

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.336 OF 2018

DISTRICT : THANE

Shri Raju Dhondiram Akrupe.)
Age : 40 Yrs., Occu.: Food Safety Officer)
(Group -B), R/at Flat No.501, Building No.)
B-2, Vihang Garden, Pokhran Road No.1,)
Opp. Raymond Gate, Vartak Nagar Corner,))
Thane (W).)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Medical Education & Drugs Dept.,)
New Mantralaya, G.T. Hospital)
Complex, L.T. Marg, Mumbai - 01.)
2. The Commissioner.)
Food & Drugs Administration, M.S,)
Survey No.341, 2nd Floor, BKC,)
Bandra (E), Mumbai - 51.)
3. Mr. Sandip Tatyarao Patange.)
OSD of Hon'ble Opposition Leader,)
Legislative Council, Maharashtra.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

**Mr. S.K. Nair, Special Counsel with Ms. N.G. Gohad, Presenting
Officer for Respondents 1 & 2.**

Mr. A.V. Bandiwadekar, Advocate for Respondent No.3.

in the

CORAM : **A.P. KURHEKAR, MEMBER-J**

DATE : **06.11.2019**

JUDGMENT

1. The Applicant has challenged the suspension order dated 19.03.2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant was serving as Food Safety Officer, Thane 112 within the administrative control of Respondent Nos.1 and 2. The incident giving rise to the suspension of the Applicant occurred on 15.03.2018. That time, the session of Maharashtra State Legislative Council was in motion. The Respondent No.3 – Shri Sandip Patange was the Officer on Special Duty with Shri Dhananjay Mundhe, Leader of Opposition. The Respondent No.3 was in his Chamber attached to the Office of Leader of Opposition within the precinct of Vidhan Bhavan. While the proceedings of Legislative Council was in motion, Shri Dhananjay Mundhe, Leader of Opposition raised plea of Attention Motion (Lakshavedhi Suchana) in respect of illegal sale of Gutkha despite the ban of its sale in the State. At about 4.50 p.m, the Applicant accompanied by Shri Sudhakar Bhalerao, M.L.A. and Shri M.N. Choudhary, Assistant Commissioner (Food), Circle 5, Thane came in the Chamber of Respondent No.3. The Applicant allegedly threatened Respondent No.3 and misbehaved with him contending that the Respondent No.3 is responsible and instrumental for bringing Attention Motion in house. In the preceding week also Shri Dhananjay Mundhe raised the issue of illegal sale of Gutkha in the State and assurance was given by the Hon'ble Minister that the enquiry will be conducted through Vigilance Department and appropriate action will be taken against the Officials found guilty. It

is on this background, on 15.03.2018 in the evening when the Session of Legislative Council was in motion, the Applicant accompanied with Shri Bhalerao, MLA and Shri Choudhary, Assistant Commissioner (Food) went to the Chamber of Respondent No.3 and misbehaved with him. The Applicant allegedly threatened Respondent No.3 for bringing Attention Motion in the House. The Respondent No.3 immediately brought the said incident to the knowledge of Shri Dhananjay Mundhe, who in turn sent letter to Hon'ble Chief Minister for enquiry into the misconduct of the Applicant and for interference with the business of House by bringing political pressure. In House, Shri Girish Bapat, Hon'ble Minister of Medical Education & Drugs Department after taking requisite information about the incidence made a statement that the conduct of the Applicant being inappropriate, he will be suspended and the Departmental Enquiry will be initiated against him. It is on this background, the Applicant was suspended by order dated 19.03.2018 in contemplation of D.E.

3. The Applicant has challenged the suspension order dated 19.03.2018 by filing this O.A. on 11.04.2018 contending that he has been victimized at the instance of Respondent No.3. According to him, the Respondent No.3 was eyeing for posting in his place at Thane 112 and the impugned action of suspension is arbitrary, malicious and abuse of process of law.

4. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page No.167 of P.B.) and Respondent No.3 had also filed Affidavit-in-reply (Page No.91 of P.B.) *inter-alia* denying that the suspension order suffers from any illegality, malice or arbitrariness. The Respondent No.1 sought to justify the suspension order contending that the act of Applicant namely, threatening Respondent No.3 in the precinct of Vidhan Bhawan exerting political pressure by bringing MLA, amount to serious misconduct. The issue of suspension was raised by Shri Dhananjay Mundhe, Leader of

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Opposition in Legislative Council. According to Respondent No.1, the conduct of Applicant as exhibited at incidence on 15.03.2018 in the Chamber of Respondent No.3 amount to serious misconduct and interference in the business of House and it maligned the reputation of Legislative Council, and therefore, the Hon'ble Minister announced suspension of the Applicant in the House on 16.03.2018. Later, on 19.03.2018, the official suspension order has been issued and D.E. was contemplated. Later, charge-sheet was issued on 29.05.2018 under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 for misconduct i.e. for breach of Rule 3(i)(ii)(iii) of Maharashtra Civil Services (Conduct) Rules, 1979. The Enquiry Officer has been appointed and D.E. is in progress. Besides, during the pendency of O.A, by order dated 15.04.2019, the suspension of the Applicant was revoked and he is reinstated as Food Safety Officer, Thane 70 instead of Thane 112. Shri Manik Jadhav is posted as Food Safety Officer, Thane 112. The Respondents thus contend that in view of revocation of suspension and reinstatement of the Applicant, the O.A. has become infructuous.

5. In view of subsequent development of revocation of suspension and reinstatement in service, the Applicant has amended O.A. contending that the suspension itself being illegal, it deserves to be quashed. He further contends that after revocation of suspension, he ought to have been reinstated at the same post at Thane 112, but he is posted at Thane 70 and on that count also, he is victimized without any fault on his part. As such, even after revocation of suspension, the O.A. is continued for decision on merit.

6. Smt. Punam Mahajan, learned Advocate for the Applicant vehemently urged that the suspension itself suffers from malice, arbitrariness and Applicant is victimized at the instance of Respondent No.3 who is OSD with Shri Dhananjay Mundhe. According to her, the Respondent No.3 forced the Hon'ble Opposition

Leader to raise the issue of suspension of the Applicant in the House and Hon'ble Minister without verifying the facts announced the suspension of the Applicant under political pressure. She further submits that after revocation of suspension, the Applicant ought to have been posted in his original place at Thane 112, but the said post was given to Shri Manik Jadhav under pressure of Opposition Leader. He thus submits that the suspension is *malafide* and Applicant deserves to be posted at his original post at Thane 112.

7. Shri S.K. Nair, learned Special Counsel for Respondent No.1 countered that the suspension of the Applicant being announced in Legislative Council, it cannot be questioned before the Tribunal in view of bar of Article 212 of the Constitution of India. In alternative submission, he contends that in view of revocation of suspension and reinstatement of the Applicant, the O.A. itself has become infructuous. As regard reinstatement of the Applicant as Food Safety Officer, Thane 70 instead of Thane 112, he submits that in view of pendency of D.E, as per Government policy, the Applicant was posted at Thane 70 and the Applicant cannot ask for reinstatement at the same post and place. In so far as the merit of suspension order is concerned, he submits that in view of serious misconduct, threats given by the Applicant to Respondent No.3 in the precinct of Legislative Council, it warranted immediate suspension to maintain discipline and rule of law. He has further pointed out that the charge-sheet is already issued and the departmental proceeding is in progress and the same will be completed within reasonable time.

8. Whereas Shri A.V. Bandiwadekar, learned Advocate for Respondent No.3 submits that, in view of threats and abusive language used by the Applicant in the Chamber of Respondent No.3, the Opposition Leader Shri Dhananjay Mundhe raised issue in the Legislative Council and his suspension was announced. He further pointed out that after incident, the Respondent No.3 had also lodged

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complaint with Respondent No.2 in respect of the outraged misbehavior of the Applicant. He thus sought to justify the suspension order.

9. Smt. Punam Mahajan, learned Advocate for the Applicant to bolster-up her contention that the impugned suspension order is malicious, arbitrary and colourable exercise of power, sought to refer certain decisions of Hon'ble Supreme Court, which are as follows :-

(a) **1989 AIR (SC) 997 (State of U.P. & Ors. Vs. Maharaja Dharmander Prasad Singh)** wherein in Para No.24, the Hon'ble Supreme Court observed as follows :-

"The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the Authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority."

This authority is pressed into service to contend that the decision of suspension of the Applicant is influenced by the dictation of Leader of Opposition without verifying the facts, and therefore, the same is unsustainable in law.

(b) The Judgment of Hon'ble Supreme Court in **Civil Appeal No.1906/1999 in the matter of (Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.) decided on 30.03.1999** where Hon'ble Supreme Court observed as follows :-

"Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension."

(c) The decision of Hon'ble Supreme Court in **Civil Appeal No.9454/2013 (Union of India & Anr. Vs. Ashok Kumar Aggarwal) decided on 22nd November, 2013** where in Para Nos.9 and 10, the Hon'ble Supreme Court held as follows :-

"9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc."

(d) The Judgment of Hon'ble Supreme Court in **Civil Appeal No.7349-7351/2010 (Kalabharati Advertising Vs. Hemant V. Narichania & Ors.) decided on 6th September, 2010** wherein in Para No.25, on the point of malice, it has been held as follows :-

"25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-

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will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts."

10. At this juncture, it is necessary to note that, indeed, the Hon'ble Supreme Court in the matter of **Union of India & Anr. Vs. Ashok Kumar Aggarwal's** case (cited supra) after considering its various earlier decisions observed as follows :-

"The scope of judicial review is limited in case of suspension for the reason that passing of suspension order is of an administrative nature and suspension is not a punishment. Its purpose is to only forbid the delinquent to work in the office and it is in the exclusive domain of the employer to revoke the suspension order. The Tribunal or the court cannot function as an appellate authority over the decision taken by the disciplinary authority in these regards.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."

11. It would be also apposite to take note of the decision of Hon'ble Supreme Court in **AIR 1994 SC 2296 (State of Orissa Vs. Bimal Kumar Mohanty)** where it has been observed as follows :-

".....the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf..... In other words it is to refrain him to avail further opportunity to perpetuate the alleged

misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

12. Similarly, in **(2006) 8 SCC 200 (Jayrajibhai Jayantibhai Patel Vs. Anilbhai Nathubhai Patel & Ors.)**, the Hon'ble Supreme Court explained legal position in following words :-

"Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

13. From the aforesaid judicial pronouncements and exposition of law, the following principles are culled out :-

- (i) The power to suspend the employee and to institute the disciplinary proceedings against an erring employee on charge of misconduct lies solely within the province of employer/State.

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(ii) The order of suspension is required to be passed after taking into consideration the gravity of misconduct sought to be enquired into bearing in mind whether it is expedient to keep an employee under suspension pending the departmental action and it should not be as an administrative routine matter. The employer/State is required to consider the nature of the charges, the surrounding circumstances of the matter and the impact on the discipline in the establishment.

(iii) The power of suspension should not be exercised in an arbitrary manner or/and without any reasonable ground or as vindictive misuse of power.

(iv) Suspension can be made in case where there is strong prima-facie case against an employee and the allegations are grave and serious.

(v) The fact of each case have to be taken into consideration for deciding whether the suspension is warranted or legal and no strait-jacket formula can be laid down in this regard.

(vi) The power of judicial review should not be exercised unless the decision of suspension is illogical or suffers from procedural impropriety or it shocks the conscience of the Court.

(vii) Where the Court or Tribunal is satisfied that there is abuse or misuse of power, then it is incumbent to interfere with the order of suspension.

14. At this juncture, it would be appropriate to see the charge levelled against the Applicant, which is as follows :-

“श्री. आर.डी. आकरुपे, निलंबित अन्न सुरक्षा अधिकारी, (गट-ब), अन्न व औषध प्रशासन, ठाणे यांचेविरुद्ध तयार करण्यात आलेले दोषारोपांचे तपशिलवार विवरणपत्र.

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दि. १६ मार्च, २०१८ रोजी विधानपरिषदेत मा. श्री. धनंजय मुंडे, मा. विरोधी पक्षनेता, विधानपरिषद यांनी अन्न व औषध प्रशासनातील अन्न सुरक्षा अधिकारी श्री. रा.धो. आकरुपे यांनी मा. विरोधी पक्षनेता यांचे विशेष कार्य अधिकारी यांना सभागृहात लक्षवेधी का विचारता असे म्हणून धमकाविले असल्याचे सांगत सदर अधिका-यावर कारवाई करण्याबाबतचा मुद्दा उपस्थित केला होता. यावरून सभागृहात गदारोळ होऊन सभागृह दोनदा तहकूब करण्यात आले. मा. मंत्री (अन्न व औषध प्रशासन) यांनी “अन्न सुरक्षा अधिकारी यांनी सन्माननीय विरोधी पक्षनेत्यांचे कार्यालयात जाऊन ज्या पद्धतीने चर्चा केली ही बाब संयुक्तीक नसल्याने अन्न सुरक्षा अधिकारी श्री. आर.डी. आकरुपे यांना निलंबित करित आहेत” अशी घोषणा केलेली आहे.

यानुषंगाने, आयुक्त, अन्न व औषध प्रशासन यांनी श्री.आकरुपे यांचेविरुद्ध कारवाई करण्याबाबत केलेल्या शिफारसीच्या अनुषंगाने श्री. आकरुपे यांना दि. १९ मार्च, २०१८ रोजीच्या आदेशान्वये निलंबित करण्यात आलेले आहेत.

तसेच, मा. विरोधी पक्षनेता, महाराष्ट्र विधानपरिषद यांनी दि. १४.०३.२०१८ रोजी मा. मुख्यमंत्री महोदयांना पत्र पाठवून श्री. आर. डी. आकरुपे, अन्न सुरक्षा अधिकारी, अन्न व औषध प्रशासन यांनी मात्र विरोधी पक्षनेता यांचेवर राजकीय दबाव आणून सभागृहाच्या कामकाजात अडथळा आणल्याबाबत त्यांची चौकशी करण्याची विनंती केली आहे.

श्री. आकरुपे हे शासकीय कर्मचारी असून, त्यांनी मा. विरोधी पक्षनेता यांच्या कार्यालयात जाऊन तेथे उपस्थित मा. विरोधी पक्षनेता यांचे विशेष कार्यकारी अधिकारी यांना सभागृहात त्यांची लक्षवेधी का लावता याबाबत विचारणा करून त्यांना धमकाविले तसेच सदर मुद्दा सभागृहात उपस्थित करण्यात आला होता तेव्हा सभागृह दोनदा तहकूब करण्यात आले. तसेच मा. विरोधी पक्षनेता, विधानपरिषद यांनी श्री. आकरुपे यांनी त्यांचेवर राजकीय दबाव आणून सभागृहाच्या कामकाजात अडथळा आणल्याबाबत मा. मुख्यमंत्री महोदयांकडे तक्रार केलेली आहे. या बाबीचा विचार करता श्री. आकरुपे यांच्या सदर वर्तनामुळे प्रशासनाची पर्यायाने शासनाची प्रतिमा मलिन झालेली आहे. त्यांचे सदर कृत्य अशोभनीय आहे.

यावरून श्री. आर. डी. आकरुपे, निलंबित अन्न सुरक्षा अधिकारी, (गट-ब), अन्न व औषध प्रशासन, ठाणे यांनी त्यांच्या कामकाजाशी निगडित नितांत सचोटी, कर्तव्यपरायणता राखलेली नाही व शासकीय कर्मचा-यास अशोभनीय असे वर्तन केलेले असून, महाराष्ट्र नागरी सेवा (वर्तनूक) नियम १९७९ मधील नियम ३ (१)(एक), ३ (१)(दोन) व ३ (१) (तीन) खालील तरतुदीचा भंग केलेला आहे.”

15. Now, turning to the facts of present case, let us see the events leading to the suspension of the Applicant. As stated above, the issue of suspension of the Applicant was raised by the Hon'ble Leader of Opposition in Legislative Council on 15.03.2018 on the background that the ban on sale of Gutkha is not being implemented effectively in Mumbai Region and indeed, had raised Attention Motion in the preceding week in the House. Admittedly, on 15.03.2018, the Applicant visited the Office of Leader of Opposition and was accompanied with MLA. The incident took place in the cabin of Respondent No.3 who was working as OSD with Hon'ble Leader of Opposition. According to Respondent Nos.1 & 2, the Applicant threatened Respondent No.3 for being instrumental in bringing Attention Motion in the House, and therefore, it amounts to interference in the business of Legislative Council. The issue was, therefore, raised by Hon'ble Leader of Opposition in House on

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16.03.2018. The Applicant has produced the copy of Proceeding dated 16.03.2018 and the relevant passage is as follows :-

“श्री. धनंजय मुंडे : सभापती महोदय, मी मागील आठवड्यात सदनात एका महत्वाच्या विषयावर लक्षवेधी सूचना उपस्थित केली होती. राज्यात गुटखा बंदीचा कायदा असताना सुद्धा राज्यामध्ये....

सभापती : माननीय विरोधी पक्षनेते हा प्रश्न यापूर्वी सदनात आला होता.

श्री. धनंजय मुंडे : सभापती महोदय, राज्यात गुटखा बंदीचा कायदा असताना सुद्धा राज्यामध्ये गुटखा विकला जातो, तयार केला जातो. त्या संदर्भात असलेल्या कायद्याची राज्यात अंमलबजावणी होत नसल्यामुळे मी मागील आठवड्यात लक्षवेधी सूचना उपस्थित केली होती. माननीय मंत्र्यांनी लक्षवेधी सूचनेवर अतिशय व्यवस्थित उत्तर दिले होते. तसेच या प्रकरणी जे अधिकारी दोषी असतील त्यांच्याविरुद्ध कारवाई करण्यासाठी विजिलन्सकडून त्यांची चौकशी करण्याचा निर्णय झाला होता. परंतु गंभीर बाब अशी आहे की, माननीय मंत्र्यांनी सदर लक्षवेधी सूचनेला सदनात उत्तर दिल्यानंतर त्या संदर्भात औषध प्रशासन विभागातील ज्या अधिका-याची चौकशी केली जाणार होती तो अधिकारी भाजपच्या एका आमदारांना घेऊन माझ्या ऑफिसमध्ये म्हणजे विरोधी पक्षनेते यांच्या विधान भवन येथील कार्यालयात आला. माझ्या कार्यालयात येऊन धिंगाणा घातला. भविष्यात गुटखा बंदी कायद्याची अंमलबजावणी होत नसेल आणि माझ्या कार्यालयाने त्यासंबंधी लक्षवेधी लावली तर, अशाप्रकारे लक्षवेधी सूचना लावण्याची कोणी हिंमत करू नये अशा पध्दतीने त्या अधिका-याची मजल होत असेल आणि ते सुद्धा अधिवेशन सुरु असताना. अशाप्रकारे अधिका-यांनी सत्ताधारी आमदाराला सोबत घ्यावयाचे आणि विरोधी पक्षनेत्यांच्या कार्यालयात जाऊन तेथील ओएसडीला धमकी द्यायची. दादा, आपल्या राज्यात हे काय सुरु आहे ? हे खोटे नाही. आपण या संदर्भात आपण उदगिरच्या भारतीय जनता पार्टीच्या आमदाराला विचारवे. मी आपल्याला त्या अधिका-याचे नाव सांगतो. आखरुपे नावाचा अन्न सुरक्षा अधिकारी श्री. धनंजय मुंडे असून सध्या तो ठाणे येथे कार्यरत आहे. त्या अधिका-याचा असा इतिहास आहे की, एक अधिकारी नाशिक येथे कार्यरत असताना त्याच्या मनमानी आणि भ्रष्ट कारभाराच्या बाबतीत मोठ्या प्रमाणात तक्रारी होत्या. त्या सर्व तक्रारी उप राष्ट्रपती महोदयांपर्यंत गेल्या होत्या. अन्न व औषध प्रशासन विभागाने त्या तक्रारीची गंभीर दखल घेतली व चौकशी सुरु केली. त्या चौकशीत त्या अधिका-याचा सर्व भ्रष्टाचार व पूर्ण कारभार उघडकीस आला होता. त्या अनुषंगाने आयुक्त, अन्न व औषध प्रशासन विभाग, मुंबई यांनी आखरुपे, अन्न सुरक्षा अधिकारी यांच्या संविधानिक पदाचे अधिकार काढून घेण्याची शिक्षा बजावली..... अशाप्रकारे त्यांच्या आदेशावर आयुक्तांनी सदर अधिका-यावर कारवाई करून त्याचे संविधानिक पद डी-नोटीफाय केले. मी दिलेली लक्षवेधी सूचना त्या अधिका-याच्या विरोधात नव्हती तर तसेच ज्या अधिका-यांच्या मदतीने गुटखाचा कारभार राज्यात सुरु असून एक हजार कोटी रुपयांची होणा-या उलाढालासंबंधी होती.

सभापती महोदय, आम्ही काय करायचे, आम्ही सोडून द्यायचे का ? सभागृहाचे नेते माननीय श्री. चंद्रकांत पाटील यांनी सांगवे. आमदार त्या अधिका-याला सोबत घेऊन येतात. आखरुपे सारखा अधिकारी विरोधी पक्ष नेत्याच्या विशेष कार्य अधिका-यास धमक्या देतो. वर्ग-२ अधिका-याबाबत घेण्यात आलेल्या किंवा घ्यावयाच्या कोणत्याही निर्णयाबाबत मंत्रालयीन विभागाला कळविणे आवश्यक आहे. तसेच आस्थापनविषयक सर्व अधिकार मंत्री महोदयांकडे असतात, त्यांनी अंतिम निर्णय घ्यावयाचा असतो. याबाबत लक्षवेधी सूचनेचे उत्तर मंत्री महोदयांनी दिले आहे. चौकशी मंत्री महोदयांनी लावली आहे. मला सांगावे की, याच्या पाटीमागे कोण आहे ? अधिका-यासोबत भाजपाच्या आमदाराची माझ्या कार्यालयात येण्याची त्यांची हिंमत होते. याबाबत मंत्री महोदयांनी चौकशी लावलेली आहे. उदया कोणत्याही सन्माननीय सदस्यांनी एखाद्या विषयाच्या बाबत लक्षवेधी सूचना चर्चेस आणली व ती एखाद्या अधिका-याच्या संदर्भात असेल, त्या अधिका-याने किंवा सत्ताधारी पक्षाच्या आमदारांनी अधिका-यासोबत जाऊन विरोधी पक्ष नेत्याच्या विशेष कार्य अधिका-यांना धमक्या द्यावेत, माझ्यासाठी हे अतिशय क्लेशदायक आहेत. ही वेळ आज माझ्यावर आहे. उदया कोणत्याही सन्माननीय सदस्यांवर ही वेळ येऊ शकते. याबाबत अधिका-याला डी-नोटीफाईड करून आपण निलंबित करणार आहात का ? नाही तर या सदनामध्ये काम करण्याची माझी काही इच्छा राहिली नाही.

सभापती : सन्माननीय विरोधी पक्ष नेत्यांनी जो प्रश्न उपस्थित केला, जो प्रसंग घडला त्याबाबत सदनाची बैठक स्थगित करण्यापूर्वी सन्माननीय सभागृह नेत्यांना मी सांगितले होते. तेव्हाही सभागृह नेत्यांनी तेच म्हटले की, चौकशी करून कारवाई करावी. त्याबाबत माझी चर्चा झाली आहे. विभागाशी संबंधित मंत्री महोदय सभागृहात उपस्थित आहेत. हा प्रसंग त्यांचा निर्देशनास आणून देण्यात आला आहे. या विषयाचे गांभीर्य ओळखून त्यांनी निवेदन करावे.

श्री. गिरीश बापट: सभापती महोदय, मी झालेल्या प्रकरणाची संपूर्ण माहिती घेतली आणि सन्माननीय विरोधी पक्षनेत्यांशीही आता चर्चा केली. या सभागृहात विविध आयुधांच्या माध्यमातून आमदार, विरोधी पक्षनेते लक्षवेधी सूचना, प्रश्न मांडले जातात. तो सन्माननीय सदस्यांचा हक्क आहे. त्या संदर्भात जी चर्चा व्हायची ती सभागृहात होईल. त्या संदर्भातील निर्णय सभागृहात होईल. सभागृहाच्या बाहेर परस्पर निर्णय करण्याची गरज नसते. कालच्या या सगळ्या

प्रकरणांमध्ये अन्न सुरक्षा अधिकारी, भिवंडी यांनी सन्माननीय विरोधी पक्षनेत्यांच्या कार्यालयात जाऊन ज्या पध्दतीने चर्चा केली ही बाब संयुक्तीक नाही. शेवटी विरोधी पक्षनेते हे मानाचे व महत्वाचे स्थान आहे. या सभागृहात कथन केलेली माहिती सत्य असते असे गृहीत धरून अन्न सुरक्षा अधिकारी श्री. आर.डी. आखरुपे यांना निलंबित करित आहोत.”

16. Whereas, the Applicant sought to contend that, having learnt about the move of Attention Motion and sensing foul-play at the instance of Respondent No.3, he decided to meet Hon'ble Leader of Opposition through Shri Bhalerao, MLA, and therefore, visited the Office of Hon'ble Leader of Opposition on 15.03.2018 to clarify the position. According to him, he went there to convince him that he is victimized by re-opening the stale and old complaints made against him during his tenure as Food Safety Inspector, Thane 112 and further to convince Hon'ble Leader of Opposition that the Respondent No.3 is trying to mislead him. Whereas, as per the contention of Respondent Nos.1 & 2, the Applicant threatened Respondent No.3 in his Chamber for forcing Hon'ble Leader of Opposition to bring Attention Motion against him and it amounts to interference in the business of House and serious misconduct.

17. In view of submissions advanced at the Bar, the following points arise for consideration :-

- (I) Whether in view of revocation of suspension of the Applicant during the pendency of this proceeding, the O.A. has become infructuous.
- (II) Whether the jurisdiction of this Tribunal is barred by virtue of Article 212 of the Constitution of India.
- (III) Whether the Applicant is entitled to repost on the same place after revocation of suspension.
- (IV) Whether interference in the order of suspension dated 19.03.2018 is warranted by the Tribunal.

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18. **As to Point No.(I) :**

The submission advanced by Shri S.K. Nair, learned Special Counsel for State that in view of revocation of suspension of the Applicant and reinstatement in service, the O.A. has become infructuous holds no water. Even after revocation of suspension, the Applicant has amended O.A. challenging his posting at other place and also sought to assail basic order of suspension on the ground that it is malicious, arbitrary and misuse of power. Needless to mention that, even if the suspension is revoked, the legality of suspension order needs to be determined on merit. It is more so in view of specific pleading raised in this behalf. As such, one needs to test the legality of the suspension order on merit irrespective of revocation of suspension. The revocation of suspension is transitory arrangement which is subject to the final outcome of the matter as well as culmination of D.E, which is already initiated against the Applicant. Suffice to say, it cannot be said that because of revocation of suspension, the O.A. has become infructuous.

19. **As to Point No.(II) :**

Shri S.K. Nair, learned Special Counsel sought to contend that the announcement of suspension of the Applicant was made by Hon'ble Minister in Legislative Council in view of issued raised by Leader of Opposition, and therefore, such decision pronounced in Legislative Council cannot be the subject matter of scrutiny before Tribunal by virtue of Article 212 of Constitution of India. Article 212 of Constitution is as follows :-

"212. Courts not to inquire into proceedings of the Legislature.- (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the

Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.”

True, the Hon'ble Minister announced the suspension of the Applicant in Legislative Council. However, in the present matter, what is under challenge is the order of suspension issued by Respondent No.1 on 19.03.2018 under Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which inter-alia provides for suspension of a Government servant in contemplation of D.E. As such, the suspension was in contemplation of D.E. and later charge-sheet was issued on 29.05.2018 for misconduct under Rule 8 of M.C.S. (Discipline & Appeal) Rules, 1979. This being the position, it is explicit that what is under challenge is suspension order dated 19.03.2018 and not the declaration of suspension made by Hon'ble Minister in Legislative Council. The bar contemplated under Article 212 of Constitution of India apply where validity of proceeding in the legislature of State is questioned in the Court. In the present matter, the Applicant is not challenging validity of proceedings of the legislature and the challenge is to the suspension order dated 19.03.2018 passed by Respondent No.1 alleging serious misconduct arising out of the incident dated 15.03.2018. In this view of the matter, in my considered opinion, Article 212 of Constitution of India is not attracted and this Tribunal has jurisdiction to decide the validity of suspension order dated 19.03.2018. The submission advanced in this behalf, therefore, holds no water.

20. **As to Point No.(III) :**

Smt. Punam Mahajan, learned Advocate for the Applicant vehemently urged that in view of revocation of suspension of the Applicant, the Respondent No.1 was bound to repost the Applicant on his original post at Thane-112, but he is posted at Thane-70 only on pressure of Hon'ble Leader of Opposition at the instance of Respondent No.3. Another aspect of the matter is that, one Shri

By name

Manik Jadhav is posted at Thane-112 with the approval of Hon'ble Chief Minister invoking powers under the provisions 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). Shri Manik Jadhav has also filed O.A.591/2019 claiming the relief of declaration that his posting at Thane-112 by order dated 29.11.2018 is legal and valid and he should not be disturbed, which is subjudice in this Tribunal. Besides, Shri Manik jadhav has also filed M.A.617/2018 in the present O.A. for intervention and it was ordered to be decided along with O.A.

21. Now, the question is whether the Applicant has vested right of reposting on his original post at Thane-112 after revocation of suspension. In this behalf, Smt. Mahajan, learned Advocate for the Applicant heavily relied on the decisions of Hon'ble Madhya Pradesh High Court in **(2005) 4 MPHT 352 (Kendriya Vidyalyaya Sangthan Vs. Dr. R.K. Shahstri & Anr.) decided on 19th July, 2005** where in Para No.11, it has been held as follows :-

"11. It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled position that the station of posting immediately before suspension would be the headquarter vis-a-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending enquiry, is to be filled by a reservist and where a reservist is not available by officiating appointment. Therefore on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7- 2002 to the extent it posts the first respondent to Karimganj and makes the revocation of suspension effective from the date of reporting at K.V., Karimganj, is invalid and liable to be quashed."

22. Smt. Mahajan, learned Advocate for the Applicant further referred to some unreported Judgments of Hon'ble High Court of Chhattisgarh in following matters :-

- (i) *Kumari Radhika Naidu Vs. State of Chhattisgarh & Ors. in WPS No.3161 of 2015, decided on 28.08.2015.*
- (ii) *Krishina Kumar Sughoshman Vs. State of Chhattisgarh & Ors. in WPS No.3154 of 2015, decided 28.08.2015.*
- (iii) *Smt. Ishwari Varma Vs. State of Chhattisgarh & Ors. in WPS No.3669 of 2015, decided on 09.10.2015.*
- (iv) *Khadanand Patanwar Vs. State of Chhattisgarh & Ors. in WPS No.3146 of 2015, decided on 08.09.2015.*
- (v) *Khelendra Kumar Singh Vs. State of Chhattisgarh & Ors. in WPS No.5039 of 2015, decided on 03.08.2016.*
- (vi) *Vijay Vajpayee Vs. The State of Chhattisgarh in WPS No.4921 of 2014, decided on 18.09.2014.*
- (vii) *Bhupendra Prasad Pandey Vs. The State of Chhattisgarh & Ors. in WPS No.6443 of 2017, decided on 24.11.2017.*
- (viii) *Harkesh Kumar Jaiswal Vs. The State of Chhattisgarh in WPS No.6550 of 2017, decided on 29.11.2017.*
- (ix) *Prakash Narayan Tiwari Vs. The State of Chhattisgarh WPS No.217 of 2015, decided on 07.07.2015.*
- (x) *Narendra Singh Rajput Vs. The State of Chhattisgarh & Ors. in WPS No.3357 of 2016, decided on 07.09.2016.*
- (xi) *Bhopal Tande Vs. State of Chhattisgarh in WPS No.2498 of 2015, decided on 10.08.2015.*
- (xii) *Teshwar Kumar Verma Vs. State of Chhattisgarh in WPS No.2181 of 2017, decided on 09.05.2017.*

The perusal of these unreported Judgments reveals that those Judgments were delivered following the Judgment of Hon'ble Madhya Pradesh High Court in **Kendriya Vidyalaya Sangthan's** case (cited supra).

Mahajan

23. Per contra, Shri S.K. Nair, learned Special Counsel for Respondent Nos.1 & 2 and Shri A.V. Bandiwadkar, learned Advocate for Respondent No.3 urged that the Applicant has no vested right to continue on the same post and it is more so in view of Circular issued by State of Maharashtra dated 20.04.2013, which *inter-alia* issued guidelines for reposting of the employee on revocation of suspension at place other than the place of his original posting held by him at the time of suspension. As per this Circular dated 20.04.2013, the Government has taken policy decision that if suspended employee is reposted on the same place, it maligns the image of the Government, and therefore, it was decided, where suspension is revoked, the concerned employee should be posted at some other place and not on the post held by him at the time of suspension. As per this Circular, indeed, the Applicant was required to be posted out of Division. However, considering his family difficulties, he was posted in Thane itself by giving posting as Food Safety Officer, Thane-70.

24. As a matter of fact, as per the recommendation of Civil Services Board (CSB), he was recommended for transfer at Yeotmal. However, the Government took sympathetic view and posted him at Thane-70 so that there should not be inconvenience to the Applicant and his family. As such, when the Government thought it fit to repost the Applicant at some other place in view of its own policy having regard to the fact of pendency of D.E, such decision cannot be interfered with. It is well settled principle of law that in such situation, the Tribunal should not substitute its own decision and it should not be interfered with. Needless to mention that the employee has no legal enforceable right to continue at one place, as a transfer is an incidence of service and it more so, when it is a case of reposting after revocation of suspension subject to the continuation of D.E. This being the position, in my considered opinion, the decision of Hon'ble Madhya Pradesh High Court and Chhattisgarh High Court relied upon, which have persuasive value are of now assistance to the

Applicant, more so in view of the polity decision of Government reflected in Circular 20.04.2013.

25. **As to Point No.(IV) :**

Now, the question remains whether the order of suspension dated 19.03.2018 needs interference in the exercise of powers of judicial review by this Tribunal. Needless to mention that the order of suspension is an administrative nature and it is not punishment. Unless the order of suspension is shown *ex-facie* illegal or malicious or without jurisdiction, the same should not be interfered with. One need to consider the alleged misconduct attributed to the public servant to find out whether the suspension was totally unwarranted. Material to note that, as stated earlier, the Applicant does not dispute his visit to the Office of Hon'ble Leader of Opposition on 15.03.2018 when the House was in Motion to discuss Attention Motion brought by Hon'ble Leader of Opposition. The issue was raised before House about lapses on the part of Applicant and other Officials for not implementing ban on Gutkha. Assurance was given in the House that the enquiry will be conducted by Vigilance Department. It is in that context, one needs to see the implication of the visit of the Applicant to the Office of Hon'ble Leader of Opposition. True, he sought to explain that he went there to explain his story. None the less, the fact remains, that his visit to the Office of Hon'ble Leader of Opposition was in the context of Attention Motion. That time, the Applicant allegedly threatened Respondent No.3 and manhandled him. He was, therefore, charge-sheeted on 29.05.2018 for serious misconduct of interference in the business of Legislative Council. Indeed, the proceedings of Legislative Council was suspended twice in view of the issue raised by the Leader of Opposition about the interference of the Applicant in the matter, who was also accompanied with MLA and apparently, it was an attempt to bring political pressure. This act of the Applicant is prima-facie in breach of Rule 3 of M.C.S. (Conduct)

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Rules, 1979. At this stage, it is not desirable to find out as to which version is true, as the issue is being enquired into in D.E. The D.E. is already initiated and is underway.

26. As stated above, in the matter of suspension, the Court should not act as an appellate forum and suspension order should not be interfered with unless *ex-facia* it suffers from malice or shocks the conscience of the Court or without jurisdiction. If in given situation, the disciplinary authority has thought it appropriate to suspend the Applicant in view of alleged misconduct, it cannot be said that the suspension is based on irrelevant consideration or suffers from *ex-facia* malice or abuse of power. Suffice to say, *prima-facie*, the charge against the Applicant is of serious misconduct and its veracity is already a subject matter of enquiry in departmental proceeding. It appears that the decision of suspension was taken to maintain sovereignty of the proceedings of Legislative Council, as the Applicant attempted to interfere in the business of House by exerting political pressure which is *prima-facie* unbecoming of a public servant. In other words, this is not a case where the suspension is ordered on non-existent ground or out of malice. I have, therefore, no hesitation to sum-up that the suspension order needs no interference by this Tribunal. It is more so, when the suspension is already revoked and the Applicant is reinstated in service though on different post, but in same city.

27. The totality of aforesaid discussion leads me to sum-up that the challenge to the suspension order holds no water and O.A. deserves to be dismissed. It is desirable to issue necessary direction for completion of D.E, so that the issue will be taken to the logical conclusion without further delay. Hence, the following order.

ORDER

- (A) The Original Application is dismissed.
- (B) Respondent No.1 is directed to complete the D.E. initiated against the Applicant including passing of final order in accordance to Rules within a period of three months from today.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (D) M.A.617/2018 is disposed of.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 06.11.2019

Dictation taken by :

S.K. Wamanse.

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