is nothing on record that may explain the inconsistencies in respect of interim relief granted / not granted / removal of the matter from the Board as per request of the learned advocate for the applicant. As is evident from the Oral Orders dated 28.06.2018, this Tribunal had agreed with the suggestion of the learned advocate for the applicant that *there is no urgency in the O.A., as interim relief is already granted, the matter was ordered to be removed from the Board and was to be placed in due course of time.*

9. Tagging /un-tagging of the present O.A. No. 154 of 2017 with another O.A. No. 259 of 2018 filed by the applicant- In order to take overall view, it is on 12.02.2019 that the O.A. No 154 of 2017 was tagged together with O.A. No. 259 of 2018 for joint hearing. Though, the registry had tagged the matter for hearing

on 21.07.2022 and 30.08.2022 but again untagged on 10.10.2022. During final hearing before the re-constituted Board it had been verbally submitted by the learned Advocate for the applicant that he would not press the adjudication of O.A. No. 259 of 2018 however, he would not make written submissions to that effect. Thereafter, the O.A. No. 259 of 2018 has not been mentioned in Heading of Oral Orders passed on 13.01.2023 and on subsequent dates of hearing of O.A. No. 154 of 2017. After, final hearing, only the O.A. No. 154 of 2017 has been closed for Orders and the other O.A. No. 259/2018 is still at the stage of final hearing. What has been outcome of this exercise of tagging / un-tagging the two O.As could not be figured out.

10. Analysis of facts:- Following critical issues emerge from the facts of the matter on record and oral submissions made by the contesting parties, inferences drawn in respect of them have been mentioned against them-

- a) **Whether Applicant has made compliance of S. 20 of the Administrative Tribunals Act, 1985 before filing the present O.A.?**- The respondents, in their affidavits in reply filed before this Tribunal, have raised the point that the interim relief has been granted to the Applicant by this Tribunal without looking into the fact that the applicant had neither complied with the

provisions of s. 20 of the Administrative Tribunals Act, 1985 nor, has made a clear declaration in this regard. In order to ascertain the factual position in this regard, we peruse the declaration made by the Applicant in the O.A., No. 154 of 2017 and relevant provisions of the Administrative Tribunals Act, 1985.

We find that:-

(i) **Declaration made by the Applicant in O.A.-** The Applicant has made declaration on page no. 2, para 'D' of the paper book) of the O.A. No. 154 of 2017 in this regard which reads as follows-

“ D. REMEDIES EXHAUSTED:

The applicant states that, the applicant has not filed any proceeding questioning the impugned Order except the present Application.”

(ii) **Relevant legal requirement-** Legal requirement as per provisions of Section 20 of the Administrative Tribunals Act, 1985 is quoted as follows :-

“20. Applications not to be admitted unless other remedies exhausted.— (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2 For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

- (a) *if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
- (b) *where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*
- (3) *For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.*

Inference- From the plain reading of the declaration made by the applicant regarding her exhausting alternative remedy available to her before approaching this Tribunal, it is inferred that the said declaration of the nature of skirting the legal requirements. No effort has been made by the Applicant to get leave granted by this Tribunal condoning this requirement. Therefore, in my considered opinion, this application is premature for reason of non-compliance with provisions of Section 20 of the Administrative Tribunals Act, 1985.

- (b) **Whether Legal Provisions of the Judges (Protection) Act, 1985 Prohibit State Govt. to Initiate Departmental Enquiry Against the Applicant ?**- Referring to the provisions of the Judges (Protection) Act, 1985, we quote the relevant

section 3 sub-sections (1) and (2) of this act for ready reference-

“SECTION 3: Additional protection to Judges.

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge. [Emphasis supplied]

Inference:- From plain reading of S. 3 (1) read with S. 3 (2) of the Judges (Protection) Act, 1985, in my considered opinion, the protection provided to judges is not absolute, but subject to provisions of S. 3 (2) of the said act and accordingly, State Govt. is not prohibited / barred from initiating Departmental Enquiry Against the Applicant. Therefore, in my considered opinion, stay granted to the departmental enquiry on this ground deserves to be vacated.

(c) **Whether Section 100 of the Waqf Act, 1995 prohibits the State Government to initiate**

Departmental Enquiry against the applicant in the present matter as pleaded by him?

Analysis :- For the purpose of analysis, I quote the Section 100 of the Waqf Act, 1995 as follows for ready reference :-

“100. Protection of action taken in good faith.-No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.”

Similar protection has been provided to public servant and Member / office bearer of statutory committees in similarly worded other Acts/ statues too. In my considered opinion, even the Constitutional Courts do not apply absolute bar on initiating departmental enquiry / criminal investigation or criminal / civil action in such cases initiated with prior sanction of State or as per order of Courts having supervisory jurisdiction. Thus, interpreting provisions of S. 100 of the Waqf Act, 1995 as providing absolute bar on the State government and courts with supervisory jurisdiction from initiating departmental proceedings in cases of misconduct in general and in the present case in particular, will not be in accordance with the letter and spirit of S. 100 of the Waqf Act, 1995.

Inference : The applicant has not been able to establish that Section 100 of Waqf Act, 1995 restricts respondent State from initiating and carrying out D.E. against the applicant.

(d) Whether the resolution No. 7 dated 19.12.2013 passed by the Waqf Board delegating its powers u/s 40 of the Waqf Act, 1995 to its Chief Executive Officer and the applicant exercising them needed a joint / comprehensive enquiry in the matter:-

(i) It is undisputed fact that the applicant had been given additional charge of Chief Executive officer, Waqf Board, Aurangabad on 02.09.2015. It is also admittedly that the respondents had initiated proceedings against the Applicant in respect of her alleged misconduct, dereliction of duties etc. while disposing of applications made by the Muttawallis of the Dudhadhari Kathade Kagzipura Masjid Trust under s. 40 of the Waqf Act, 1995, the original powers in respect of which vests in the Waqf Board. The applicant has pleaded that the Waqf Board, in exercise of powers vested in the Board u/s 27 of the Waqf Act, 1995, had delegated the powers to the Chief Executive Officer of the Board to decide applications made u/s 40 of the said Act vide resolution no. 7 of Board's meeting held on 19.12.2013 which fact has

not been disputed by the respondents. Provisions of S. 27 of the Waqf Act, 1995 is as quoted below-

*“27. **Delegation of powers of the Board-** The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any committee, subject to such conditions and limitations as may be specified in the said order, such of the powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.”*

ii. Extract of Proceedings of the said meeting of the Waqf Board passing Resolution No. 7, in its meeting held on 19.12.2013 needs close scrutiny to understand underlying facts therefore, the contents of agenda note, draft resolution recommended to be passed and the resolution finally passed are being quoted as follows-

Agenda Item:-

“Point No. 7. Delegation of powers to the Chief Executive Officer, Member, Servants under section 27 of the Waqf Act 1995.

Comments of office including that of the Chief Executive Officer & Secretary to the Waqf Board and Recommended Draft Resolution:- (not presented to the Board)

Resolution No. 110/2013:- *It is unanimously resolved to delegate the powers of the Board as prescribed in section 36, 37, 40, 41, 42, , 43 & 70 to Chief Executive Officer for smooth functioning of the business of the Board.”*

iii. It may be observed that the then Member Secretary & Chief Executive Officer of Waqf had not presented any reasoned and scrutinized proposal for delegation of powers before the Waqf Board. It is also observed that neither the then Chief Executive Officer of the Waqf Board nor the Joint Secretary to Government in Minorities Development Department namely, Mrs. Ainul Chand Attar, both being government representative in the Board, had expressed their reservations on Waqf Board taking up the matter without a proper agenda note. The applicant in her capacity as in-charge Chief Executive officer, Waqf Board, Aurangabad had in her office all the original records including resolutions passed by the Waqf Board, to which she had access, despite that without examining Minutes of Waqf Board meeting held on 19.12.2013 herself, the applicant made reference to the said Joint Secretary to government, who in turn, prompted the applicant to go ahead with exercise of delegated powers. The applicant has, prima facie, not exercised due diligence while exercising delegated powers. These facts indicate that there is much more to the background facts than what meets our eyes, requiring a thorough joint

department enquiry against the officials and office bearers, as per merit of role played by them in the matter. From reading of judgment para 10 to 17 and 21 to 23 of the judgment dated 08.10.2021 in Civil Revision Application No. 2183/2021 and civil application filed in a group of Writ Petitions it is inferred that these facts were not brought to the notice of Hon'ble High Court (Principal Bench) in Civil Appellate Jurisdiction, Civil Revision Application No. 102 of 2019 with Interim Application No. 2183/2021 and a batch of Civil Application filed in a group of Writ Petition, judgment dated 08.10.2021.

Inference:- In view of above analysis of facts, it is inferred that the CEO of Waqf Board in whose period, a namesake resolution No 110/2013 of delegation of powers was passed and the Joint Secretary Mrs. Ainul Chand Attar, office bearer who permitted such un-scrupulous oral proposal without scrutiny by office / Waqf Board and all of such persons, who did not exercise due diligence in passing resolution, which may amount to excessive delegation, appear to be prima-facie responsible along with the applicant and therefore, the respondent authorities may after carrying out preliminary inquiry, consider subjecting the concerned to joint departmental enquiry in the interest of justice.

(e) **Whether, any mandate to stop departmental inquiry against the applicant emanates from any judicial pronouncement of Hon'ble High Court of**

Judicature at Bombay, principal bench or the bench at Aurangabad, or by judicial pronouncement of Hon'ble Supreme Court?

Analysis- The applicant has argued by way of defence that the Judgment delivered by the Maharashtra Wakf Tribunal, Aurangabad in Application No. 35/2009 dated 20.06.2009 has gone against the said Dudhadhari Kathada Kagzipura Trust. She is also dwelling more on evidence which has been used in favour of the real estate developer / builder appearing as intervenor through the private party claiming title on disputed property registered in the name of the Dudhadhari Kathada Kagzipura Trust. Likewise, though the applicant has cited various facts relating to litigations pertaining to the land bearing survey No. 980 and 981 of village-Morwadi, District-Nashik expecting that this Tribunal should take into account those subsequent developments going against the said Trust as admissible and sufficient reason to quash and set aside proposed departmental enquiry against the applicant. These facts, in my considered opinion, needed to be placed before the Disciplinary Authority and do not deserve consideration of this Tribunal at this Stage.

Inference:- The Applicant has been persistent in her effort to make this Tribunal own and play the role of Departmental Enquiry Officer / Disciplinary Authority. In my considered opinion, this Tribunal has no reason to substitute itself in place of

disciplinary authority or, the Departmental Enquiry Officer and to undertake task to scrutinize grounds on basis of which the Departmental Enquiry had been proposed/ ordered by the competent Authority and to look into the merits of the order passed by the Applicant on 04.02.2016 exercising powers of the Waqf Board u/s 40 of the Waqf Act, 1985 without getting satisfied that the Applicant had exercised due diligence in ascertaining her competence to perform what is alleged to have been done without authority etc. It is open for the respondents to examine the background facts of Ms. Ainul Attar, the Joint Secretary, Department of Minorities Development, issuing letter of guidance bearing no. as क्रमांक: वक्फ 2015/ प्र.क्र. 246/ का. -4, अल्प संख्यक विभाग, मंत्रालय, मुंबई, dated 16.10.2015, which is annexed as Annexure A-8, page 84 of the paper-book, in ambiguous terms and take necessary departmental action based on merit of facts which may also be in the form of a joint inquiry against the predecessor of the applicant, the applicant and the joint secretary to government of Maharashtra in Department of Minorities Development, or any other person, based on merit of the matter and as per provisions of MCS (D&A) Rules, 1979.

10. **CONCLUSIONS** :- After considering facts on record and oral submissions made, in my considered opinion, the Applicant has

approached this Tribunal without exhausting available alternative remedy and without making clear declaration in that regard so as to enable this Tribunal to pass orders on merit regarding condonation of requirements u/s 20 of the Administrative Tribunals Act, 1985. Further, in view of provisions of s. 3 (2) of the Judges (Protection) Act, 1985, and Section 100 of the Waqf Act, 1995, there is no merit in claim of the Applicant for protection against Departmental Enquiry etc. initiated by State Government. The applicant has been resisting the process of Departmental Enquiry by making Tribunal substitute itself in place of Departmental Enquiry Officer/ Disciplinary Authority. It is open for the applicant to place before the competent authority the facts regarding any mandate emanating from judgment of Hon'ble High Court or Hon'ble Supreme Court which directly or impliedly amounts to barring / prohibiting departmental inquiry against the applicant. Therefore, in my considered opinion, the Original Application No. 154 of 2017 is devoid of merit. Hence, the following order:-

ORDER

- (A) O.A. No. 154 of 2017 is dismissed for the reasons being misconceived and devoid of merit.
- (B) Prayer Clause (B) has become infructuous as the suspension order dated 03.03.2017 (Annexure A-4)

has already been revoked vide order passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 4023 of 2017 dated 15.01.2018

- (C) In respect of prayer Clause (C), interim stay to the further proceedings in departmental enquiry as granted by this Tribunal vide its oral order dated 07.03.2017, is hereby vacated. Nothing in this order restricts / prohibits the Respondents from initiating any departmental action against the Applicant individually or jointly with any other public servant of the State, who may also be found to be responsible in this matter, as per provisions of Maharashtra Civil Services (Discipline and Appeal) Rules), 1979 and any other rule as may be applicable, in order to decide the matter and associated issues on merit; subject to mandate emanating from orders/ judgments of Hon'ble High Court and or, Hon'ble Supreme Court.
- (D) No order as to costs.

MEMBER (A)

ORIGINAL APPLICATION NO. 154 OF 2017
(Naseem Banu Nazir Patel Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
and
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 08.06.2023

ORAL ORDER :

Heard Shri Avinash Deshmukh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. As the Members of this Division Bench are equally divided on six points mentioned in para No. 1 of the order passed by the Member (A) in O.A. No. 154/2017 and the operative part of the order, the matter has to be referred to the Hon'ble Chairperson of the Maharashtra Administrative Tribunal, Mumbai for taking further action as per the provisions of Section 26 of the Administrative Tribunals Act, 1985 so that the matter get finally decided by majority opinion to make it executable.

3. Registrar of this Tribunal, Bench at Aurangabad to do the needful in this regard as per standard operating procedure.

MEMBER (A)

MEMBER (J)

ORIGINAL APPLICATION NO. 154 OF 2017
(Naseem Banu Nazir Patel Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
and
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 20.06.2023

POINTS FOR REFERENCE :

In view of difference of opinion on some points while delivering separate judgments by us vide order dated 8.6.2023, the matter needs to be referred to another Member of the Tribunal as per the provisions of U/s 26 of the Administrative Tribunals Act, 1985. Thus, the following questions need to be referred to another Member:-

(i) Whether Original Application is premature and not maintainable in view of the provisions of section 20 of the Administrative Tribunals Act, 1985?

(ii) Whether the applicant is entitled to seek protection U/s 3(1) R/W Sec. 3(2) of the Judicial Officers (Protection) Act, 1985, as well as, U/s 100 of the Waqf Act, 1995 from Departmental Enquiry initiated by the State Government ?

(iii) Whether the applicant was empowered to exercise the delegated powers U/s 40 of the Waqf Act, 1995 in the present form in respect of Waqf property involved in the proceedings ?

(iv) Whether the departmental enquiry initiated by issuing show cause notice against the applicant was null and void before the applicant replied the same?

2. The Registrar of this Bench is directed to refer these questions to the Hon'ble Chairperson for further action.

MEMBER (A)

MEMBER (J)

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 154 OF 2017
(Reference Matter)

DISTRICT : AURANGABAD

Naseem Banu Nazir Patel,)
Age : 45 years, Occu. : Service,)
R/o : C-5/27, Snehanagar, Government)
Quarters Osmanpura, Aurangabad.).. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)
2. **The Principal Secretary,**)
Minorities Development Department,)
Room (Dalan) No.714, 7th Floor,)
Mantralaya (Extension), Madam Kama Road,))
Hutatma Rajguru Chowk, Mantralaya,)
Mumbai-32.)
3. **Joint Secretary,**)
Revenue and Forest Department,)
Madam Kama Road, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai-32.).. **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for
Applicant.
: Shri V.R. Bhumkar, P.O. for respondent
Authorities.

CORAM : **JUSTICE P.R. BORA, VICE CHAIRMAN.**
DATE : **22.12.2023**

ORDER

1. The learned Members of the then Division Bench of this Tribunal at Aurangabad since did not have consensus on the issues involved in the Original Application No. 154/2017, have written separate judgments and then made a reference to the Hon'ble Chairperson as provided under section 26 of the Administrative Tribunals Act, 1985 (for short "the Act of 1985) by stating the points on which they differ. The Hon'ble Chairperson, in turn, referred the matter to the undersigned to hear the parties on the said points of difference and decide the matter in accordance with law.

2. Accordingly, I have heard the learned counsel appearing for the applicant, as well as, the learned Presenting Officer for the respondent authorities. The points of reference are formulated by the Division Bench, which heard the matter.

The reference is on the following points :-

(i) Whether Original Application is premature and not maintainable in view of the provisions of section 20 of the Administrative Tribunals Act, 1985?

(ii) Whether the applicant is entitled to seek protection U/s 3(1) R/w Sec. 3(2) of the Judicial Officers (Protection) Act, 1985, as well as, U/s 100 of the Waqf Act, 1995 from Departmental Enquiry initiated by the State Government?

(iii) Whether the applicant was empowered to exercise the delegated powers U/s 40 of the Waqf Act, 1995 in the

present form in respect of Waqf property involved in the proceedings?

(iv) Whether the departmental enquiry initiated by issuing show cause notice against the applicant was null and void before the applicant replied the same.”

3. Point No. (i) :- Whether Original Application is premature and not maintainable in view of the provisions of section 20 of the Administrative Tribunals Act, 1985 ?

(a) The Learned Member (J) has held the Original Application maintainable before this Tribunal in spite of non-compliance of Section 20 of the Administrative Tribunals Act, 1985, whereas the Learned Member (A) has held the application premature for non-compliance of provisions of Section 20 of the Administrative Tribunals Act, 1985. Section 20 of the said Act reads thus :-

“20. Applications not to be admitted unless other remedies exhausted.— (1) *A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.*

(2) *For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—*

(a) *if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired. (3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.”

(b) The Learned Member (A) has observed that the declaration given by the applicant regarding her exhausting alternative remedy available to her before approaching this tribunal is in the nature of skirting the legal requirements. Learned Member (A) has further observed that no effort has been made by the applicant to get leave granted by this Tribunal condoning this requirement. It is further observed that the application is premature for the reason of non-compliance of section 20 of the Administrative Tribunals Act, 1985.

(c) The Learned Member (J) has recorded that the order dated 4.2.2016 passed by the applicant is a Quasi-Judicial order. Learned Member (J) has further observed that there is nothing on record to show that the said order would go beyond the purview of section 100 of the Waqf Act, 1995 inviting disciplinary action. In the above circumstances, according to Learned Member (J), it is difficult to accept that this Tribunal will not have the jurisdiction to entertain the Original Application, which is filed for challenging the

impugned suspension order and a proposal to initiate disciplinary action against the applicant, though the applicant has not exhausted remedy of filing appeal against such order. Learned Member (J) on the above reasoning has held the Original Application maintainable.

(d) I have perused the order dated 3.3.2017, whereby the applicant has been suspended in contemplation of the Departmental Enquiry against her. The order has been issued in the name of and under the instructions of the Hon'ble Governor of the State of Maharashtra. In the said order it is specifically stated as under :-

“महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने.”

(e) The learned Presenting Officer appearing for the respondents has not brought to my notice any statutory rule providing for an appeal or revision against the order passed in the name of and under the orders of the Hon'ble Governor to any other authority. In fact, there is no statutory rule, which provides for an appeal or revision against the order issued in the name and under the orders of the Hon'ble Governor to any other authority. In the circumstances, this Tribunal can very well entertain the application filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985.

4. Point No. (ii) : Whether the applicant is entitled to seek protection U/s 3(1) R/w Sec. 3(2) of the Judicial Officers (Protection) Act, 1985, as well as, U/s 100 of the

Waqf Act, 1995 from Departmental Enquiry initiated by the State Government?

(a) The Learned Member (A) has recorded a finding that the applicant has not been able to establish that Section 100 of the Waqf Act, 1995 restricts respondent State from initiating and carrying out D.E. against the applicant. The Hon'ble Member (A) has further held that the State Government is not prohibited/barred from initiating Departmental Enquiry against the applicant, since protection provided to the Judges is not absolute, but subject to provisions of Section 3(2) of the said act.

(b) The discussion made by the Learned Member (J) leads to an inference that the applicant is entitled for the protection U/s 100 of the Waqf Act, 1995 and, as such, no departmental enquiry could have been initiated against her by the State Government based upon the order passed by her on 4.2.2016.

(c) The learned Member (A) has held that the provision under Section 3(2) of the Judges (Protection) Act, 1985 does not prohibit the Government for initiating departmental enquiry against the Judges. Accordingly, the learned Member (A) has further opined that the interim stay granted to the departmental enquiry initiated against the present applicant deserves to be vacated. Learned Member (A) has taken a similar view insofar as the provisions under Section 100 of the Waqf Act, 1995 is concerned. According to the learned Member (A), Section 100 of the Waqf Act,

1995 does not restrict the State Government from initiating and carrying out the departmental enquiry against the applicant.

(d) The learned Member (J) has held that the order dated 4.2.2016, which has become cause of action for initiating the departmental proceedings against the applicant since was a quasi-judicial order, the respondents could not have initiated any action against the applicant on that count having regard to the provisions under the Judges Protection Act and the Waqf Act, 1995.

(e) The definition of the 'judge' is provided under the Judges Protection Act, 1985 thus:-

“2. Definition. – In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).”

(f) Section 3 of the Judges (Protection) Act, reads thus:-

“3. Additional protection to Judges —

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.”

The plain reading of the aforesaid provision leaves no doubt that the judicial authority or quasi-judicial authority cannot be subjected to any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(g) Section 100 of the Waqf Act, 1995 reads thus:-

“100. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.”

As provided under Section 100 of the Waqf Act, 1995, no action would lie against the board or Chief Executive Officer for anything which is in good faith done or intended to be done under the Waqf Act.

(h) It is not in dispute that the order passed by the applicant on 4.2.2016 under the provisions of section 40 of the Waqf Act, 1995 has become the cause of action for contemplation of the D.E. against the applicant and the consequent order of her suspension. Section 40 of the Waqf Act reads thus :-

“40. Decision if a property is 1 [waqf] property.—(1)
The Board may itself collect information regarding any property which it has reason to believe to be 1 [waqf] property and if any question arises whether a particular property is 1 [waqf] property or not or whether a 1 [waqf] is a Sunni 1 [waqf] or a Shia 1 [waqf], it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is 1 [waqf] property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is 1 [waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as 1 [waqf] property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.”

As provided under section 40, if any question arises whether a particular property is waqf property or not, the Board under this section may after making such enquiry as it may deem fit, decide the question. Sub section 02 of said section 40 says that the decision of the Board on a question under sub-section 01 shall, unless revoked or modified by the Tribunal, be final.

Section 40(1) and (2) of the Waqf Act if read with section 2(a) and 3(1) of the Judges (Protection) Act, 1985, there remains no doubt that the order passed u/s 40(1) of the Wqaf Act is a quasi-judicial order and the officer, who passes such order acts as a quasi-judicial authority.

If section 100 of the Waqf Act is read with the aforesaid provisions, the only inference, which may emerge therefrom, would be that the person, who has passed the order u/s 40(1) of the Waqf Act, 1995 would be entitled for protection u/s 3(1) of the Judges (Protection) Act, 1985, as well as, u/s 100 of the Waqf Act, 1995. However, the immunity so provided to the judicial and quasi-judicial authorities is not unfettered.

(i) As has been observed by the Hon'ble Supreme Court in the case of **Zunjarrao Bhikaji Nagarkar VS. U.O.I. & Others, 1999 (7) SCC 409** to maintain the charge-sheet against a judicial or quasi-judicial authority something more is required. Which are those circumstances wherein it would not be impermissible to hold a D.E. against the judicial or quasi-judicial authority or in other words in which circumstances the judicial authority can be subjected for any civil, criminal or departmental action even in respect of any order passed by the said authority is discussed hereinafter while considering point no. 4 of the reference. Obviously, answer to the point, 'whether the applicant can be held entitled for such protection' would also be simultaneously decided with point no. 4 of the reference.

5. **Point No. (iii) :- Whether the applicant was empowered to exercise the delegated powers U/s 40 of the Waqf Act, 1995 in the present form in respect of Waqf property involved in the proceedings?**

(a) In this regard learned Member (A) has observed that the applicant has prima-facie not exercised due diligence while exercising the delegated powers. Learned Member(A) has further observed that the Waqf Board and the office bearers of the said Board did not exercise due diligence in passing the resolution. Learned Member (A) has further observed that the resolution may amount to excessive delegation and for that he has held all the concerned officers including the present applicant responsible and has also suggested for subjecting the other officers to the departmental enquiry.

(b) Learned Member (J) has reproduced the observations made by the Hon'ble High Court while deciding C.R.A. No. 01/2016, wherein the Hon'ble High Court has recorded a finding that there is no reason to doubt the correctness of the delegation given by the respondents.

(c) It is the matter of record that against the decision given by the applicant in the proceedings u/s 40 of the Waqf Act, Waqf Appeal No. 01/2016 was preferred by the Masjid Trust before the learned Maharashtra Waqf Tribunal. Learned Waqf Tribunal held that the order dated 04.02.2016 passed by the applicant was without jurisdiction. The learned Tribunal in para 53 of the judgment has observed as under: -

"53. Even the resolution of the Board dtd.19.12.2013 which is referred in the said letter is not produced on record. The surprising thing that, the Board is party but no any attempt is also made from the Board to substantiate their contention to produce the said resolution of the Board by which the powers are delegated to the C.E.O.. In short, there is no any document on record to show that the C.E.O. was delegated the powers of the Board to decide the application under Section 40(1) of the Act of petitioner."

(d) Against the order passed by the learned Waqf Tribunal, Civil Revision Application No. 102/2019 was filed by one Linker Shelter Pvt. Ltd. In the said matter certain other applications were also preferred. One Civil Application No. 25385/2019 was preferred by Dudhadhari Kathade Kagzipura Masjid Trust also. While deciding the said revisions by the common judgment as about the observations made by the Tribunal in para 53 of its judgment, which I have reproduced hereinabove, the Hon'ble Bombay High Court has commented thus:-

"14. The said observation of the Tribunal is clamped as perverse, as it has failed to take into consideration the resolution of the Board dtd.19/12/2013, which was placed before the Tribunal by the Appellants themselves. I agree with the said submission. The said finding is undoubtedly perverse as the Tribunal has recorded that, since the order of C.E.O. does not speak of any such resolution, nor the Government communication dated 16/10/2015 grants delegation in favour of the C.E.O. and thirdly, the resolution of the Board itself is not produced. This observation is in utter contrast to the factum of production of resolution before the Tribunal by the Appellants themselves vide Exhibit 23.

(e) The Hon'ble High Court has ultimately recorded the following finding on the issue of powers delegated to the

applicant to decide the application under Section 40 of the Waqf Act: -

“When Section 27 of the Act makes it clear that the Board can delegate its powers and duties under the Act to any person mentioned in the said provision and when the Board has chosen to exercise its power, being delegated to the C.E.O. to determine the question whether the subject property is waqf property and the C.E.O. accordingly has passed an order in exercise of his delegated power and, when the delegation by the resolution is never called in question, I do not see any reason to doubt the correctness of the delegation by the resolution.”

(f) In view of the finding so recorded by the Hon’ble High Court learned Member (A) in fact, had exceeded his jurisdiction in drawing the inferences as recorded in his order. Learned Member (J) has rightly held that the applicant was duly delegated the powers under Section 40 of the Waqf Act.

6. Point No. (iv) Whether the departmental enquiry initiated by issuing show cause notice against the applicant was null and void before the applicant replied the same.

(a) The learned Member (A) has recorded the conclusion that there is no merit in the claim of the applicant for protection against the D.E. and the O.A. filed by the applicant is devoid of merit.

(b) Learned Member (J) has observed that the basis for suspending and initiating D.E. against the applicant was order dated 4.2.2016 passed by the applicant. He has further observed that in Waqf Appeal No. 01/2016 the

Hon'ble High Court has upheld the said order passed by the applicant. The learned Member (J) has further observed that in view of the fact that the order dated 4.2.2016 is upheld by the Hon'ble High Court, the impugned action taken by respondent No. 4 against the applicant would fall to the ground. On the aforesaid reasoning the Hon'ble Member (J) has passed an order thereby allowing the O.A. by declaring the D.E. proposed/initiated against the applicant as null and void and has further ordered that the said D.E. is dropped.

(c) Some of the observations as are made by Member (J) are factually incorrect. The order passed by the Hon'ble High Court in Civil Revision No. 102/2019, whereby the order passed by the Maharashtra Waqf Tribunal in Waqf Appeal No. 01/2016 is set aside cannot be interpreted to mean that the Hon'ble High Court has upheld the order dated 4.2.2016 passed by the applicant. The Hon'ble High Court in the said order has directed the Waqf Tribunal to adjudicate the appeal on its own merits uninfluenced by the observations touching the merits of the matter.

7. Applicant was suspended vide order dated 3.3.2017. I deem it appropriate to reproduce herein below first 02 paragraphs of the said order, which read thus :-

“ज्या अर्थी, मस्जिद दुदाधारी, कथडा उर्फ काजीपुरा, ता. जि. नाशिक या संस्थेच्या ताब्यातील सर्वे नं. ९८० व ९८१ मधील वक्फ मालमत्ता म्हणून नोंद असलेली मालमत्ता दि. ०४/०२/२०१६ च्या आदेशान्वये वक्फ नसल्याचे घोषित करून गैरवर्तणूक केल्याची बाब अल्पसंख्याक विकास विभागाच्या प्राथमिक चौकशीमध्ये निष्पन्न झाली आणि उक्त अनियमिततेस श्रीमती नसीमा बानो पटेल, तत्कालीन प्रभारी मुख्य कार्यकारी अधिकारी, महाराष्ट्र राज्य वक्फ

मंडळ, औरंगाबाद, सध्या जिल्हा अधीक्षक भूमि अभिलेख, औरंगाबाद ह्या जबाबदार असल्याने त्यांच्याविरुद्ध विभागीय चौकशीची कार्यवाही करण्याचे योजिले आहे.

त्या अर्थी, महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम, १९७९ च्या नियम ४(१)(अ) अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून आता उक्त श्रीमती नसीमा बानो पटेल यांना आदेशाच्या दिनांकापासून शासन सेवेतून निलंबित करण्यात येत आहे. श्रीमती पटेल या पुढील आदेश काढले जाईपर्यन्त निलंबित राहतील.”

8. After passing of the said order within 03 days i.e. on 6.3.2017 the applicant filed the present Original Application. From the record, it appears that on 7.3.2017 the matter was for first orders placed before the Single Bench because of non-availability of the Division Bench and the learned Single Bench was pleased to grant the interim stay to the further proceedings in the D.E. until further orders. The record further shows that this Tribunal though stayed further proceedings in the D.E., did not grant stay to the order of suspension observing that the order of suspension has already come into effect. It is the further matter of record that the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad, vide order passed on 15.1.2018 in W.P. No. 4023 of 2017 revoked the order of suspension. Since further proceedings in the D.E. were stayed by this Tribunal on 7.3.2017, though in the suspension order the respondents have declared their intention to commence the D.E. against the applicant and in contemplation of the said D.E. had suspended the applicant by invoking the provisions under rule

4(1)(a) of the M.C.S. (Discipline & Appeal) Rules, 1979, the D.E. could not proceed further beyond passing of the order of suspension.

9. Learned Member (J) has held the D.E. proposed against the applicant as null and void and further passed an order, thereby dropping the said D.E. Learned Member (A), however, has vacated the interim stay granted by this Tribunal on 7.3.2017, whereby the further proceedings of the D.E. were stayed by this Tribunal. Learned Member (A), in his order has further observed that nothing in the said order restricts or prohibits the respondents from initiating any departmental action against the applicant individually or jointly with any other public servant of the State, who may also be found to be responsible in this matter, as per provisions of M.C.S. (Discipline & Appeal) Rules, 1979. Learned Member (A) has finally dismissed the O.A. terming the same as misconceived and devoid of merits.

10. In his judgment the learned Member (J) has observed that the order dated 4.2.2016 passed by the applicant is quasi-judicial order. It is further observed by him that there is nothing on record to show that the said order would go beyond perview of

Section 100 of the Wakf Act inviting disciplinary action. On the aforesaid reasoning the learned Member (J) has reached to the conclusion that the D.E. initiated against the applicant is null and void.

11. Learned Member (A) has recorded that the provisions under the M.C.S. (Discipline & Appeal) Rules, 1979 do not prohibit any such enquiry. Learned Member (A) has also observed that the applicant has been resisting the process of D.E. by making the Tribunal substitute itself in place of Departmental Enquiry Officer/disciplinary authority. Learned Member thus further observed that it is open for the applicant to place the facts before the competent authority regarding any mandate emanating from judgment of Hon'ble High Court or Hon'ble Supreme Court, which directly or impliedly amounts to barring/prohibiting departmental inquiry against the applicant. Learned Member (A) has also observed that the claim of the applicant that the provisions of section 100 of the Waqf Act, 1995 gives 'absolute' immunity to her from any departmental enquiry is unacceptable. Learned Member has also noted that the provisions u/s 3(2) of the Judges (Protection) Act, 1985 also cannot be interpreted to mean that there is absolute bar for initiating D.E. against the person discharging judicial functions.

12. Section 3(1) and 3(2) of the Judges (Protection) Act, 1985 and Section 100 of the Waqf Act, 1995, I have reproduced hereinabove. The section 3(1) of the Judges (Protection) Act, 1985 provides that no court shall entertain or continue any civil or criminal proceeding against any person, who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. Sub-section 2 of section 3, however, clarifies that nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

Section 100 of the Waqf Act, 1995 says that no suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

13. It is the argument advanced on behalf of the applicant that the D.E. is contemplated against the applicant on the sole ground that the applicant passed an order on 4.2.2016, thereby declaring that the properties in possession of Majid Dudadhar, survey nos. 980 and 981 situated at Aias Kathade Alias Kazi Pura, Tq. & Dist. Nashik are not the Waqf properties. As has been argued on behalf of the applicant, the order, which has been passed on 4.2.2016 by the applicant has been passed in a quasi-judicial proceedings u/s 40 of the Waqf Act, 1995 and, as such, the applicant is entitled for protection u/s 3(1) of the Judges (Protection) Act, 1985. It has also been argued that since the aforesaid order has been passed by the applicant in capacity of the quasi-judicial authority while discharging her duties under Waqf Act, 1995, the applicant is also entitled for protection u/s 100 of the Waqf Act, 1995 and, as such, no proceedings can be initiated against the applicant on the ground of the order passed by her on 4.2.2016.

14. I have already held that the order dated 4.2.2016 has been passed by the applicant as a quasi-judicial authority while deciding the application u/s 40 of the Waqf Act, 1995. I have also recorded that the said order has been passed by the applicant in a quasi-judicial proceedings. The law is well settled

that failure to exercise the judicial or quasi-judicial power properly or wrong application or interpretation of law by judicial or quasi-judicial authority while deciding any matter itself, cannot be held to be a misconduct for the reason that the wrong or erroneous decision is subject to judicial supervision in appeal.

15. In the instant matter the order dated 3.3.2017, however, reveals that the disciplinary enquiry is contemplated against the applicant on the ground that in the preliminary enquiry conducted by the Minority Development Department of the State, it is revealed that by declaring the properties bearing survey nos. 980 & 981 in possession of Majid Dudadhar, not to be Waqf proprieties, the applicant has committed a misconduct. It is thus evident that it is not the allegation of the respondents against the applicant that the applicant did not exercise the quasi-judicial power properly or she was wrong in interpretation of law. The allegation is that by giving such decision, the applicant committed misconduct. In the impugned order the words used are “...गैरवर्तणूक केल्याची बाब अल्पसंख्याक विकास विभागाच्या प्राथमिक चौकशीमध्ये निष्पन्न झाली...”

16. Question arises, in the above circumstances, the action initiated by the respondents of contemplating the D.E.

against the applicant whether can be declared as null and void? In the matter of **Zunjarrao Bhikaji Nagarkar VS. U.O.I. & Others** (cited supra). Having considered the exercise of quasi-judicial function vis-a-vis the D.E., the Hon'ble Supreme Court has observed that-

“To maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order”.

In the case of **Inspector Prem Chand vs. Govt. of NCT of Delhi and Ors., (2007) 4 SCC 566**, Hon'ble Supreme Court has in para 11 has quoted the term 'misconduct' as defined in the **P. Ramanatha Aiyar's Law Lexicon**, 3rd Edn., at page 3027, which reads thus :-

“The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.”

The Hon'ble Supreme Court has further observed that,

“Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct.”

In the case of **Union of India and Others vs. J. Ahmed, (1979) 2 SCC 286**, the Hon'ble Supreme Court has quoted the

definition of word 'misconduct' from the Stroud's Judicial Dictionary, which reads as under :-

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

In the case cited supra the Hon'ble Supreme Court has held that an act or omission which runs counter to the expected code of conduct would certainly constitute a misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct.

17. The observations made by the Hon'ble Supreme Court in the aforesaid judgments would reveal that the immunity granted to the judicial or quasi-judicial authorities is not unfettered. As observed in all the aforesaid judgments if a judicial or quasi-judicial officer conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it can certainly be stated to be misconduct. If it is noticed that the quasi-judicial order was influenced by the extraneous consideration or deliberate or actuated by mala fide, the officer concerned passing such order may not be entitled for immunity under the provisions of Judges (Protection) Act, 1985.

18. In the instant matter, as has been noted by me hereinabove, the order dated 3.3.2017 demonstrates that the DE was contemplated against the applicant as it was revealed in the primary enquiry conducted by the Minority Development Department of the State that by declaring that the City Survey nos. 980 & 981 are not the Waqf properties, the applicant has committed a misconduct. It is the matter of record that within 03 days of passing of the aforesaid order, the applicant has approached this Tribunal by filing the present O.A. and on next day i.e. on 7.3.2017 the then learned Member (J) passed an interim order thereby staying the enquiry proceedings until further order. It is quite evident that in view of the aforesaid interim order, the respondents could not move further in the enquiry contemplated against the applicant.

19. Learned Member (J) in para 12 of the order written by him has observed that,

“from the admitted facts on record, it is evident that passing of impugned suspension order and proposal to initiate departmental enquiry initiated against the applicant are emanating from the order dated 4.2.2016 (Annex. A-9) passed by this applicant under sec. 40 of the Wakf Act relating to properties bearing No. 980 & 981 thereof holding that those properties though were registered as Wakf properties, those are not Wakf properties and because of that the applicant said to have committed misconduct actionable under M.C.S. (Discipline & Appeal) Rules, 1979”.

In para 13 learned Member has further observed that, “In view of above, it is crystal clear that the said order dated 4.2.2016 passed by the applicant is a quasi-judicial order. There is nothing on record to show that the said order would go beyond perview of Section 100 of the Wakf Act inviting disciplinary action.”

20. Having regard to the averments in the order of suspension to which I have referred hereinabove and after having considered the contentions taken in the affidavit in reply filed on behalf of the respondents, it is difficult to agree with the observations made and the findings recorded by the learned Member (J) that there is nothing on record to show that the said order would go beyond perview of Section 100 of the Wakf Act inviting disciplinary action. In the order of suspension dated 3.3.2017, it has been specifically stated that in the preliminary enquiry conducted by the Minority Development Department of the State it is revealed that the applicant has committed a misconduct by declaring that the properties survey nos. 980 & 981 are not the Waqf properties though they are recorded as Waqf properties.

21. As has been observed by the Hon'ble Supreme Court in the case of **Inspector Prem Chand vs. Govt. of NCT of Delhi and Ors.** (cited supra) the word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context

wherein the term occurs. The context in which the said term is used in the order of suspension is found in the affidavit in reply filed on behalf of respondent no. 2. In para 3.1 of the said reply the respondent no. 2 has stated that,

“The respondents have received a number of complaints from various persons including 04 members of the Maharashtra State Waqf Board, Aurangabad and 01 Member of the Central Waqf Council regarding the order dated 4.2.2016 passed by the applicant.”

In para 3.2 the respondent no. 2 has stated that,

“the main allegation made against the applicant is that, she was having hand in gloves with the encroachers of the said waqf properties and with a mala fide intention has ignored the material documentary proofs submitted before her in support of the claim of the said properties being waqf properties.”

In para 3.3 the said respondent has further stated that,

“There are many other allegations, circumstantial proofs/factors, which are prima facie sufficient for ordering a detailed enquiry into the matter. However, details thereof cannot be received at this point of time, as it may adversely affect the proceedings of proposed Departmental Enquiry to be made against the applicant.”

In para 09 the respondent no. 2 has expressed that,

“Since, after primary scrutiny of the relevant records the Government of Maharashtra has reached to a conclusion that prima facie evidences in support of the allegations exists and therefore, a thorough departmental enquiry is needed to ascertain the facts in the matter.”

22. There is reason to believe that in background of the allegations as are made in the affidavit in reply filed by

respondent no. 2, the word 'misconduct' is used in the order dated 3.3.2017. In view of the allegations as are made in the reply filed on behalf of respondent no. 2, no such inference can be drawn as has been drawn by the learned Member (J) that there is nothing on record to show that the order passed by the applicant on 4.2.2016 would go beyond perview of section 100 of Waqf Act, 1985 inviting disciplinary action. Having considered the averments made and the allegations raised by respondent no. 2 in his affidavit in reply against the applicant in context with the order passed by the applicant on 4.2.2016, it appears that the word 'misconduct' used in the order dated 3.3.2017 implies a wrongful intention and not a mere error of judgment.

23. It further appears to me that the prayer so made is premature and cannot be considered by the Tribunal. Learned Member (J) has passed such an order presuming that the order dated 4.2.2016 passed by the applicant is an act falling within the perview of section 100 of the Waqf Act, 1995. Said section 100 provides that no suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is **in good faith** done or intended to be done under this Act. If the affidavit in reply filed on behalf of

respondent no. 2 is considered, he has expressly alleged that the order so passed by the applicant on 4.2.2016 is passed with mala-fide intention meaning thereby that it has not been passed in good faith. As has been observed by the Hon'ble Supreme Court in the case of **Zunjarrao Bhikaji Nagarkar VS. U.O.I. & Others** (cited supra), if there are allegations that the order passed by the quasi-judicial authority, is influenced by extraneous consideration, the charge sheet can be very well maintained against a quasi-judicial authority. As has been observed by the Hon'ble Supreme Court in the case of **Inspector Prem Chand vs. Govt. of NCT of Delhi and Ors.** (cited supra), the word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. The word 'misconduct' used in the order dated 3.3.2017 has to be construed in premise of or with reference to the allegations made against the applicant in the affidavit in reply filed on behalf of respondent no. 2. In the circumstances, the prayer made by the applicant to declare the D.E. as null and void cannot be accepted. I reiterate that it is the premature prayer. Without knowing the nature of the charges levelled against the applicant and without giving such an opportunity to the respondents to frame and issue such a charge memo to the applicant, it would be very

unsafe to record a finding whether the misconduct alleged against the applicant falls within the perview of the acts prescribed u/s 100 of the Waqf Act, 1995 or whether the applicant will be entitled for the protection u/s 3(1) of the Judges Protection Act, 1985.

24. Even in premise of the fact that the suspension of the applicant directed vide the order dated 3.3.2017 has been revoked by the Hon'ble High Court, it may not be possible to declare the enquiry proposed against the applicant as null and void. When in the preliminary enquiry the applicant is found to have committed misconduct, the right of the respondents to conduct the D.E. in respect of the conduct of the applicant so revealed, which according to them is a misconduct, cannot be taken away by the Tribunal. The allegations against the applicant made by respondent No. 2 in his affidavit in reply raise doubt about her integrity. Without knowing the charges, which may be framed by the respondents, the D.E. cannot be held as null and void. No doubt, the primary burden would be on the respondents to substantially prove the allegations made by them against the applicant and opportunity will be with the applicant to prove her innocence by rebutting those charges. At this juncture, the applicant neither can be certified to be innocent nor can be held guilty. It would only be possible if the respondents are permitted to proceed with the D.E.

25. For the reasons recorded by me as above, though I am not in agreement with the conclusions recorded by the learned Member (A) on point nos. 1 and 3 of the reference and though I am not fully agreeing with the conclusions recorded by him on point no. 2, I concur with the finding recorded by him on point no. 4 and the final order passed by him.

26. The learned Registrar of this Tribunal is directed to take further steps in the present matter as per rules.

VICE CHAIRMAN

27. At this juncture the learned counsel for the applicant has prayed for continuing the interim order passed in the present matter for next 15 days as the applicant desires to challenge the present order before the Hon'ble High Court. The learned Presenting Officer has submitted for passing appropriate order. Hence, I pass the following order:-

ORDER

The interim order passed in the present Original Application shall remain in force for next 15 days.

VICE CHAIRMAN

Date :- 4.1.2024

28. As directed by this Tribunal to the learned Registrar to take further steps in the present matter as per the rules, the

learned In-charge Registrar has placed this matter today for pronouncement of the judgment in the present Original Application as per majority view.

29. As provided under section 26 of the Administrative Tribunals Act, 1985, the point or points on which the learned Members of the earlier Bench differed and reference is made in that regard, the point or points on which a reference is made are required to be decided according to the opinion of the majority of the Members of the Tribunal, who have heard the case including those, who first heard it.

30. It is the matter of record that both the learned Members, who have recorded the dissenting judgments in the present matter, have retired on attaining the age of superannuation. In the circumstances, the undersigned alone will have to discharge the task of pronouncing the majority view and the final order as per the majority view. Following is the order as per majority view:-

ORDER

The prayers made for declaring the departmental enquiry proposed against the applicant as null and void and to issue necessary directions to drop the said enquiry are rejected.

Consequently the Original Application shall stand dismissed, however, without any order as to costs.

VICE CHAIRMAN

31. After pronouncement of the aforesaid order the learned counsel for the applicant has prayed for staying the effect and operation of the present order for next 15 days as the applicant is intending to challenge this order before the Hon'ble High Court. The learned Presenting Officer has submitted for passing necessary orders. Hence, I pass the following order :-

ORDER

In view of the fact that the stay was operating till this date, I deem it appropriate to continue the same for next 15 days as prayed for by the learned counsel for the applicant.

VICE CHAIRMAN

