

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 792 OF 2023**

DISTRICT : AURANGABAD

Jyoti D/o Rajaram Pawar,  
Age : 49 years, Occu. Tahsildar  
(now under suspension)  
R/o Pride Plaza, Vedant Nagar,  
Aurangabad.

**.. APPLICANT.**

**V E R S U S**

1. The State of Maharashtra,  
Through, The Principal Secretary,  
Revenue and Forest Department,  
Maharashtra State, 3<sup>rd</sup> Floor  
New Mantralaya, Madam Cama  
Road, Hutatma Rajguru Chowk,  
Mumbai-400032.
2. The Additional Secretary,  
Revenue and Forest Department,  
Maharashtra State, 3<sup>rd</sup> Floor,  
New Mantralaya, Madam Cama  
Road, Hutatma Rejguru Chowk,  
Mumbai-400032.
3. The District Collector,  
Aurangabad Alamgir Colony,  
Maulana Azad Research Centre Rd.,  
Collector Office Campus,  
Aurangabad.431003

**.. RESPONDENTS.**

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**APPEARANCE** : Shri S.S. Thombre, learned counsel for  
the applicant.

Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondent  
authorities.

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

**DATE** : **24.11.2023**  
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## **ORDER**

1. Heard Shri S.S. Thombre, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent.

2. By filing the present Original Application the applicant has challenged the order of her suspension issued by respondent no. 2 on 24.8.2023. The suspension has been ordered alleging inaction on part of the applicant in taking appropriate legal actions against the persons, who have illegally excavated huge quantity of minor minerals from the lands owned by Deogiri Co-operative Sugar Factory. The impugned order reveals that the issue of largescale illegal excavation of minor minerals i.e. murum from the land of Deogiri Co-operative Sugar Factory was vehemently discussed in the

Maharashtra Legislative Assembly on 26.12.2022. In the order of suspension, it is alleged that being Tahsildar of Aurangabad (Rural) the applicant was under an obligation to take appropriate penal actions against the culprits, who have carried out said illegal excavation. The impugned order further reveals that the Government has directed the Divisional Commissioner to send the proposal for initiating Departmental Enquiry against the persons, responsible for such vast excavation without permission of the competent authority. The applicant has been suspended under rule 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in contemplation of Departmental Enquiry against the applicant.

3           The applicant has raised multiple objections in exception to the impugned order. The applicant has denied the allegation of inaction on her part in taking appropriate legal action against the persons who have carried out illegal excavation of minor minerals. It is the contention of the applicant that the alleged excavation had occurred prior to her joining on the post of Tahsildar, Aurangabad (Rural). It is the further contention of the applicant that the excavations have taken place in the private land of Deogiri Co-operative Sugar Factory. It is further contended that the 'Murum' excavated

from the lands of Sugar Factory has been used for the construction of Samruddhi Mahamarg and the Government has resolved not to take any penal action in relation to excavation of 'Murum' used for the construction of Samruddhi Mahamarg.

4. Shri S.S. Thombre, learned counsel appearing for the applicant submitted that without any just and sufficient reason the respondents have passed an order of suspension against the applicant. The learned counsel submitted that the excavation was going on from the land of Deogiri Co-operative Sugar Factory since the year 2015-16, whereas the applicant resumed the charge of the post of Tahsildar, Aurangabad (Rural) in March-2021. Learned counsel submitted that after the issue of excavation of minor minerals from the land of Deogiri Co-operative Sugar Factory was raised in Maharashtra Legislative Assembly, the committee consisting of high level Government Officers was constituted for conducting an enquiry as about the said excavations. Learned counsel pointed out that in the report submitted by the said committee, it has been specifically observed that the excavations were going on since last 5-6 years. Learned counsel further submitted that the said committee has not attributed any incriminating role or any culpable inaction on part of the applicant.

5. The order of suspension is challenged mainly on the ground that it has been passed under the political pressure in order to please the Hon'ble Minister and local MLA. According to the applicant, there are no sufficient grounds for directing suspension of the applicant. It has been further argued that though the suspension is stated to have been ordered by invoking the powers under rule 4(1)(a) of the M.C.S. (Discipline & Appeal) Rules, 1979, on the date of passing such order neither the departmental enquiry was pending against the applicant nor it can be said that the enquiry was contemplated. Learned counsel submitted that the very vague statement has been made in the order that against the officials, who are responsible for not taking any penal action in respect of the illegal excavations carried out from the lands belonging to Deogiri Co-operative Sugar Factory, the proposal for initiating D.E. has been called for from the Divisional Commissioner, Aurangabad. Learned counsel submitted that without receiving such proposal from the Divisional Commissioner, no order of suspension could have been passed against the applicant. Learned counsel further submitted that the report of the committee, which was appointed after the issue was discussed in the Maharashtra Legislative Assembly did not attribute any

specific blame to the present applicant. Learned counsel further submitted that even the report submitted by the Collector, Aurangabad also does not attribute any inaction or negligence on part of the applicant. Learned counsel submitted that the order of suspension cannot be issued unless there is strong prima-facie material against the employee in regard to misconduct alleged against him.

6. Relying upon the judgment of Hon'ble Apex Court in the case of **Union of India (UOI) and Ors. Vs. Ashok Kumar Aggarwal, (2013) 16 SCC 147**, learned counsel submitted that the order of suspension has to be passed after taking into consideration the gravity of the misconduct sought to be enquired into or investigated and the appointing authority or the disciplinary authority has to take a conscious decision independently whether it is expedient to keep an employee under suspension. Learned counsel submitted that the suspension casts stigma on the career of the Government employee and hence the suspension has to be ordered only in such matters wherein the employer reaches to a conclusion that the enquiry against the delinquent cannot be conducted without suspending him. Learned counsel also referred to the judgment delivered by this Tribunal in **O.A. No. 762/2023 (Dr. Suryakant**

**s/o Arjunrao Sable Vs. the State of Maharashtra & Ors.)** on 6.10.2023. Learned counsel submitted that identical fact situation is existing in the present matter. The learned counsel lastly submitted that in view of the G.R. dated 3.1.2023 the so called allegations against the applicant have become redundant. The learned counsel for all above reasons prayed for setting aside the impugned order.

7. Learned Chief Presenting Officer supported the impugned order. Learned C.P.O. submitted that the applicant is working as Tahsildar, Aurangabad (Rural) since 01.03.2021 and most of the complaints about illegal excavations were received during the tenure of the applicant. Learned C.P.O. submitted that because of inaction on part of the applicant not only that the State Government lost royalty worth crores of rupees, but several hectors of land is rendered useless for cultivation. Learned C.P.O. therefore, prayed for dismissal of the Original Application.

8. I have carefully considered the submissions made on behalf of the applicant, as well as, State authorities. I have also perused the documents produced on record. The applicant has been suspended by invoking the powers under Rule 4(1) of the

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The aforesaid Rule provides that the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending. According to the submissions made by the learned counsel for the applicant, the order of suspension does not reveal that the Departmental Enquiry is contemplated against the applicant or that it is pending against her. The argument so made by the learned counsel is difficult to be accepted. In para No. 2 of the impugned order, it has been expressly mentioned that the Divisional Commissioner, Aurangabad is directed to forward the proposal for initiating D.E. against the officers, who are found guilty of not taking any penal action against the persons involved in the illegal excavations of minor minerals from the land of Deogiri Co-operative Sugar Factory. From the tenor of the order it is quite evident that the Government has already taken a decision to hold D.E. against the applicant and others and the Divisional Commissioner is directed to send a formal proposal in that regard. It is thus clear that the D.E. is



contemplated against the applicant and suspension of the applicant has been ordered in contemplation of the said D.E.

9. Now it has to be examined whether the impugned action of the respondents of directing suspension of the applicant is sustainable? Rule 4(1)(a) of the MCS (D&A) Rules, 1979 referred to hereinabove confers power on the disciplinary authority to place an employee under suspension in contemplation of the departmental proceedings; however, the power of suspension cannot be exercised in arbitrary manner or without any reasonable ground.

10. Applicant has placed on record the Government Resolution dated 3.1.2023. Vide the said G.R. the Government has resolved to cancel all the penal orders issued by the Revenue Agencies in respect of the minor minerals used for the construction of the Samruddhi Mahamarg. In the preamble of the said G.R. it is stated that considering the importance of Samruddhi Mahamarg, the actions initiated by the Revenue Officers in respect of illegal excavations of minor minerals for construction of Samruddhi Mahamarg are required to be cancelled. The contents in the preamble further reveal that the contractors carrying out the construction of the Samruddhi

Mahamarg have excavated the minor minerals without following the procedure prescribed therefor and, as such, the Revenue Officers of the respective revenue areas have initiated the penal actions against the said contractors under Section 47(7) and 47(8) of the Maharashtra Land Revenue Code 1966. Taking into account the importance of Samruddhi Mahamarg for the development of the State the project of Samruddhi Mahamarg has been notified as a vital public project and under the provisions of Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013, more particularly forth proviso to sub-rule 1 of Rule 46 the Government has waived the royalty over the minor minerals used for the purposes of the construction of the said Samruddhi Mahamarg.

11. As is revealing from the documents placed on record by the applicant, as well as, the respondents the minor minerals excavated from the lands belonging to Deogiri Cooperative Sugar Factory, Phulambri are excavated for the construction of Samruddhi Mahamarg. In the complaint made by Shri Roshan Kisan Awasarmal on 8.9.2019 also it is alleged that the Company by name M/s. Megha Engineering and Infrastructure Limited, which is carrying out the construction of Samruddhi Mahamarg has illegally and unauthorizedly excavated the minor

minerals i.e. Murum as well as soil from the lands belonging to and in possession of Deogiri Cooperative Sugar Factory. It is further significant to note that the issue which was raised by Shri Haribhau Bagade Hon'ble Member of Maharashtra Legislative Assembly on the Floor of the Assembly on 26.12.2022 was also in respect of excavations carried out from the land belonging to Deogiri Cooperative Sugar Factory at Phulambri.

12. The extract of the record and proceedings of the discussion which took place on 26.12.2022 in the assembly are placed on record, contents of it reveal that according to Hon'ble Member of Legislative Assembly also the Murum which was illegally excavated from the lands of Deogiri Cooperative Sugar Factory was used for construction of Samruddhi Mahamarg. The Hon'ble Revenue Minister while making statement in respect of the question raised by Hon'ble M.L.A. Shri Haribhau Bagade, stated that written complaint in that regard dated 8.9.2021 has been received to the Government and pursuant to that the Tahsildar Aurangabad Rural has carried out an enquiry wherein it is confirmed that the Minor Minerals have been excavated from the large area and in huge quantity. The Hon'ble Revenue Minister further stated that the Collector,

Aurangabad had directed the Sub-Divisional Officers and the Tahsildars of the area to conduct thorough enquiry in that regard and submit the report. It was the question raised by Hon'ble M.L.A. that while the minor minerals (murum) were being excavated in huge quantity, why the concerned Revenue Officers did not object to that and why they did not take any action against them. While answering the question of the Hon'ble M.L.A. the Hon'ble Revenue Minister stated that the enquiry will be conducted and necessary actions will be taken against the culprits.

13. I have narrated the aforesaid facts for the reason that the same have resulted in issuance of the order of suspension against the applicant. From the contents of the order of suspension it is revealed that the enquiry is contemplated against the applicant for the inaction on her part in taking penal actions against the persons, who carried out illegal and unauthorized excavations of Murum from the lands of Deogiri Cooperative Sugar Factory. The Committee, which was appointed for carrying out an enquiry into the question raised by Shri Haribhau Bagade the Hon'ble MLA, in its report has recorded that the excavation has been done for the purposes of Samruddhi Mahamarg. In the report the committee

has further noted that the primary responsibility was on the management of Deogiri Cooperative Sugar Factory to ensure that no excavations take place from the lands owned and possessed by them without their consent; however, instead of doing that the Deogiri Cooperative Sugar Factory has indulged in making the correspondence with the Revenue Authorities. The report of the said committee further reveals that the excavation was carried out from the lands of Deogiri Cooperative Sugar Factory even prior to year 2016. The report further contains that after Deogiri Cooperative Sugar Factory went in liquidation, the land and assets of said Factory came in possession of the Maharashtra State Cooperative Bank. However, Bank officials did not show the due diligence and failed in stopping the illegal excavations from their lands.

14. Applicant assumed the charge of the post of Tahsildar of Aurangabad (Rural) on 25.2.2021. On 8.9.2021 Shri Roshan Kisan Awasarmal made a written complaint to the Collector, Aurangabad. Learned Collector on 16.11.2021 forwarded the said complaint to the Tahsildar, Aurangabad vide letter dated 16.11.2021 and directed the Tahsildar, Aurangabad to conduct an enquiry and take the appropriate actions against the culprits. After receiving the aforesaid letter the Tahsildar

Aurangabad i.e. the applicant immediately wrote to the Circle Officer, Pisadevi and Talathi of Sajja Savangi, thereby directing them to conduct the spot inspection and to submit the report thereof expeditiously. Accordingly, the spot was inspected by the Circle Officer and Talathi and the spot panchnama was prepared. Spot panchnama demonstrates that theft of Murum had taken place prior to 6-7 years. On 16.9.2022 the applicant wrote to the Debts Recovery Officer of Debts Recovery Tribunal, Aurangabad informing them that the primary responsibility was on them to protect their land and to take necessary actions for prevention of theft of Murum by filing FIR with the Police in that regard. It is the contention of the applicant that she has discharged the duties cast on her and in the circumstances the impugned order of suspension is unwarranted.

15. Shri Thombre, learned counsel appearing for the applicant has argued that in premise of the G.R. dated 3.1.2023, whereby the Government has resolved to cancel the penal actions already initiated in respect of illegal excavations of the minor minerals (Murum) used for the construction of Samruddhi Mahamarg and stop taking such actions henceforth, there appears no propriety in contemplating the enquiry against the applicant in that regard.

16. There appears substance in the arguments so advanced by the learned counsel. The very allegation against the applicant for which the enquiry is contemplated against her is that the applicant did not take any legal action in respect of the minor minerals excavated from the land belonging to Deogiri Cooperative Sugar Factory, discussion in respect of which was held in the Maharashtra Legislative Assembly on 26.12.2022. Vide its G.R. dated 14.11.2018, when the Government has resolved to waive the royalty payable on the minor minerals excavated for the construction of Samruddhi Mahamarg and when by the subsequent G.R. dated 3.1.2023 has further resolved to cancel the actions initiated by the Revenue Officers of the respective divisions against the contractors who are carrying out the construction of Samruddhi Mahamarg for illegal excavation of Murum and has also further directed not to initiate any penal action in respect of the excavation of the minor minerals (Murum) for construction of Samruddhi Mahamarg, the decision to initiate departmental proceeding against the applicant for not taking any penal action against the illegal excavations occurred from the lands of Deogiri Cooperative Sugar Factory and in contemplation of the said

enquiry to suspend the applicant vide order dated 24.8.2023, impugned in the present O.A., appears unconscionable.

17. Though it may be a fact that on 26.6.2022 some discussion had taken place in the Maharashtra Legislative Assembly on the issue raised by Hon'ble M.L.A. Shri Haribhau Bagade and though Hon'ble Revenue Minister had made some announcement in that regard, in view of the G.R. dated 3.1.2023 now no action is warranted. Had the applicant initiated criminal proceedings or penal actions against such illegal excavations promptly as is expected from her by Hon'ble M.L.A. and Hon'ble Revenue Minister, the question arises what would be the fate of such penal actions in light of the G.R. dated 03.01.2023. The apparent anomaly in the action taken against the applicant is that when the applicant is subjected to suffer the order of suspension and to face the Departmental Enquiry for not taking penal actions against the persons, who illegally and unauthorizedly excavated minor minerals used for construction of Samruddhi Mahamarg, such actions already taken by the Revenue Officers are resolved to be cancelled by the Government.



18. In the facts and circumstances discussed as above, there appears substance in the submission made by the learned counsel for the applicant that the decision to suspend the applicant and to initiate D.E. against her is a political decision only with an object to satisfy the concerned political leaders. There cannot be a dispute on the legal proposition that there is a little scope for judicial review in case of suspension for the reason that passing of suspension order is of a administrative nature and suspension is not a punishment. However, at the same time, it also cannot be lost sight of that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or else it would amount to vindictive misuse of power. Hon'ble Apex Court in the case of **Balvantrai Ratilal Patel Vs. State of Maharashtra, AIR 1968 SC 800**, has ruled that the suspension should be made only in a case where there is a strong prima-facie case against the delinquent employee and there are allegations involving moral turpitude or grave misconduct or indiscipline or refusal to carry out the orders of superior authority. Further, it has to be considered that the suspension order constitutes a great hardship to the person concerned and adversely affects his prospects of promotion and also attaches stigma on his career.

Hon'ble Apex Court has therefore, consistently observed that the order of suspension should not be made in perfunctory or in a routine and casual manner, but with due care and caution after taking all factors into account.

19. For the reasons stated above, the order of suspension impugned in the present Original Application deserves to be set aside. In the result, the following order is passed :-

**ORDER**

- (i) The order dated 24.08.2023 impugned in the present Original Application is quashed and set aside.
- (ii) Respondents are directed to forthwith reinstate the applicant on the post from which she was suspended.
- (iii) The Original Application stands allowed in the aforesaid terms without any order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 24.11.2023**