

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 759 OF 2022

DISTRICT:- OSMANABAD

Manisha d/o Arun Rashinkar,

Age-47 years, Occu. Deputy Collector

then S.D.M. Bhoom, R/o. Alakh

Bungalow, Laxmi Nagar, Savedi,

Ahmednagar.

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APPLICANT

V E R S U S

- 1. The State of Maharashtra,**
Through Additional Chief Secretary
Revenue and Forest Department,
Mantralaya, Mumbai-400032.
- 2. The Divisional Commissioner,**
Office of Divisional Commissioner,
Near Delhi Gate, Fazilpura,
Aurangabad-431 001.
- 3. District Collector,**
Collector office, Osmanabad
Near Laxmi Nagar and Samarth
Nagar, Osmanabad-413 501.
- 4. Regional Departmental Inquiry Officer,**
Collector Office, Aurangabad
Near Delhi Gate, Fazilpura,
Aurangabad 431 001.

.. RESPONDENTS

APPEARANCE : Shri O.D. Mane, learned counsel for
the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 14.02.2024

ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri O.D. Mane, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. The applicant while working on the post of Sub-Divisional Officer at Bhoom was also entrusted with the work in respect of Fodder camps established in the relevant period and to scrutinize the details of payments to be made to the persons and/or institutions running the said Fodder camps. The Collector, Dharashiv vide his letter dated 30.04.2019 has entrusted the said work to the present applicant. It was noticed that the proposals which were submitted by the Tahsildar suggesting deductions from the payments to be made in respect of said fodder camps for certain discrepancies noticed on part of the persons running the said Fodder camps were substantially reduced by the applicant. It was alleged that in large number of matters such reductions were made by the present applicant, whereby the Government was put to financial loss to the extent of more than 2.5 Crores. It was also alleged that certain bills were considered by the applicant though they were not properly prepared and presented without signature of the concerned persons.

3. It is the contention of the applicant that all such orders were passed by her in accordance with law and the norms which were laid down in that regard. It is also the contention of the applicant that the orders, which are referred to in the charge-sheet issued against her, have been passed by her in the capacity of quasi-judicial authority and are appealable. In the circumstances, according to her, she is entitled for the protection under Section 3(1) of the Judges (Protection) Act, 1985.

4. Shri O.D. Mane, learned counsel appearing for the applicant vehemently argued that the applicant has been unnecessarily subjected for such enquiry without any reasonable cause therefor. Learned counsel submitted that when it is the contention of the respondents that by reducing the amount of fine as was proposed by the Tahsildar the applicant has caused revenue loss to the Government worth of Rs. 2.5 Crores, the applicant has placed on record 27 orders, wherein the Collector, Dharashiv has further reduced the amount of fine in addition to the reduction made by the applicant. Learned counsel submitted that the orders, which could become available, are filed on record, but in fact there

may be more such matters, wherein similar orders have been passed by the Collector.

5. Learned counsel further submitted that the respondents have nowhere alleged that the orders which are subject matter for enquiry against the applicant were influenced by extraneous consideration or there are allegations as about the integrity of the applicant. Relying on the judgment of the Hon'ble Apex Court in the case of **Zunjarrao Bhikaji Nagarkar vs. U.O.I. And Others, 1999 (7) SCC 409**, learned counsel submitted that in the said matter the Hon'ble Supreme Court has unambiguously held that unless there are allegations of corruption or the doubts are raised about the integrity of the officer concern in passing the orders, in the capacity of judicial or quasi-judicial authority, he/she cannot be subjected for departmental enquiry in connection with the said orders. Learned counsel submitted that the present case is identical with the facts which existed in the matter before the Hon'ble Supreme Court and, as such, the applicant is entitled for the relief as claimed by her.

6. Learned Presenting Officer appearing for the State authorities has resisted the contentions raised on behalf of the applicant. Respondents have filed their affidavit in reply.

Learned P.O. reiterated the contentions raised in the affidavit in reply filed on behalf of the respondents. He submitted that for the administrative convenience vide letter dated 30.4.2019 the applicant was authorized by the Collector, Dharashiv, to scrutinize and verify the payments to be made to the persons running the fodder camp in the area. Learned P.O. submitted that the orders passed by the applicant are administrative orders subject to approval from the Collector. Learned P.O. submitted that as such the applicant cannot claim immunity under the Judges (Protection) Act. Learned P.O. further submitted that if the contents of the charge-sheet are perused the allegation is in regard to the manner in which the applicant has dealt with the work entrusted to her. Learned P.O. by reading the charge-sheet in detail submitted that the respondents can certainly look into those aspects and are not precluded from conducting enquiry in such matters. He, therefore, prayed for dismissal of the O.A.

7. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. As has been noted by us hereinabove thrust of the applicant is on the issue that the orders which are subject matter of the enquiry were passed by the applicant in the capacity of quasi- judicial

authority. The second limb of the argument is that evidence which the applicant has produced on record reveals that the applicant has followed the procedure as was prescribed and has accordingly passed the orders, which are confirmed by the learned Collector and in some of the matters the Collector has caused more deductions in addition to the deduction suggested by the applicant (27 such orders are placed on record by the applicant). It has also been argued that unless there are allegations about the integrity of the applicant the departmental proceeding cannot be initiated in respect to the orders passed by the applicant in that capacity. There cannot be a dispute that the Judges (Protection) Act provides immunity to the orders passed by the judges who are designated as the judges and other persons though are not designated as judge are quasi-judicial authorities. The criteria is that if the order passed by such authority, if not appealed against would become final is held to be quasi-judicial authority and gets protection under section 3(1) of the Judges (Protection) Act. In the present matter the orders passed by the applicant, which are made subject matter of the enquiry against her do not fall within that category. It is the contention of the applicant herself in the O.A. that the final orders in respect of the payments to be made to the persons running the fodder camp were under the signature

and under the approval of the Collector and the scrutiny only was to be carried out by the present applicant. As has been contended by the respondents and the fact which has not been disputed by the applicant, the authority to carry out the subject work was given by the Collector, Dharashiv to the applicant vide his letter-cum order dated 30.04.2019. We have carefully gone through the said letter, as well as, annexures thereto. After having gone through the said document it is quite discernable that the applicant cannot fall within the definition of judicial or quasi-judicial authority.

8. Shri Mane, learned counsel appearing for the applicant was persuasive in submitting that the orders which are passed by the applicant must be treated as the orders passed under the provisions of Maharashtra Land Revenue Code and in the circumstances the provisions under Section 232 would be applicable. It is difficult to accept the contention so raised since no such document or order is produced, so as to accept the contention as has been raised. We have gone through the provisions of Maharashtra Land Revenue Code also. The provision which has been referred cannot be made applicable in the present matter. As has been contended by the respondents this was the arrangement made under the orders

of the Collector. In the circumstances, the orders passed by the applicant which are subject matter in the present enquiry cannot be said to have been passed by the applicant as a quasi-judicial authority.

9. For the sake of arguments even if it is accepted that the orders were passed by the applicant in capacity of the Sub-Divisional Officer even then we are afraid any such protection could be available for the applicant if the tenor of the statement of charge issued against the applicant is concerned. Learned counsel Shri Mane has relied upon the judgment in the case of **Zunjarrao Bhikaji Nagarkar vs U.O.I. And Others** (cited supra). We have carefully gone through the said judgment. There cannot be dispute as about ratio laid down in the said judgment insofar as judicial officers and the orders passed by the said officers in capacity of the judge are concerned. Even in that matter the Hon'ble Supreme Court has distinguished that such protection is not available even for the persons acting as judge or quasi-judicial authority if the allegations are about integrity of the officer passing such orders and if the orders are noticed to be influenced by extraneous consideration.

10. In the case of **Zunjarrao Bhikaji Nagarkar vs U.O.I. And Others** (cited supra) itself the Hon'ble Supreme Court has

referred to the earlier judgment of it in the case of **Government of Tamil Nadu vs. K.N. Ramamurthy (1997 (7) SCC 101)**. In the said matter the Hon'ble Supreme Court has held that failure to exercise quasi-judicial power properly amounts to misconduct. In the said case the respondent, who was working as Deputy Commercial Tax Officer was imposed with the following charges:-

“(i) That he failed to analyse the facts involved in each and every case referred to above;

(ii) That he failed to check the accounts deeply and thoroughly while making final assessment;

(iii) that he failed to subject the above turnover to tax originally; and

(iv) that he failed to safeguard government revenue to a huge extent of Rs. 44,850/-.”

11. The aforesaid charges were held to be proved against him and he was imposed with the punishment of stoppage of increment for three years with cumulative effect. Against the said order of punishment the officer concerned approached the Tamil Nadu Administrative Tribunal which set aside the disciplinary proceeding against the respondent. The Tribunal was of the view that the order of assessment passed by the respondent was in his quasi-judicial capacity and there was hierarchy of the General Sales Tax Act to correct its order if it

was erroneous. Tribunal held disciplinary proceeding initiated against the respondent as unwarranted and set aside the punishment imposed on him. While setting aside the judgment of the Tribunal, the Hon'ble Supreme Court referred to its earlier decisions in the case of **Union of India Vs. Upendra Singh, 1994 (3) SCC 357**; [Union of India Vs. A.N. Saxena \(1992 \(3\) SCC 124\)](#) & [Union of India vs. Dhawan \(1993 \(2\) SCC 56\)](#) etc. In the case of Upendra Singh (cited supra) the Hon'ble Apex Court had ruled that the Tribunal had no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. The Hon'ble Supreme Court had further observed that the Tribunal or the Court can interfere only if on the charge framed (read with imputation or particulars of the charges if any), no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. Observing further that, if the charges are like that, (i) the officer concerned failed to analyse the facts involved in each and every matter referred to in the charge-sheet or (ii) failed to check the accounts thoroughly while making final assessment which ultimately resulted in huge loss in the Government revenue etc. the enquiry into such charges can very well be conducted against the said officer.

12. In the present matter, the charge against the applicant are of the similar nature. We deem it appropriate to reproduce the charges against the present applicant as it is in vernacular, which read thus: -

“श्रीमती मनिषा राशिनकर हया उपविभागीय अधिकारी, भूम जि. उस्मानाबाद या पदावर कार्यरत असताना त्यांनी खालीलप्रमाणे अनियमितता केली आहे:-

बाब क्र.१ :- श्रीमती मनिषा राशिनकर हया उपविभागीय अधिकारी, भूम जि. उस्मानाबाद या पदावर कार्यरत असताना महाराष्ट्र शासन महसूल व वन विभाग, शासन निर्णय क्रमांक एससीवाय-२०१९/प्र.क्र.३०/म-७ दिनांक २५/०१/२०१९ अन्वये खरीप हंगाम २०१८ मध्ये उस्मानाबाद जिल्ह्यात चारा छावण्या सुरु करण्यात आल्या होत्या. त्यानुषंगाने चारा छावणी मंजूरी आदेशातील अटी व शर्तीचे उल्लंघन करणा-या चारा छावणी चालकावर बाबनिहाय दंडात्मक कार्यवाही करण्याकरिता जिल्हाधिकारी उस्मानाबाद यांचे आदेश क्रमांक [२०१९/महसूल/पाणीटंचाई/कावि-२७२](#), दि. २१.०५.२०१९ अन्वये उपविभागीय अधिकारी भूम, जि. उस्मानाबाद यांना प्राधिकृत करण्यात आले होते. सदर प्रकरणी तपासणी अधिकारी यांच्या अहवालावरून चारा छावणीतील तपासणीतील त्रुटीच्या अनुषंगाने दंड निश्चित करणेबाबत संबंधित तहसीलदार यांनी ९१ प्रकरणांमध्ये एकुण रुपये ८,०७,३८,८५७/- (अक्षरी आठ कोटी सात लाख अडतीस हजार आठशे सत्तावन रुपये) इतक्या रकमेचा प्रस्ताव उपविभागीय अधिकारी, भूम यांचेकडे सादर केला. श्रीमती मनिषा राशिनकर, तत्का. उपविभागीय अधिकारी, भूम जि. उस्मानाबाद यांनी सदर ९१ प्रकरणांत एकुण रुपये ५,५५,०८,८३५/- (अक्षरी पाच कोटी पंचावन लाख आठ हजार आठशे पस्तीस रुपये) इतक्या रकमेच्या दंडाचे आदेश निर्गमित केले आहेत. श्रीमती मनिषा राशिनकर यांनी सदर ९१ प्रकरणांत संबंधित तहसिलदार यांनी प्रस्तावित केलेल्या दंडाच्या रक्कमेपेक्षा कमी रक्कमेचे मोघम स्वरुपाचे आदेश पारित केल्याने शासनाचे एकुण २,५२,३०,०२२/- (अक्षरी दोन कोटी बावन्न लाख तीस हजार बावीस रुपये) इतक्या रकमेचे नुकसान झाले असून त्यास श्रीमती मनिषा राशिनकर, तत्का. उपविभागीय अधिकारी, भूम जि. उस्मानाबाद हया जबाबदार आहेत.

बाब क्र.२ :- श्रीमती मनिषा राशिनकर हया उपविभागीय अधिकारी, भूम जि. उस्मानाबाद या पदावर कार्यरत असताना त्यांनी उपविभाग भूम अंतर्गत चारा छावणी चालकाने त्रुटीची पुर्तता केलेली नसताना संबंधितांचा दंड माफ केला आहे.

बाब क्र.३ :- श्रीमती मनिषा राशिनकर हया उपविभागीय अधिकारी, भूम जि. उस्मानाबाद या पदावर कार्यरत असताना त्यांनी चारा छावणी चालकास दिलेल्या नोटीशीच्या अनुषंगाने चारा छावणी चालक यांनी सादर केलेल्या खुलाश्यावर संस्थेचे अध्यक्ष/सचिव यांच्या स्वाक्ष-या नसताना छावणी धारक यांचे खुलाशे दाखल करून घेउन ते ग्राह्य धरले आहेत.

बाब क्र.४ :- श्रीमती मनिषा राशिनकर हया उपविभागीय अधिकारी, भूम जि. उस्मानाबाद या पदावर कार्यरत असताना उपविभाग भूम अंतर्गत चारा छावण्या चालु झाल्यापासुन ते शेवटच्या तपासणी पर्यंत त्याच त्या उणीवा पुन्हा पुन्हा आढळुन आलेल्या आहेत. सदर बाबींची पुर्तता तपासणी कालावधीत झालेली नसताना श्रीमती मनिषा राशिनकर यांनी दंड पुर्णपणे माफ करून कार्यालयीन कामकाजाच्या पध्दतीकडे दुर्लक्ष केले आहे.

बाब क्र.५ :- श्रीमती मनिषा राशिनकर हया उपविभागीय अधिकारी, भूम जि. उस्मानाबाद या पदावर कार्यरत असताना त्यांनी शासन निर्णय क्रमांक एससीवाय २०१९/प्र.क्र.३०/म-७, दि. २५ जानेवारी, २०१९ मधील अटी व शर्तीचे पालन केलेले नाही.

अशाप्रकारे श्रीमती मनिषा राशिनकर तत्का. उपविभागीय अधिकारी, भूम जि. उस्मानाबाद (निलंबित) यांनी वरीलप्रमाणे असदहेतूने प्रेरित होउन एका जबाबदार अधिका-यास अशोभनीय ठरेल, अशी कृती जाणीवपूर्वक केली आहे. तसेच त्यांनी नितांत सचोटी व कर्तव्यपरायणता राखण्यात कसूर करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम ३ चा भंग केला आहे.”

13. After having read the charges as aforesaid and considering the misconduct alleged therein there remains no doubt that the respondents can conduct the departmental enquiry against the applicant in regard to the said misconducts. In the circumstances, the prayer made by the applicant to quash and set aside the enquiry proceeding initiated against her has to be rejected. Hence, the following order: -

ORDER

- (i) The Original Application is dismissed however, without any order as to costs.
- (ii) The respondents are directed to complete the enquiry as expeditiously as possible and preferably within the period of two months from the date of this order.

MEMBER (A)

VICE CHAIRMAN