

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 799 OF 2021

DIST. : OSMANABAD

Shirish Ramchandra Yadav,)
 Age. 52 years, occu. Govt. Service,)
 Presently working as Deputy District)
 Election Officer, C/o Collector Office,)
 Beed.).. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 Through Additional Chief Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Mumbai - 400 032.)
- 2) **The Divisional Commissioner,**)
 Aurangabad Division, Aurangabad.)
- 3) **The Collector,**)
 Osmanabad, Dist. Osmanabad.)
- 4) **Regional Departmental Enquiry)**
Officer, Collector Office,)
 Aurangabad.).. **RESPONDENTS**

 APPEARANCE :- Shri Jivan J. Patil, Advocate for the
 applicant.

: Shri V.G. Pingle, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **16.07.2024**

ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri Jiwan J. Patil, learned counsel for the applicants and Shri V.G. Pingle, learned Presenting Officer for respondent authorities.

2. Applicant has filed the present Original Application for quashment of the charge-sheet dated 11.01.2021 issued against him by respondent no. 01 the State. The National Highways Authority of India (NHAI) had appointed the Land Acquisition Officer, Manjra Project, Dist. Osmanabad as ex-officio Competent Authority of Land Acquisition (for short CALA) for the National Highway No. 361 i.e. Ratnagiri to Nagpur vide notification issued by the Government of India on 27.03.2014. At the relevant time, since the applicant was working on the post of Land Acquisition Officer, Manjara Project, he came to be appointed as ex-officio Competent Authority for Land Acquisition. It is the case of the applicant that while discharging his duties as CALA he had passed an order of apportionment of the land acquisition compensation. One Ambadas Varade filed a complaint about the order of apportionment so passed by the applicant. According to the applicant, said Ambadas Varade did not have any concern with

the said apportionment of land acquisition compensation. It is the further contention of the applicant that on the basis of the said complaint made by Ambadas Varade departmental proceedings have been initiated against the applicant. It is the contention of the applicant that the orders, which he had passed while working as CALA are the quasi-judicial orders, since the National Highways Authority of India Act, 1988 provides the status of quasi-judicial authority to the CALA. It is the further contention of the applicant that section 28 of the National Highways Authority of India Act, 1988 provides protection to the officers working as CALA in respect of the orders passed by the said officers while discharging duties under the provisions of the said Act. It is the further contention of the applicant that even otherwise being a quasi-judicial authority the applicant is also entitled for the protection under the Judges Protection Act.

3. In the affidavit in reply filed on behalf of the respondents they have not disputed that the Competent Authority of Land Acquisition appointed under the National Highways Authority of India Act 1988 is quasi-judicial authority and the orders passed by him while discharging the functions of the said post assume the form of quasi-judicial orders. No

doubt it is the further contention of the respondents that the act of the applicant is of doubtful integrity and, as such, the applicant does not deserve the protection as a quasi-judicial authority.

4. The applicant though has raised some more grounds justifying his prayer for setting aside the enquiry proceedings initiated against him and the respondents have resisted the said objections exhaustively in their affidavit in reply, the main objection as has been raised by the applicant is that the enquiry initiated against him based on the orders passed by him while working as CALA is liable to be quashed and set aside in view of the provisions under the Judges Protection Act, as well as, National Highways Authorities Act. We would like to deal with the aforesaid issue first and if then required we may look into and decide the other aspects involved in the matter.

5. We find it necessary to reproduce herein-below the entire text of the statement of charge issued against the applicant along with its memorandum of charge as it is vernacular, which read thus: -

“ज्ञापन:-

शासनाने महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम ८ अन्वये श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद यांच्या विरुद्ध विभागीय चौकशी करण्याचे ठरविले आहे. ज्याबाबत चौकशी करण्याचे ठरविण्यात आलेले आहे, अशा गैरशिस्तीच्या

किंवा गैरवर्तणुकीच्या दोषारोपांच्या बाबींच्या सोबत जोडलेल्या विवरणात (जोडपत्र-एक) मध्ये दिलेला आहे. प्रत्येक आरोपाच्या पुष्टी गैरशिस्तीच्या किंवा गैरवर्तणुकीच्या आरोपांचे विवरण (जोडपत्र- दोन) सोबत जोडले आहे. ज्या दस्तऐवजांवरून व ज्या साक्षीदाराव्दारे दोषारोपांच्या बाबीला पुष्टी देण्याचे योजिले आहे त्यांची यादी सुध्दा सोबतच्या जोडपत्र तीन व चार मध्ये जोडण्यात आली आहे.

२. श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद यांना असा निदेश देण्यात येत आहे की, त्यांनी हे ज्ञापन मिळाल्या पासून १० दिवसांच्या आत त्यांचे बचावाचे लेखी निवेदन सादर करावे. तसेच त्यांचे म्हणणे व्यक्तीशः मांडण्याची त्यांची इच्छा असेल तर त्यांनी तसेही नमूद करावे.

३. त्यांना असेही कळविण्यात येत आहे की, जे दोषारोप त्यांनी कबूल केलेले नाहीत तेवढ्या दोषारोपाच्या बाबतीतच फक्त चौकशी केली जाईल, म्हणून त्यांनी प्रत्येक दोषारोप विनिर्देशपूर्वक कबूल किंवा नाकबूल केला पाहिजे.

४. श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद यांना आणखी असेही कळविण्यात येत आहे की, त्यांनी वरील परिच्छेद २ मध्ये विनिर्दिष्ट केलेल्या दिनांकाला किंवा त्यापूर्वी आपले बचावाचे लेखी निवेदन सादर केले नाही किंवा चौकशी प्राधिकाऱ्यापुढे ते व्यक्तीशः हजर राहिले नाहीत किंवा त्यांनी महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम ८ मधील तरतुदींचे किंवा उक्त नियमानुसार काढण्यात आलेल्या आदेशांचे/निदेशांचे अनुपालन करण्यात त्यांनी अन्यथा कसूर केली वा नकार दिला तर चौकशी प्राधिकाऱ्यास त्यांच्याविरुद्ध एकतर्फी चौकशी चालू करता येईल.

५. श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद यांचे महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ च्या नियम २३ कडे लक्ष वेधण्यात येत आहे. या नियमानुसार कोणत्याही शासकीय कर्मचाऱ्याला त्याच्या शासकीय सेवेसंबंधीच्या कोणत्याही बाबतीत त्याच्या हितसंबंधात पोषक होईल, अशा प्रकारे वरिष्ठ प्राधिका-यावर कोणताही राजकीय अथवा बाह्य दबाव आणता येणार नाही किंवा आणण्याचा प्रयत्न करता येणार नाही. याबाबतीत त्यांच्यावतीने अन्य कोणत्याही व्यक्तीकडून या शिस्तभंगविषयक कार्यवाहीसंबंधात अभिवेदन आल्यास श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद यांना असे अभिवेदन केले असल्याची माहिती होती व ते त्यांच्या सांगण्यावरून करण्यात आले आहे, असे गृहीत धरण्यात येईल व महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ च्या नियम २३ चे उल्लंघन केल्याबद्दल त्यांच्याविरुद्ध कारवाई करण्यात येईल,

६. हे शापन मिळाल्याची पोच देण्यात यावी,

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

सही/-

(अ.ज.शेट्ये)

शासनाचे अवर सचिव

प्रति,

श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद (विभागीय आयुक्त, औरंगाबाद यांच्या मार्फत.)

प्रत :-१) विभागीय आयुक्त, औरंगाबाद यांना विनंती करण्यात येते की, त्यांनी सोबतचे ज्ञापन (जोडपत्र १ ते ४) श्री शिरीष यादव, उपजिल्हाधिकारी मांजरा प्रकल्प (भूसंपादन), उस्मानाबाद यांचेवर बजावून त्याची दिनांकित पोच शासनास पाठवावी.

२) जिल्हाधिकारी, उस्मानाबाद

३) निवडनस्ती ई-४ अ

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जोडपत्र-एक

श्री शिरीष यादव, उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद यांच्याविरुद्ध तयार करण्यात आलेल्या दोषारोपातील बाबींचे विवरणपत्र.

श्री शिरीष यादव, उपजिल्हाधिकारी हे उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद या पदावर दि.०४.१०.२०१७ पासून कार्यरत असून, त्यांनी खालीलप्रमाणे अनियमितता केली आहे. बाब- श्री काळभैरवनाथ देवस्थान यांची मौ. तुळजापुर येथील स.नं. १२२ मधील राष्ट्रीय महामार्ग क्र. ३६१ च्या चौपदरीकरणासाठी संपादित झालेल्या जमीनीच्या मावेजा मागणीचा अर्ज सदर देवस्थान ट्रस्टचे अध्यक्ष श्री. तानाजी कालीदास पुजारी यांनी केला होता. सदर अर्जास श्री प्रदीप पैलवान व इतर यांनी मावेजा वाटपास आक्षेप नोंदविल्यानंतर उपजिल्हाधिकारी भूसंपादन यांनी सर्व पक्षकारांना बाजु मांडण्याची संधी देवुन दि. १५/११/२०१८ रोजी अन्वये सदर देवस्थानाच्या ट्रस्ट अध्यक्ष यांना धर्मादाय आयुक्तांनी संपादित जमीनीच्या मावेजाची रक्कम संबंधीत अध्यक्ष यांना देण्याबाबतचे अभिप्राय दाखल करण्याच्या अटीवर मावेजाचे वाटप करण्यात येईल असे आदेश पारीत केले. संबंधीत ट्रस्टचे अध्यक्ष श्री तानाजी कालीदास पुजारी यांनी दि. ११/०१/२०१९ रोजी देवस्थानला मंजूर मावेजा रकमेपैकी ५०% व कब्जेदार/वहिवाटदार यांना म्हणजेच श्री तानाजी कालीदास पुजारी यांना ५०% मावेजा देणेबाबत पुनर्विलोकन अर्ज सादर केला. सदर पुनर्विलोकन अर्जावर कोणतीही सुनावणी न घेता श्री शिरीष यादव, उपजिल्हाधिकारी भूसंपादन यांनी संपादित क्षेत्राचा देवस्थानला मंजूर मावेजा रकमेपैकी ५०% रक्कम अर्जदारास रुपये १,१९,६३,२९७/- दिनांक ०७/०५/२०१९ रोजी वाटप केली.

वास्तविक पहाता, सदरील जमीन ही श्री. काळभैरवनाथ देवस्थानच्या सेवेसाठीची इनाम जमीन असून, देवस्थान इनाम जमीनी ज्या धर्मादाय आयुक्तांकडे नोंदणीकृत ट्रस्टच्या आहेत, त्या जमीनीच्या भूसंपादनाचा मावेजा हा धर्मादाय आयुक्त यांचे सल्यानुसार /अभिप्रायानुसार महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्थापन अधिनियम, १९५० च्या कलम ३५ मधील तरतुदीनुसार देवस्थान/ ट्रस्टच्या नावे दिर्घ मुदतीच्या ठेवीमध्ये राष्ट्रीयकृत बँकेमध्ये अथवा शेड्युल्ड बँकेमध्ये सार्वजनिक ठेव म्हणून ठेवणे आवश्यक आहे. तसेच धर्मादाय आयुक्त विहीत करतील अशा अटी व शर्तीच्या अधिन राहून अथवा धर्मादाय आयुक्त यांचे अभिप्राय घेऊनच देवस्थान ट्रस्टच्या मालकीच्या जमीनीपैकी संपादीत जमीनीचा मावेजाचे वाटप करणे आवश्यक आहे. प्रस्तुतच्या प्रकरणांतील जमीनीवर काबीज असलेले इनामदा/ जुने कब्जेदार यांना ते कुळ आहेत असे म्हणता येत नाही. हया बाबी विचारात न घेता श्री शिरीष यादव, उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद यांनी अर्जदार श्री. तानाजी कालीदास पुजारी, यांना ५०% मावेजा रक्कम रुपये १,१९,६३,२९७ -/ वाटप केली आहे.

सबब, उक्त कृती करून श्री शिरीष यादव, उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद यांनी महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम ३ चे उल्लंघन केले आहे.

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जोडपत्र-दोन

श्री शिरीष यादव, उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद यांच्याविरुद्ध तयार केलेल्या दोषारोपातील बाबींच्या पृष्ठार्थ असलेल्या गैरशिस्तीच्या किंवा गैरवर्तणुकीच्या आरोपांचे विवरणपत्र,

श्री शिरीष यादव, उपजिल्हाधिकारी हे उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद या पदावर दि.०४.१०.२०१७ पासून कार्यरत असून, त्यांनी खालीलप्रमाणे अनियमितता केली आहे.

बाब - श्री शिरीष यादव, उपजिल्हाधिकारी हे उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद यांनी श्री काळभैरवनाथ देवस्थान यांची मौ. तुळजापुर येथील स.नं. १२२ मधील राष्ट्रीय महामार्ग क्र. ३६१ च्या चौपदरीकरणासाठी संपादित झालेल्या जमीनीच्या मावेजाचे वाटप करतांना करतांना खालीलप्रमाणे अनियमितता केली आहे.

१. मौ. तुळजापूर येथील गट क्र. १२२ चे भूसंपादन दोन टप्प्यात झाले असून, भूसंपादन अधिकारी कार्यालयाची नोटीस दि. २५/०४/२०१८ अन्वये सदर गटातील संपादीत क्षेत्र ४२२ चौ. मी. चा मावेजा मंजूर करण्यात आलेला आहे.

२. त्यानुसार सदर देवस्थान ट्रस्टचे अध्यक्ष श्री. तानाजी कालीदास पुजारी यांनी मावेजा मागणीचा अर्ज भूसंपादन अधिकारी यांचे कार्यालयास सादर केला होता. सदर अर्जास श्री. प्रदीप पैलवान व इतर यांनी मावेजा वाटपास आक्षेप नोंदवील्यानंतर उपजिल्हाधिकारी भूसंपादन यांनी सर्व पक्षकारांना बाजू मांडण्याची संधी देवुन प्रकरणात दि. १५/११/२०१८ रोजी आदेश पारीत केले आहेत.
३. सदर आदेश दिनांक २०१८/११/१५ अन्वये आक्षेप कर्त्याचा आक्षेप, सबळ पुराव्या अभावी फेटाळण्यात आलेला असून, सदर देवस्थानाच्या ट्रस्ट अध्यक्ष यांना धर्मादाय आयुक्तांनी संपादीत जमीनीच्या मावेजाची रक्कम संबंधीत अध्यक्ष यांना देण्याबाबतचे अभिप्राय दाखल करण्याच्या अटीवर मावेजाचे वाटप करण्यात येईल असे आदेश पारीत केलेले आहेत.
४. संबंधीत ट्रस्टचे अध्यक्ष श्री तानाजी कालीदास पुजारी, यांनी दि. ११/०१/२०१९ रोजी महसूल व वन विभागाचा शासन निर्णय क्र. डी.ई. व्ही./३५०५/३३०/प्र.क्र.४७/ल ४ दि.२६/०६/२००६, देवस्थान जमीनीच्या मावेजा वाटपासंदर्भात मा. उच्च न्यायालय, खंडपिठ औरंगाबाद यांचे रिट याचिका क्र. ९४११/२०१० मधील पारीत आदेशाची प्रत दाखल करुन, उक्त नमुद शासन निर्णयातील तरतुदीनुसार देवस्थानला मंजूर मावेजा रकमेपैकी ५०% व कब्जेदार/वहिवाटदार यांना म्हणजेच श्री तानाजी कालीदास पुजारी यांना ५० मावेजा देणेबाबत पुनर्विलोकन अर्ज सादर केला होता.
५. श्री तानाजी कालीदास पुजारी, अध्यक्ष श्री काळभैरवनाथ देवस्थान तुळजापुर यांनी वरील प्रमाणे मावेजा मागणी बाबत सादर केलेल्या पुनर्विलोकन अर्जावर काणतीही सुनावणी न घेता श्री शिरीष यादव, उपजिल्हाधिकारी भूसंपादन यांनी उक्त शासन निर्णय व मा. उच्च न्यायालयाचे आदेशानुसार सदर संपादित क्षेत्राचा देवस्थानला मंजूर मावेजा रकमेपैकी ५०% रक्कम रुपये १,१९,६३,२९७/- दिनांक ०७/०५/२०१९ दिली. तसेच कब्जेदार/ वहिवाटदार श्री तानाजी कालीदास पुजारी, यांचेकडून मावेजा वाटपावेळी सदर वाटपाबाबत तक्रार निर्माण झाल्यास सदर मावेजाची रक्कम एक रकमी वसुल करण्यात येईल, असे बंधपत्र घेवुन मावेजाचे वाटप केले.

वास्तविक पहाता, सदरील जमीन ही श्री. काळभैरवनाथ देवस्थानच्या सेवेसाठीची इनाम जमीन आहे. त्याचप्रमाणे सदरचे देवस्थान आणि सदरची जमीन आणि इतर मिळकती या महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्थापन अधिनियम, १९५० च्या तरतुदीनुसार न्यास नोंदणी कार्यालयाकडे मिळकत पत्रिका क्र. A.२५९३ अन्वये नोंदणीकृत आहे. त्यानुसार देवस्थान इनाम जमीनी ज्या धर्मादाय आयुक्तांकडे नोंदणीकृत ट्रस्टच्या आहेत, त्या जमीनीच्या भूसंपादनाचा मावेजा महाराष्ट्र शासनाच्या महसूल व वन विभागाचा शासन निर्णय क्र. देव ३४८०/१६३५ एल, ४ दि.१७ ऑक्टोबर १९८४ मधील तरतुदीनुसार हा धर्मादाय आयुक्त यांचे सल्यानुसार/ अभिप्रायानुसार महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्थापन अधिनियम १९५० च्या कलम ३५ मधील तरतुदीनुसार देवस्थान / ट्रस्टच्या नावे दिर्घ मुदतीच्या ठेवीमध्ये राष्ट्रीयकृत बँकेमध्ये अथवा शेड्युल्ड बँकेमध्ये सार्वजनिक ठेव म्हणून ठेवणे आवश्यक आहे. तसेच

धर्मादाय आयुक्त विहीत करतील अशा अटी व शर्तीच्या अधिन राहून अथवा धर्मादाय आयुक्त यांचे अभिप्राय घेवुनच देवस्थान ट्रस्टच्या मालकीच्या जमीनीपैकी संपादीत जमीनीचा मावेजाचे वाटप करणे आवश्यक आहे. महसूल व वन विभागाचा शासन निर्णय क्र.डी.ई.व्ही./३५०५/३३०/प्र.क्र.४७/ल, ४ दिनांक २६.०६.२००६ मधील तरतुदीप्रमाणे प्रस्तुतच्या प्रकरणांतील जमीनीवर काबीज असलेले इनामदा/जुने कब्जेदार यांना ते कुळ आहेत असे म्हणता येत नाही ह्या बाबी विचारात न घेता श्री शिरीष यादव, उपजिल्हाधिकारी भूसंपादन यांनी श्री सुतार, तत्का. कंत्राटी कर्मचारी सध्या बडतर्फ यांनी अर्जदार श्री तानाजी कालीदास पुजारी, यांना ५०% मावेजा रक्कम रुपये १,१९,६३,२९७ -/ देणे बाबत सादर केलेल्या टिपणीस मान्यता देवुन सदर मावेजाची रक्कम अर्जदार यांना दिनांक २०/०३/२०१९ रोजी नियमबाह्यपणे वाटप केली आहे.

सबब, उबत कृती करुन श्री शिरीष यादव, उपजिल्हाधिकारी हे उपजिल्हाधिकारी (भूसंपादन) मांजरा प्रकल्प, उस्मानाबाद यांनी महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम ३ चे उल्लंघन केले आहे.”

6. We reiterate that the respondents have not disputed that the Competent Authority of Land Acquisition, under National Highways Authority of India Act, is quasi-judicial authority. The respondents have also not disputed that at the relevant time the applicant worked on the said post. If the contents of the charge leveled against the applicant and the details provided thereof are perused, there remains no doubt that according to the respondents, the orders passed by the applicant while discharging the duties of CALA are contrary to the provisions under the relevant acts and that the concerned order has been passed by the applicant without taking into account the provisions under the Maharashtra Public Trust Act, 1950 as well as Land Acquisition Act. It also appears to be the contention of the respondents that the provisions under the

Tenancy Act are also overlooked by the applicant. The procedural irregularities are also alleged to be committed by the applicant.

7. We have to thus examine whether the orders passed by the applicant and exercise of quasi-judicial function can form the basis of disciplinary proceedings against him. Learned counsel for the applicant has heavily relied upon two judgments of the Hon'ble Apex Court, first in the case of **Union of India and Another Vs. R.K. Desai, (1993) 1 SCC 49** and another in the case of **Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others, (1999) 7 SCC 409**. In the case of R.K. Desai (cited supra) the allegations against the Government officer concerned were merely to the effect that refunds were granted to the unauthorized persons and this was done in disregard to the instructions of the Central Board of Direct Taxes, however, there was no allegation either express or implied that the concerned actions were taken by the said officer actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In the circumstances, the Hon'ble Apex Court held that merely because such orders of refund were made by the officer concerned, even assuming that they were

erroneous or wrong, no disciplinary action could be taken as the said officer was discharging quasi-judicial function.

8. The statement of imputations against Shri R.K. Desai was as follows:-

“Shri R.K. Desai also issued refunds amounting to Rs. 26,641 in the cases referred to above to the Indian agents of the masters of ships. In fact, these agents were not authorized to receive the refund orders, nor were there any requests from the non-resident owners of the ships to issue such refunds to their agents. The refunds were therefore granted to unauthorized persons. Moreover, refunds in these cases were personally delivered to instructions.”

The Hon'ble Apex Court in regard to the aforesaid allegations has observed as follows: -

“4. In our view, the allegations are merely to the effect that the refunds were granted to unauthorized persons and this was done in disregard to the instructions of the Central Board of Direct Taxes. There is no allegation, however either express or implied that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous considerations. In these circumstances, merely because such orders of refunds were made, even assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent was discharging quasi-

judicial functions. If any erroneous order had been passed by him the correct remedy is by way of an appeal or revision to have such orders set aside. In these circumstances, there is no dispute that the appeal may fail.”

9. In the matter of Zunjarrao disciplinary proceedings for major penalty were initiated under Rule 14 of CCS (CCA) Rules, 1965 against the appellant namely Zunjarrao. The charge against him was that, “while working as Collector/Commissioner Central Excise passed the Order-in-Original No.20/95 dated 20.03.95 in which he had favoured (assessee party) by not imposing any penalty on the said party even though he had held that party had clandestinely manufactured and cleared the excisable goods and evaded the excise duty wilfully. It was further mentioned against the said Zunjarrao in the statement of charge that, thus he failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. Servant and contravened Rule 3(1)(i) and (ii) and (iii) of the CCS (Conduct) Rules, 1964. Zunrarrao had though ordered imposition of excess duty and confiscation of the goods his order was silent about imposition of penalty on the basis of which it was alleged against him that he failed in exercising quasi-judicial power properly.

10. The Hon'ble Apex Court on reviewing the legal position regarding imposition of penalty concluded that Zunjarrao had no discretion not to impose penalty though he had discretion to decide quantum of penalty. It was further observed by the Hon'ble Apex Court that approach of Zunjarrao in not imposing penalty was, therefore, not inconformity with the law. The Hon'ble Apex Court however, considered the question whether mistaken view of law itself was sufficient to proceed against the appellant i.e. Zunjarrao. The Hon'ble Apex Court while deciding the said question also took into consideration the explanation by the appellant that he had acted in the overall interest of review in not imposing penalty on assessee party. The Hon'ble Apex Court however, observed in paragraph 43 of the said judgment thus: -

“43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial

order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

11. The Hon'ble Apex Court considering whole aspects involved in the said matter ultimately recorded conclusion that the said was not case for initiation of any disciplinary proceedings against the appellant i.e. Zunjarraro. The Hon'ble Apex Court held the charge of misconduct raised against the appellant improper and quashed the same.

12. After having gone through the facts involved in the aforesaid matters and the decisions rendered by the Hon'ble Apex Court in the said matters, we find substance in the arguments advanced by the learned counsel appearing for the applicant. It is undisputed that the order which is referred in the statement of charge, whereby the applicant is said to have remitted 50% amount of the compensation worth Rs. 1,19,63,297/- to one Tanaji Kalidas Pujari has been passed by

the applicant while discharging the duties of the Competent Authority of Land Acquisition under the provisions of National Highways Act, 1956. Thus, the applicant had passed the said order in capacity of a quasi-judicial authority and the said order, therefore, has to be held a quasi-judicial order.

13. The allegations against the applicant are that he passed the said order in review without taking any hearing on the said application, that the land which was acquired is belonging to Temple Trust registered under the provisions of Bombay Public Trust Act (now Maharashtra Public Trust Act, 1950) and in the circumstances as per the provisions under Section 35 of the Maharashtra Public Trust Act, 1950 instead of remitting the amount in favour of the said Tanaji Kalidas Pujari the applicant must have invested the amount of compensation received to the temple trust towards acquisition of the land owned by the said trust in accordance with the terms and conditions, which may be imposed by the learned Charity Commissioner. It is further submitted that the persons who are in possession of the land owned by the temple trust cannot be said to be the tenants in the property. It is alleged that the applicant without considering and taking into account the provisions as aforesaid paid 50% of the amount to said Tanaji

Kalidas Pujari. In Annexure-II with the statement of charge the details of the misconduct alleged against the applicant are provided. The said annexure contains the elaborate facts which are briefly noted in the Annexure I with the charge-sheet. According to the respondents, by making such an order applicant has violated the provisions under Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

14. The allegations as above made against the applicant would mean that the applicant is unaware of the provisions under the Maharashtra Public Trust Act, the Land Acquisition Act etc. It also can be said that the applicant wrongly interpreted the legal provisions under the aforesaid Acts and has passed an erroneous order.

15. As held by the Hon'ble Apex Court in the case of **Zunjarrao Bhikaji Nagarkar** (cited supra) a wrong interpretation of law cannot be a ground for misconduct. The Hon'ble Apex Court has further held that every error of law may not constitute a charge of misconduct and if it is so held it would impinge upon the independent functioning of quasi-judicial officers. In the entire statement of charge against the applicant or in the details provided thereof, it is nowhere the allegation against the applicant that the order in question was deliberately

passed by the applicant or that the said order was actuated by mala fides. It is also nowhere the allegation against the applicant that the said order was passed for some extraneous consideration. As held by the Hon'ble Apex Court in the case of **R.K. Desai** and **Zunjarrao Nagarkar** (cited supra), the negligence or carelessness alleged in exercising quasi-judicial power, in order to constitute misconduct, should not be mere carelessness, inadvertence or omission but a culpable negligence. The mistaken view of law allegedly taken by the applicant itself would not constitute any misconduct. It is held by the Hon'ble Apex Court that to maintain any charge-sheet against the quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort was alleged against Zunjarrao Nagarkar, the Hon'ble Apex Court set aside the disciplinary proceedings against him. In the case of **R.K. Desai** (cited supra) also an appeal filed against the decision of the learned Central Administrative Tribunal, whereby the Tribunal had quashed and set aside the show cause notice issued to said R.K. Desai in contemplation of the departmental enquiry against him came to be dismissed by the Hon'ble Apex Court on the ground that there was no allegation express or implied that the actions

taken by Shri Desai were actuated by any corrupt motive or to oblige any person on account of extraneous consideration. The Hon'ble Apex Court has specifically held in the said matter that even assuming that the orders passed by the quasi-judicial authorities are erroneous or wrong, no disciplinary action can be taken as the officer concerned was discharging the quasi-judicial function. On similar line the Hon'ble Apex Court in the case of **Zunjarrao Nagarkar** has observed that, if, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers.

16. In the instant case we reiterate that the respondents have not even whispered in the memorandum of charge issued against the applicant as well as in the details of charge so leveled against him that the order in regard to the payments of 50% amount of compensation to Shri Tanaji Pujari was passed by the applicant for some extraneous consideration or was actuated by malice. In absence of any such allegation against the applicant we have reached to the conclusion that there is no case for initiation of any disciplinary proceeding against the applicant. The orders passed by the quasi-judicial authority while discharging duties of the post held by him unless are alleged with mala fide or with ulterior or corrupt motive cannot

be held as misconduct and no departmental enquiry can be initiated into such charges. It further cannot be lost sight of that the alleged order passed by the applicant was liable to be corrected in appeal or revision. The applicant may have exercised his jurisdiction wrongly but that wrong could have been corrected in appeal and that cannot form a basis for initiating the disciplinary proceedings against him.

17. In the affidavit in reply filed by respondent Nos. 1 & 2 it is alleged that act of the applicant in ordering the payment of compensation is of doubtful integrity and hence does not deserve the protection under the Judges Protection Act or under the National Highways Authority of India Act, 1988. It has to be stated that the allegations which are made in the affidavit in reply are not noticed in the memorandum of charge or statement of charge issued against the applicant. The enquiry against the applicant is to be conducted on the basis of the statement of charge and in the circumstances the allegations as are made in the affidavit in reply must have been raised in the statement of charge. In the memorandum of charge and in the statement of charge not only that there is no allegation of doubtful integrity or corrupt motive etc. against the applicant, but the statement of charge opens with an averment that, “श्री

शिरीष यादव, उपजिल्हाधिकारी हे उपजिल्हाधिकारी (भुसंपादन) मांजरा प्रकल्प, उस्मानाबाद या पदावर दि.०४.१०.२०१७ पासून कार्यरत असून, त्यांनी खालीलप्रमाणे **अनियमितता** केली आहे.” It is very significant to note that in the statement of charge it is not even the contention of the respondents that the applicant committed any illegality, what is alleged against him is that he committed irregularity. It has to be further noted that at the end of the statement of charge it is stated that the applicant committed breach of Rule 3 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In fact, Rule 3 of the aforesaid M.C.S. (Discipline and Appeal) Rules is in respect of ‘application’ of the said Rules and is nowhere related to any misconduct. It appears that the respondents were in fact intending to mention Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979. The said rule reads thus: -

“3. Duty of the Government servants to maintain integrity, devotion to duty, etc. - (1) Every Government servant shall at all times -

- (i) maintain absolute integrity ;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant.

(2) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

(3) No Government servant shall, in performance of the official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such directions, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

(4) Nothing in sub-rule (3) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.”

18. As held by the Hon'ble Bombay High Court in the case of **Mohan Krishna Antrolikar Vs. The Commissioner, Prohibition and State Excise and Anr. 2001(2)Bom. Cases Reporter 693**, Sub-rule 1(i) and (ii) of Rule 3 (1) operate in different fields. Mere failure to do duty or failure to maintain devotion to duty per se cannot result into failure to maintain absolute integrity unless there is further evidence or material to support the said charge. Moreover, to bring home the charge that the Government servant has failed to maintain absolute integrity or devotion to duty or even for proving that the acts allegedly done by him are unbecoming of a Government servant, firstly there must be a specific charge and there must be positive material or evidence to show the nexus between the

allegation and the act alleged against the said Government employee. We have twice noted earlier that the statement of charge does not contain any such allegation that the alleged order was passed by the applicant with any ulterior motive or was actuated with malice. In the departmental enquiry proceedings and more particularly when it is directed to be under rule 8 of the M.C.S. (Discipline & Appeal) Rules, 1979 likely to entail in imposition of major penalty upon the delinquent, the charge must not be vague that the applicant committed breach of rule 3 of the M.C.S. (Discipline & Appeal) Rules, 1979.

19. For the reasons elaborated by us hereinabove, the following order is passed:-

ORDER

- (i) The departmental enquiry initiated against the applicant and the statement of charge issued against him on 11.01.2021 is quashed and set aside.
- (ii) The Original Application stands allowed in the above term, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 16.07.2024