

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.94 of 2019
(Subject : Suspension)**

DISTRICT : JALNA

Shri Sandeep Laxmanrao Patil)
R/o. Collector Officer, Jalna.) **....Applicant.**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
(Industries, Energy and Labour Department,)
Mantralaya, Mumbai 32.)
2. The Director of Geology and Mining,)
Cement Road, Shivaji Nagar, MS, Nagpur.)
3. The Divisional Commissioner,)
Near Delhi Gate, Collector Office, Aurangabad.)
4. The Collector,)
Aurangabad – Nagpur Road, Old Jalna,)
Jalna)
5. Shri Purshottam Bhapkar,)
Divisional Commissioner,)
Aurangabad.)
6. Annasaheb Shinde,)
Additional Collector,)
Collector Office Station Road, Parbhani.) **.....Respondents.**

Ms. S.B. Talekar, the learned Advocate with Ms. Rebekah Daniel, the learned Advocate for the Applicant.

Shri M.S. Mahajan, the learned Chief Presenting Officer for Respondents No.1 to 4.

Shri V.D. Sapkal, the learned Advocate for the Respondents No.5 and 6.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN
RESERVED ON : 02.04.2019.
PRONOUNCED ON : 09.05.2019.

J U D G M E N T

1. Heard Ms. S.B. Talekar with Ms. Rebekah Daniel, the learned Advocates for the Applicant, Shri M.S. Mahajan, the learned Chief Presenting Officer for Respondents No.1 to 4 and Shri V.D. Sapkal, the learned Advocate for the Respondents No.5 and 6.

2. Applicant has been suspended by order dated 19.01.2019. Applicant's claim challenging suspension is based long drawn pleadings and various grounds. However, the same can be culled and noted to be on three points :-

- (a) The impugned order is propelled due to malafides such as unjust and unfair demand of Respondent No.5, Shri Purshottam Bhapkar who is holding the position of Respondent No.3 i.e. Divisional Commissioner, Aurangabad.
- (b) On facts there are no factual grounds to support the decision for suspension and the same is ordered sheerly on account of malafides owing to the illegal demand referred to in forgoing point.
- (c) The Divisional Commissioner, Aurangabad is not Disciplinary Authority / Appointing Authority or otherwise Competent Authority, if the Applicant who is appointed and employed by Industries, Energy and Labour Department, Government of Maharashtra, impugned order is without proper authority and jurisdiction of the Respondent No.3/5.

3. In order to fathom and perceive applicant's version about illegal demand and the malafides it is necessary to advert to the text of pleadings contained in O.A., referred in the pleadings as described in points no.(a) and (b), which reads as under :-

As to Demands :-

“46. The applicant had received a message from emissary (i.e. the respondent No.6) of the Divisional Commissioner, Aurangabad that no action will be taken against him if he were to fulfill the demand of the Divisional Commissioner. However, the applicant refused to oblige saying that he had not involved in any illegality and, therefore, he had nothing to fear.

47. The applicant, however, did not succumb to the illegal demand made by the Divisional Commissioner through his emissary.

48. The Additional Collector, Parbhani had asked the applicant that it was better to meet the Divisional Commissioner and sort out the matter. The message was very clear that the Divisional Commissioner, Aurangabad was expecting that the applicant and four others will fulfill the demand of the Divisional Commissioner, Aurangabad. However, the applicant and four others refused to meet the Divisional Commissioner. As a result, he got prepared an adverse report of enquiry through his henchman on 19.01.2019.”

(Quoted paragraphs 46, 47 & 48 from page 13 & 19 of the paper book of O.A.)

4. Sole narration about demands by the Respondent No.3/5 as seen in paragraph No.46 of O.A. are seen kept/ left by the applicant extremely vague. Nothing can be made out from these pleadings. It was necessary on the part of applicant to furnish each and every factual particular demand and also who are those four other officers to whom the demand was made by the Respondent No.3/5, the pleadings in O.A. are as below :-

As to Malafides :-

“18. Surprisingly enough, the enquiry was conducted not by the Committee consisting of four members including the Chairman appointed by the Divisional Commissioner but the Committee consisting of some other members. What is more astonishing is that the said report is also signed by the Additional Collector, Parbhani who was not even present either at the time of spot inspection or at the time of enquiry, which was conducted on 08.01.2019, which is evident from the geotag photographs taken during the course of inspection and enquiry on 08.01.2019, copies of which are annexed herewith and marked at Annexure “J” collectively.

21. As a matter of fact, the stock of sand at Gondi area and within the limits of Shagad-Tirthpuri road within the limits of Gondi Village worth 905 brass already attached and seized and the same was kept for auction sale since 23.10.2018, was not required to be seized again or shown in the total stock of sands. The applicant had pointed that the stocks of sand worth 361 brass at the site of Ambad road within the limits of Gondi Village and sand stocks worth 901 brass at Shahgad-Tirthpuri within the limits of Gondi Vily Clage were not required to be shown in the list of stocks of the sand attached during the course of spot inspection and / or enquiry by the Vigilance Committee on 08.01.2019. The Committee prepared possession receipts, panchnamas apart from the report of the enquiry on 08.01.2019, copy of which is annexed herewith the marked at Annexure “K”.

22. The Divisional Commissioner, Aurangabad kept aside the report dated 08.01.2019 and relied on some other report submitted by some other Committee constituted on 19.01.2019, however, the applicant is not aware of any Committee constituted on 19.01.2019 and the report alleged to have submitted by such Committee. Thus, one more Committee consisting of Additional Collector, Parbhani, SDO Patri, District Mining Officer, Parbhani, Tahsildar, Pathri and Naib-Tahsildar, Manwat submitted a report on 19.01.2019, copy of which is annexed herewith and marked at Annexure "L".

38. The allegation that the files were not made available and they refused to sign panchnamas or did not cooperate or gave evasive answers and that his response regarding giving of information was far from satisfaction and that they refused to take the trailers in their possession are baseless, false and frivolous and, therefore, denied.

42. The third Committee alleged to have conducted enquiry consisting of five members namely, Additional Collector, Parbhani SDO, Pathari, District Mining Officer, Parbhani, Tehsildar, Pathari, Naib Tehsildar, Manwat is different from the first Committee constituted on 02.01.2019 as well as the second Committee constituted again under the chairmanship of Additional Collector, Parbhani having as many as 12 officers.

44. The applicant fails to understand as to why the enquiry committee was not constituted in terms of GR dated 03.01.2018 and why was the committee once constituted on 02.01.2019 was reconstituted twice thereafter."

(Quoted paragraph Nos.18, 21, 22, 38, 42 & 44 from page nos.9, 10, 11, 16, 17 & 19 of the paper book of O.A..)

5. The demand of any favour or illegal gratification is a serious matter. The allegation is required to be made with full sense of responsibility and duty and has to be properly pleaded/ described / narrated so that in the event of need it can be properly proved. The narration of demand of illegal gratification or favour, if any is made in a vague manner and it does not and shall not constitute due and proper pleadings.

6. While it is very easy to make the allegations of illegal demands, however in absence of specific pleadings of any unfair / illegal demand, any enquiry in relation thereto would be impossible.

7. Making an allegation without narrating as to what was the demand and a simple or bold allegation that illegal demand was made does not deserve any cognizance for its being unable of being enquiring into. Therefore, imputation of demand of gratification/ favour or whatsoever nature if not made with due and specific pleadings, does not on facts or in law warrant any cognizance whatsoever.

8. In so far as factual aspect and aspect of malafides is concerned, summary of Applicant's plea is that :-

- (a) Certain volume of sand, computable in terms of volume (Eg. Brass or Cubic meter etc.) is in the nature of defence towards charge of being instrumental to theft and pilferage, unauthorized or illegal mining etc. of minor mineral-sand beyond certain limits as can be perceived from the records.
- (b) The suspension on the ground that enquiry is in contemplation as regards mis-conduct of non-cooperation with enquiry committee for siding the guilty men or screening of evidence and conscious act of failure/deny to extend imperatively necessary co-operation with the enquiry committee is totally unjust and hence malafide.
- (c) The Committee constituted by Divisional Commissioner was unauthorized and illegal and contrary to the direction of Chairperson of Maharashtra Legislative Assembly.
- (d) The Appointing Authority of the said Committee were not present at the alleged visit/ enquiry.

9. It prima facie, appears that the question as to whether, the Committee was properly constituted etc. it cannot be the matter of business for an employee who is bound to obey the orders of superiors. In case there was any defect with constitution of the Committee appointed by the Divisional Commissioner i.e Respondent No.3 / 5 he would be answerable and accountable to the Legislative Assembly from whom the orders of enquiry had emanated, however it cannot be a ground for non-co-operation.

10. The aspect as to propriety of delegation etc. by the Divisional Commissioner was not the matter to be decided and to be commented by the applicant at this stage. It also prima facie appears that from the point of view of propriety whatsoever, it is none of the business of applicant to challenge the Constitution and Authority of the committee who had stepped into enquiry in the matter and use the said ground as a point of objections for defence against an order of suspension, whether or not in the process of disciplinary proceedings.

11. It may eventually be possible for the applicant to raise dispute and debate as a defence whatsoever, about the legality of committee in the disciplinary enquiry, but refusal to furnish information asked for by the enquiry committee appointed by the Divisional Commissioner, by challenging the authority of the that enquiry committee, prima facie, does not stand to any reasonableness while challenging the suspension.

12. The question as to whether there exist demonstrable grounds as to whether the suspension is called for or justified on facts is to be decided at the stage of scrutiny of suspension if an appeal as provided under rules is preferred.

13. Be it that, there is an appeal like the Appeal in Civil Law against decrees in Civil Law, all the questions, as raised, on facts and Law would be open for arguments for scrutiny :-

Where an appeal which has arisen from an order of interlocutory in nature, the nature of scrutiny and appeal can never be as exhaustive or as extensive and as deep as it could be in appeal against the decree. The scope of scrutiny in the revision of the application or the jurisdiction under superintendent would be further narrowed down.

14. Statutory appeal where legality and justifiability of order may be wide open and available for scrutiny with certain necessary limitations, however in the jurisdiction under Article 226 & 227 of Constitution of India the nature and scope of enquiry shall be different rather not the same or equal as of a forum of statutory appeal, where applicant has to show total lack of authority or patent malafides based on undisputable facts.

15. In the present case where the suspension is ordered, which itself is to be based on executive decision on the basis of material as available on record, and on what appears prima facie, the scope of enquiry in present O.A., is in the nature power of superintendent of this Tribunal's of jurisdiction under Article 226 and 227 of the Constitution of India.

16. Therefore, what the scope of enquiry in the present O.A. is pretty narrow. Therefore, what is to be examined is requirement, justiciability and propriety of impugned order in the background of facts as were prima facie emerging on record, unlike any probe which appellate fora would do.

17. Decision impugned being executive decision what can be examined and has to be examined is :-

- (i) As to whether the suspension has been ordered sheerly due to malafides.
- (ii) Is the action taken without any material whatsoever on record.
- (iii) Whether on facts the decision of suspension has been resorted to on the basis of settled principle of law and statutory rules.

18. On facts of the case it is seen that very subject matter relates to illegal and excessive mining of sand in the bed of Godavari river is the factual root cause leading the suspension. Earlier the officers having expertise from the mining Department were not posted in the office of Collectorate. During those times, the matter of mining was governed barely on the basis of volume to be excavated as decided by the Revenue Authorities and was regarded as matter which was not seen to be dealt with by use of expertise and specialized study.

19. Now, since excavation / mining of sand and its results have acquired draconian posture, the duty and degree of intense care and vigil is required to be observed, any failure in that regard acquires, graver than gravest form as an act of omission of failure or misconduct.

20. Therefore, in the background that sand mining in Jalna District has acquired the disastrous and draconian form and enquiry in that regard was ordered due to discussion of Legislative Assembly, the allegations of failure in that regard cannot be seen or shown as an unimportant or less important matter, the manner in which it is represented by the applicant.

21. The present is not the stage where the version contained in the impugned order consisting of certain imputation against the applicant could be casually brushed aside or neglected or considered to be open for debate and doubled and neglected.

22. This Tribunal finds that allegations of malafides, illegality and unfair demand etc. have been narrated in utmost casual manner which can be definitely denoted as irresponsible and as a cheap recourse. Graver allegations of “demand” require better larger specifications as to the demand on facts.

23 Had it been the case that from whatever facts were within the knowledge of the applicant gathered from words spoken or gestures expressed whether in words spoken or not but which applicant had noticed to represent the demand of Respondent No.3/5, of favour of gratification, all such factual data ought to have been brought before this Tribunal, else the conduct of the applicant turns out to be in the nature of casual and irresponsibly being bold. This attitude deserves deprecation, at the same time the allegations are liable to be discarded for want of necessary particulars.

24. On facts, since subject matter allegations do not consists sufficiently shocking material the grounds pleaded as factual basis of malafides too turn to be vague and do not deserve any cognizance. On the other hand applicant’s, attitude appears to be prima facie, contemptuous towards directions of the Legislative Assembly and towards superiors.

25. Applicant’s conduct is in the nature of insubordination. The act or omission for which disciplinary enquiry is in contemplation, prima facie, amounts to insubordinate which is a very simple concept. It prima facie, appears that the conscious disobedience or neglect to orders which are not minor or trivial is in the nature definitely amounts to misconduct and can be regarded as conduct attracting major penalty such as removal from employment. Whenever the conduct which is likely to attract major penalty upon the misconduct being proved, the action of suspension would be within the power of authority and shall not be open for interference just for the sake of asking.

26. Therefore, the points (a) and (b) in foregoing paragraph no.2 are answered in negative as to competence of Respondent No.3/5 to suspension.

27. Applicant's plea and contention is from employment. Applicant plead that his Parent Department is Industries, Energy and Labour Department. Though he has been posted or attached to office of Collector his Appointment Authority and Disciplinary Authority to be Industries, Energy and Labour Department. Therefore the Divisional Commissioner, Aurangabad is not competent to issue order of suspension.

28. The point of power of jurisdiction is raised by the Applicant. Therefore it is applicant's duty to plead and prove/ demonstrate that the power to point with any particular officer or authority and this could be done only by producing by way of evidence copy of the set of rules, orders etc. from which applicant demonstrate as to who is the competent authority as led down by in statutory rules which provides for the matter of competency of appointment and disciplinary matters.

29. The person who claims ouster and jurisdiction has to prove it. Since the applicant has barely alleged lack of authority but did not demonstrate as to, in whom the said power vests the absence of authority cannot be presumed. Therefore, this Tribunal cannot hold that the applicant's plea with the Divisional Commissioner does not have power is either proved or demonstrated by the Applicant, hence, the said plea of the Applicant fails.

30. In view that applicant has failed on all three grounds, Original Application does not merit any interference and the same is dismissed with costs.

prk

(A.H. Joshi, J.)
Chairman