

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**ORIGINAL APPLICATION NO.234 OF 2016****DISTRICT: SOLAPUR**

Shri Manoj Gajanan Nimbalkar,)
R/o. Block No.11, Bennur Nagar,)
Near R.T.O. Office, Vijapur Road,)
Solapur) .. Applicant

Versus

1) The State of Maharashtra,)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai)

2) The Collector, Solapur)
Collector Compound, Siddheshwar Peth,)
Solapur) ..Respondents

Shri N.P. Dalvi, the learned Advocate for the Applicant.

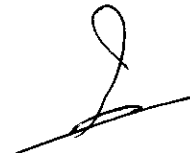
Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATED : 26.04.2016.

J U D G M E N T

1. Heard Shri N.P. Dalvi, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.



2. Heard both sides and perused the O.A., annexures thereto. The case proceeds with admitted background that alternate remedy exists and applicant has prayed for dispensation of alternate remedy.

3. The case was heard on the point of maintainability of O.A. on account of availability of alternate remedy.

4. Learned Advocate for the Applicant Shri N.P. Dalvi has made submissions on following points :-

- (a) Alternate remedy by way of appeal lies before the Divisional Commissioner.
- (b) It is the Applicant's contention that taking recourse of alternate remedy would not be fruitful because suspension is levered due to the communication of Divisional Commissioner through the queries raised by him in the letter dated 24.02.2016.
- (c) Therefore, points which are pivotal to the question of alternate remedy and to the merit are one and the same. Hence, submissions on both alternate remedy and merit are common and concurrent, and hence let the O.A. be heard on merits.

5. Hence, in the points on which prayer for dispensation of alternate remedy and challenge to suspension as advanced are summarized as follows :-

- (a) Sub Divisional Officer (S.D.O.) submitted the report to the Collector on 18.12.2015, (copy whereof is at Exhibit-B, page 13 to 16 of the O.A. paper book) and proposed that disciplinary action be taken against Shri D.N. Londhe, Election Naib, Tahasildar, Karmala as well as Applicant Shri M.G. Nimbalkar.
- (b) Based on the report submitted by S.D.O., and after giving its reference, Collector, Solapur, wrote letter of Divisional Commissioner on 30.01.2016, (copy whereof is at Exhibit-C, pages 17 to 20 of the O.A. paper book) and proposed that initiation of Departmental Enquiry (D.E.) against Shri D.N. Londhe would be proper.
- (c) The Divisional Commissioner raised queries by letter dated 24.02.2016, (copy whereof is at Exhibit-D, page 24 of the O.A. paper book) and called certain information. One amongst those queries read as follows :-



“५) संबधित लिपीक श्री. निंबाळकर यांना निलंबित केले किंवा कसे,”

(Quoted point 5 from Exhibit 'D', page 21 of the paper book)

- (d) Impugned order is passed by the Collector, Solapur on 19.02.2016 (copy whereof is at Exhibit-A, pages 11 and 12 of the O.A. paper book).
- (e) Reply of the State does not reveal that action is initiated against Tahasildar, Shri D.N. Londhe, and also fails to answer as to due application of mind on the part of Collector would be shown.
- (f) Order of suspension of the Applicant is based sheerly on the query raised by Divisional Commissioner which has operated as lever resulting into pushing of the impugned order and hence not only that alternate remedy be dispensed with, but impugned order be quashed since it is devoid of independent application of mind by the Collector.

6. The date schedule of the events referred to in foregoing paragraphs needs to be recapitulations, which is done as follows :-

- 29.12.2015 : Proposed by Sub Divisional Officer.
- 30.01.2016 : Letter by Collector to Divisional Officer.
- 24.02.2016 : Query raised by Collector.
- 19.02.2016 : Action taken by the Collector.

7. If the dates sequence is seen, the contention of the Applicant that the action of the Collector is levered by query and potential suggestion by Divisional Commissioner is shown to be factually incorrect, because the action of suspension, taken by the Collector is dated 19.02.2016 while the query by Divisional Commissioner is dated 24.02.2016 i.e. by about 5 days later.

8. Had it been the case that the query as raised by Divisional Commissioner would have been received by the office of Collector even before order dated 19.02.2016, even then, it may have at the most been a cause of ignition, and in no case it could be seen as a lever or an order.



9. The power and authority of the Divisional Commissioner to scrutinize the matter could have been independently exercised had the Applicant not involved this Tribunal into the scrutiny on merits, by insisting on dispensation of alternate remedy.

10. In so far as, the fact of misconduct reported by Sub Divisional Officer about the Applicant is concerned, it is of serious nature. The matter is to be deal at the time of conducting departmental enquiry. Whether and to what extent the delinquent is involved and cannot be gone into at this stage. It cannot be presumed that Collector did not apply mind. Requirement of Law is contemplation of a disciplinary proceeding. The disciplinary action being in contemplation is not denied by Applicant. All that he claims is that he is a small man and has no role in any decision making process. Applicant being innocent can be tested at the stage of disciplinary proceedings. It cannot be preempted and put as a shield.

11. Present is the case whether the authority, Collector is satisfied as regards the need to initiate disciplinary proceedings, which is contemplated, and pending thereto suspension is considered by him to be necessary. It is not the case that the applicant is that suspension is ordered barely on figment or surmises.

12. Therefore, Original Application has no merit it deserves to be dismissed, and is dismissed.

Sd/-

(A.H. Joshi, J.)
Chairman

prk