

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.619 OF 2020

DISTRICT : PALGHAR

Shri Pruthviraj Uttamrao Rathod.)
Aged 35 years, working as Awal Karkun in)
Sanjay Gandhi Branch, Office of Tahasildar,)
Mokhada, District : Palghar and residing at)
"Sai Karuna Apartments", Flat No.6,)
Near Dream City, Bodhale Nagar, Nashik.)...**Applicant**

Versus

1. The Sub Divisional Officer and)
Magistrate/Assistant Dist. Collector)
Javhar Division, Javhar having office)
At Javhar, Tal. : Javhar, Dist. : Palghar.)
2. The Tahsildar, Mokhada,)
Dist. Palghar.)
3. The Naib Tahsildar (Sanjay Gandhi)
Yojana) in the office of Tahsildar,)
Mokhada, District : Palghar.)
4. The District Collector, Palghar.)
5. The Tahsildar, Tal. : Jawahar,)
District : Palghar.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Mrs. A.B. Kololgi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 07.09.2021

JUDGMENT

1. The Applicant has challenged suspension order dated 01.04.2020 on the ground on competency of Respondent No.1 – Sub Divisional Officer (SDO), Palghar who has suspended the Applicant invoking provisions of Disaster Management Act, 2005.

2. Shortly stated facts giving rise to Original Application are as under:-

While the Applicant was serving as clerk, he was promoted on 07.08.2015 by Respondent No.4 – Collector, Palghar and posted in the Office of Tahsildar, Mokhada. During the Covid-19 pandemic situation certain instructions were issued by District Management Authority / Collector, Palghar that the employees serving on the establishment of Collector should not leave Headquarter, so as to take necessary steps to curb Covid-19 situation. The Respondent No.1 – SDO by letter dated 01.04.2020 suspended the Applicant *inter-alia* alleging that despite of order issued by the Collector to remain present in Headquarter, he remained absent and secondly, he made some alteration in record and thereby committed serious misconduct. The Respondent No.1 invoked provisions of Section 51 (b) of Disaster Management Act and suspended the Applicant. His Headquarter was kept at Javhar. In suspension order, there is reference of payment of Subsistence Allowances in terms of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). Thus, in contemplation of DE, the Applicant can be suspended by Respondent No.1, which is challenged in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail impugned transfer order *inter-alia* contending that the appointing authority of the Applicant is Respondent No.4 – Collector, and therefore, suspension order issued by Respondent No.1 – SDO is

totally bad in law on the point of competency itself. He further submits that Respondent No.1 – SDO though invoked Section 51 (b) of Disaster Management Act, the said powers are vested with District Authority established under Section 25 of Disaster Management Act and there are no such powers with SDO to suspend the Applicant. He has further pointed out that though the Applicant has been suspended in contemplation of DE till date no charge-sheet in DE has been served upon the Applicant.

4. Another development is that Respondent No.4 – Collector by order dated 08.10.2020 revoked the suspension of the Applicant because of non-initiation of DE within stipulated period and the Applicant is reinstated in service at Vikramgad. However, learned Advocate for the Applicant submits that since suspension order dated 01.04.2020 itself being bad in law and void, it deserves to be set aside with consequential service benefits to the Applicant.

5. The learned Presenting Officer Mrs. K.S. Gaikwad made feeble attempt to justify the competency of SDO to suspend the Applicant by impugned order dated 01.04.2020. She tried to contend that in view of defiance of the instructions issued by the Collector under Disaster Management Act, 2005, the Applicant has committed serious misconduct and he has been rightly suspended by the SDO. In reference to impugned order dated 01.04.2020, she tried to contend that there was delegation of powers by Collector to the SDO to suspend the Applicant.

6. At the very outset, it needs to be stated that admittedly, the appointing authority and disciplinary authority of the Applicant is Collector, Palghar. The suspension and disciplinary action of the Applicant is governed by the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). In terms of Rule 4 of 'Rules of 1979', it is for the

appointing authority or any other authority to which appointing authority is subordinate or disciplinary authority or any other authority empowered in that behalf by Governor by general or special order to empower to place a Government servant under suspension. Its proviso further states that where the order of suspension is made by authority lower than the appointing authority, such authority shall forthwith report the circumstances in which the order was made. It is thus explicit from Rules that the competent authority for suspension of the Applicant is Collector and not SDO, who is subordinate authority to the Collector. Though the learned P.O. tried to contend that there was delegation of power in favour of SDO, no such order of Government is forthcoming. Indeed reference of letter dated 16.03.2020 as referred in impugned suspension order pertains to the instructions issued by the Collector about the measures to curb Covid-19 disease and it does not pertain to the delegation of power of suspension. Indeed, there could not be any such delegation of power of suspension by Collector to SDO *dehors* the law.

7. Now, let us see the material portion of the suspension order dated 01.04.2020, which is as follows :-

“त्याअर्थी मी सहाय्यक जिल्हाधिकारी तथा उपविभागीय अधिकारी जव्हार विभाग जव्हार आपत्ती व्यवस्थापन अधिनियम २००५, नियम ५१(b) अन्वये व उपोद्घातातील अ.क्र. ३ अन्वये मला प्रदान केलेल्या शक्तीचा वापर करून श्री. पृथ्वीराज राठोड अ.का. संगायो तहसीलदार कार्यालय मोखाडा यांना शासनाचे सुरक्षिततेसाठी तसेच कामकाज सुरळीत चालण्यासाठी तात्काळ निलंबित करण्यात येत आहे. सदर कर्मचारी श्री. पृथ्वीराज राठोड अ.का. संगायो तहसीलदार कार्यालय मोखाडा यांचे विरुद्ध भारतीय दंड संहिता (४५ ऑफ १८६०) च्या कलम १८८ अन्वये फौजदारी कारवाई करण्यात यावी. सदरची फौजदारी कारवाई करण्यासाठी नायब तहसीलदार संगायो तहसीलदार कार्यालय मोखाडा यांना प्राधिकृत करण्यात येत आहे.”

8. It is thus manifest from the impugned order that SDO has invoked Section 51(b) of Disaster Management Act, 2005 to suspend the Applicant which indeed pertains to the authority or powers of district authority. Section 51 of Disaster Management Act is as under :-

“51. Whoever, without reasonable cause –

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorized by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.”

9. The perusal of scheme of Disaster Management Act, 2005 further makes it clear that if an Officer withdraws himself from the duties without express written permission of his superior authority, he shall be liable for punishment, as seen from Section 56 of Disaster Management Act, 2005. Whereas, Section 59 provides for institution of criminal prosecution for the offences punishable under Section 56 and cognizance is required to be taken by Court on complaint, as contemplated under Section 60 of Disaster management Act, 2005. Apart, District Authority means “District Disaster Management Authority” constituted under Section 25 of Disaster Management Act, 2005.

10. Suffice to say, the Disaster Management Act provides for the appointment of various authorities and powers of the said authorities to ensure normalcy and to curb the spread of an epidemic. It nowhere empowers the authority concerned for exercising powers of disciplinary authority. Suffice to say, the Disaster Management Act and Maharashtra Civil Services (Disciplinary and Appeal) Rules are altogether different enactment since they operate in different spheres. If disciplinary authority seeks to exercise powers of disciplinary authority for suspension, etc., then it has to be in consonance with ‘Rules of

1979'. No such powers of suspension can be traced under the provisions of Disaster Management Act, that too by SDO.

11. As such, the invocation of powers of suspension exercising or referring provisions of Disaster Management Act is totally bad in law and uncalled for. If there are any such misconduct by the Applicant and suspension was necessitated, it ought to have been by the disciplinary authority viz. Collector, Palghar in consonance with 'Rules of 1979'.

12. The learned Advocate for the Applicant referred to the decision of Hon'ble Bombay High Court **2021(4) Mh.LJ (State of Maharashtra Vs. Dr. Ashok Anand)**. In that case, the Director, Medical Education and Drugs deputed Dr. Ashok Anand at Swami Ramanand Tirth, Rural Government Medical College, Ambejogai invoking the provisions of Epidemic Disease Act, 1987 read with Maharashtra Covid-19 Regulations, 2020. The deputation order was challenged before the MAT and challenge was upheld. Being aggrieved by it, the Government approached Hon'ble High Court by filing Writ Petition which came to be dismissed. The issue was whether Dr. Ashok Anand could have been deputed invoking the provisions of Epidemic Disease Act or whether it was transfer in violation of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) under the guise of deputation. The Hon'ble High Court examined the scheme of 'Transfer Act 2005' as well as Epidemic Disease Act and upheld the finding of this Tribunal that Director erred in assuming to himself the powers to shift Dr. Ashok Anand from GGMC to SRTR Medical Hospital, Ambejogai, as if he was empowered to do so under the provisions of Epidemic Disease Act and the regulations. In Para No.10, the Hon'ble High Court held as under :-

"Having regard to the scheme of the ED Act and the Regulations, it is difficult to trace a power to transfer an officer or to assign an officer on deputation in breach of the other statutory provisions governing the terms and conditions of such officer. The Regulations obviously cannot

override the Transfer Act and, therefore, has to yield to the latter. The ED Act being a Central Act (referable to Entry 29 of List-III of the Constitution of India), and the Transfer Act a State Act (which has Article 309 as its source], what calls for examination next is, whether any inconsistency exists between the two enactments. Having read the extant laws, we also do not see any inconsistency between the ED Act and the Transfer Act. The said statutory provisions operate in completely separate fields. The primary object of the ED Act is to prevent spread of an epidemic and authorizes measures to be taken such as those extracted supra and also other measures not clearly specified for prevention of spread. The specific measures which could be taken do not include any step of the nature with which we are concerned. Shifting an officer out from a post held by him except in accordance with the provisions governing his employment, we are persuaded to hold, is not even an implied power that the Director possesses in terms of the ED Act. In order that exercise of power under a general law does not conflict with a special law in a case of the present nature, in our considered view, the power of the Director, if any, as the Empowered Officer under the ED Act could not have been exercised in complete disregard/derogation of the Transfer Act. Having regard to the office Dr. Anand was holding on August 5, 2020, it is none other than the Chief Minister who would be the Competent Authority under the Transfer Act to direct his transfer. If indeed it is conceded that the Director, being the Empowered Officer, has power so wide as to transfer any officer/government servant notwithstanding the safeguards provided in the statutory provisions, such power would be susceptible to a charge of being arbitrary and offending Article 14 of the Constitution of India. Regard being had to the facts of the instant case where the Inquiry Committee was constituted on May 13, 2020 and submitted its report on the following day and it took the Director time till August 5, 2020 to exercise power under the ED Act, as contended, it defies logic as to why the Chief Minister was not consulted prior to directing Dr. Anand to report at SRTR Medical Hospital in pursuance of the impugned order dated August 5, 2020. We are inclined to the view that there was no such grave emergency which could brook no delay and thereby the opinion of the Chief Minister could have been forsaken. We, therefore, concur with the Tribunal that the Director erred in assuming unto himself the power to shift Dr. Anand out from GGMC to SRTR Medical Hospital as if he was empowered to do so under the provisions of the ED Act and the Regulations.”

13. Thus, on the same analogy and having considered the scheme of Disaster Management Act *vis-à-vis* provision of Maharashtra Civil Services (Discipline & Appeals) Rules, 1979 it will have to be held that S.D.O. has no authority or power to suspend the Applicant under the provisions of Disaster Management Act, 2005.

14. Reliance placed by learned P.O. on the decision rendered in **O.A.No.02/2016 (Shri Naresh A. Polani V/s District Collector-Cum-Chairman & Ors)** is totally misplaced. In that case, the Applicant had challenged the show cause notice dated 18.09.2015 issued by Collector-Cum-Chairman, District Management Authority, Solapur issued invoking Section 51 of Disaster Management Act, 2005. The Tribunal held that in view of bar of jurisdiction under Section 71 of Disaster Management Act, 2005 the Tribunal has no jurisdiction to entertain any such challenge to the show cause notice issued under the provisions of Disaster Management Act specifically provides that no Court (except Supreme Court or High Court) has jurisdiction to entertain any suit or proceeding in respect of anything done by the District Authority in pursuance of any powers conferred upon it by the Act. It is in that context, O.A. was dismissed on the point of jurisdiction.

15. Whereas in the present case explicitly no such power vest with S.D.O. to suspend the Applicant since his appointing authority and disciplinary authority is admittedly Collector. This is not a case where action taken by the District Authority in exercise of powers under Disaster Management Act is under challenge. What is under challenge is the order of suspension passed by the S.D.O. and not the order passed by the District Authority.

16. The totality of the aforesaid discussion thus leads me to sum up that the impugned suspension order is totally indefensible and bad in law, and therefore, deserves to be quashed. Hence the following order:-

ORDER

- (A) Original Applicant is allowed.
- (B) Impugned suspension order dated 01.04.2020 is quashed and set aside. Consequently the Applicant be re-posted in the office of Tahasildar, Mokhada where he was working at

the time of suspension within two weeks from today with consequential service benefits.

(C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 07.09.2021

Dictation taken by : S.K. Wamanse.

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