

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 11<sup>th</sup> NOVEMBER, 2024

WRIT PETITION NO.4820 OF 2023

*KAILASH BUNDELA*

*Versus*

*THE STATE OF MADHYA PRADESH AND OTHERS*

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**Appearance :**

*Shri Sanjay K. Agrawal – Senior Advocate with Shri Amreshwar Pathak –  
Advocate for the petitioner.*

*Shri Girish Kekre – Government Advocate for the respondents-State.*

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**Reserved on : 24/10/2024**

**Pronounced on : 11/11/2024**

**ORDER**

This petition, under Article 226 of the Constitution of India, has been filed seeking quashing of order rejecting the request of petitioner for not initiating departmental enquiry and also for quashing of chargesheet dated 29.04.2019 (Annexure P/9).

2. The petitioner, at the time of discharging his duties as Additional Collector granted permission exercising the power provided under Sections 165(6) and 165(7-b) of the Madhya Pradesh Land Revenue Code, 1959 (for brevity 'Code of 1959') and it is alleged that the said permission has been given by the petitioner by not following the due

procedure and thereby causing loss to the Government exchequer and it is also alleged that he was not competent to grant such permission, and as such, chargesheet was issued to the petitioner containing as many as 13 charges. After issuing chargesheet, an enquiry was initiated against the petitioner which was challenged by him by filing this petition but no interim order has been granted to him and the departmental proceeding is still going on.

3. As per learned counsel for the State, the prosecution witnesses have been examined and defendants are to be examined and thereafter final order would be passed.

4. Although, Shri Agrawal, has assailed the action of the respondents mainly on the ground that the chargesheet issued by the respondents is illegal for the reason that the petitioner is protected under the provisions of The Judges (Protection) Act, 1985 (hereinafter referred to as 'Act of 1985'). He has submitted that the State Government has also issued a circular dated 25.03.2021 (Annexure P/10) whereby the revenue officers have also been considered to be a 'Judge' as per Section (2) of the Act of 1985 and as such, the proceeding which is said to be illegal and initiated by the petitioner granting permission under Section 165 cannot be subjected to a disciplinary proceeding. He has also submitted that the enquiry can be initiated only when there is any oblique motive of the authority in granting permission or exercising power under Section 165 of the Code of 1959 but according to him in this case, EOW has also conducted an enquiry and submitted its report clarifying that there was no oblique motive available with the petitioner while performing the duties

as Additional Collector and granting permission under Section 165 of the Code of 1959. It is also clarified that no financial loss has been caused to the Government Exchequer due to such action of the petitioner and as such, Shri Agrawal, learned counsel for the petitioner submits that there was no occasion for issuing any chargesheet or subjecting the petitioner to disciplinary proceeding.

5. Shri Agrawal, learned counsel for the petitioner further submits with regard to competency of the petitioner, as he was at the relevant point of time holding the post of Additional Collector, it is alleged that power of granting permission under Section 165 of the Code of 1959 is vested with the Collector only and even under the work distribution order, the said exercise cannot be exercised by the Additional Collector. Shri Agrawal submits that this point has already been settled by the Indore Bench vide order dated 03.10.2023 passed in W.P. No.3679 of 2021 that the Additional Collector can also exercise powers granting permission under Section 165 pursuant to Section 11 of the Code of 1959. He has also submitted that the issue in respect of initiating disciplinary proceeding or any criminal proceeding against the revenue authorities, who are provided protection, has already been dealt with and decided by the Indore Bench in W.P. No. 23674 of 2023 on 21.05.2024 that no such proceeding can be initiated against the revenue officers and accordingly, petitioner submits that present proceeding is illegal and contrary to law, therefore, the same deserves to be set aside.

6. Shri Girish Kekre, learned Government Advocate at the same time opposed the submissions and submits that pursuant to the reply submitted

by the respondent that petitioner is not entitled to get the benefit of provisions of Act of 1985 and such protection is not available to the petitioner and the provisions of sub-section (2) of Section 3 of Act of 1985 does not fully protect him. According to him power is still vested with the authority and also with the State Government to initiate disciplinary and criminal proceedings against the revenue officers or Judges who have been protected under the provisions of Act of 1985.

7. Shri Kekre has also submitted that the petitioner has exercised his power under Section 165 of Code of 1959 by virtue of work distribution order and according to him, it is a settled principle of law that work distribution order cannot delegate the judicial power to the authority and therefore, the petitioner has exercised that power illegally, therefore, he is rightly subjected to judicial proceedings as has been done by the respondents in the present case issuing chargesheet against the petitioner.

8. In support of his submissions, Shri Kekre has placed reliance on several judgments which are as under :-

- (i) Meena Mehra (Smt.) vs. The Lokayukt Organization & Anr. I.L.R. [2011] M.P., 3019.
- (ii) Hariprasad Bairagi vs. Radheshyam and others (2022) 1 M.P.L.J. 414.
- (iii) Budhua Chamar vs. Board of Revenue Laws (MPH) 2001 9 31.
- (iv) Dy. Inspector General of Police vs. K.S. Swaminathan (1996) 11 SCC 498.
- (v) Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha (2012) 11 SCC 565.
- (vi) Union of India and others vs. Duli Chand (2006) 5 SCC 680
- (vii) Union of India and others vs. K.K. Dhawan (1993) 2 SCC 56.

(viii) Sudhakar s/o Baorao Kadu vs. State of M.P. and others 2015  
(1) M.P.L.J. 372.

**9.** In reply to the submissions made by learned counsel for the respondents, Shri Agrawal has submitted that as regards competency of the petitioner, the permission granted by him under Section 165, has been recalled in some of the cases by exercising *suo motu* power of review by the Commissioner but those orders were challenged before the Writ Court and the Writ Court in number of cases held that the order of Commissioner is improper and set aside the same holding that the petitioner was fully competent to exercise the powers under Section 165 of Code of 1959 and therefore that stand, according to him, taken by the State and argued by Shri Kekre does not have any substance.

**10.** No other point is pressed by learned counsel for the parties.

**11.** After hearing the legal and factual submissions made by the learned counsel for the parties and to decide the controversy involved in this case, it is necessary to bring the relevant facts on record in nutshell, which are as under :-

**11.1** The petitioner was initially appointed as a Deputy Collector, joined on 01.09.2000, promoted to the post of Joint Collector in the month of November, 2007 and was further promoted to the post of Additional Collector in the month of October, 2014.

**11.2** As per the petitioner, he being the senior most officer, was due for promotion to the post of IAS cadre.

**11.3** A chargesheet was served upon the petitioner on 29.04.2019 and for the first time in his service career a disciplinary proceeding was initiated against him. The chargesheet contained as many as

13 charges and a copy of the same is available on record as Annexure P/9. A reply to the chargesheet has also been filed on 24.08.2020 by the petitioner denying all the charges levelled against him.

**11.4** As pleaded in the petition that after filing the reply to the chargesheet, it is expected that a decision has to be taken by the authority to conduct a regular departmental enquiry within a period of 15 days as per the circular of GAD dated 27.04.2022 but in complete violation of the said circular, no decision was taken by the authority in the matter and kept the same pending for long deliberately and according to the petitioner, it was intentionally done by the respondents but the moment it was found that the name of the petitioner is likely to be considered in the ensuing DPC for promoting the officers in the IAS cadre, no final decision had been taken. The petitioner then made a representation on 04.10.2022 requesting respondents-authorities to quash the chargesheet because which is pending since last two years taking note of the fact that petitioner has already been granted clean chit in the matter by the EOW, still matter is not being filed and petitioner is not being considered for promotion to the post of IAS cadre.

**11.5** The respondents on 20.02.2023 took a decision in a very hot haste manner ordering institution of departmental enquiry against the petitioner and appointed Commissioner, Ujjain as an Enquiry Officer and Additional Collector, Ratlam as a Presenting Officer. As per the petitioner, the respondents were sitting silent over the

matter for almost 02 years and 05 months and all of a sudden took a decision to initiate disciplinary proceeding just 07 days prior to the date of holding DPC which clearly indicate the malafides of the respondents/authorities towards the petitioner.

**11.6** As per the petitioner, the respondents are well aware of the fact that the charges levelled against the petitioner regarding the work which he performed as a quasi-judicial officer are relating to dealing with the quasi-judicial proceeding, therefore, it would be difficult for the authorities to prove any of the charges levelled against the petitioner, however, just to deprive him and keep him away from consideration for the promotional post of IAS cadre, all exercise was being done.

**11.7** The EOW has also enquired about the allegations levelled against the petitioner at their own level because of some complaint made and finally they have opined that in their enquiry they did not get any material to draw an inference that the alleged conduct of the petitioner involve any conspiracy or had any oblique motive to get personal profit or by the said act of petitioner, Government has suffered any financial loss. As per the petitioner, when such was the opinion of EOW and Lokayukt and the same have also been filed by the petitioner by taking copy of the same under Right to Information Act then initiating departmental enquiry and keeping the same pending for years together is nothing but a malicious exercise of powers by the respondents just to keep the petitioner away from the list of candidates to be considered for promotion to the post of IAS cadre.

**11.8** The petitioner has also stated in the petition that the duties alleged as misconduct against the petitioner does not fall within the category of misconduct and it was purely in accordance with law. He performed the said duties as a quasi-judicial officer having all protection and no departmental enquiry can be initiated for such an action and therefore, this petition has been filed asking quashing of the same. It is also stated by the petitioner that even otherwise an enquiry cannot be kept pending for such a long time and as such enquiry deserves to be set aside.

**12.** A reply has been filed by the respondents stating therein that as per the opinion of the officers of the State Government, a disciplinary proceeding was initiated against the petitioner and out of the total 56 cases, which is alleged to have been decided by the petitioner illegally, 20 cases out of the charge no.2 and 12 cases out of charge no.3 were pending consideration before the Commissioner, Ujjain in a revision proceeding filed under Section 51 of Code of 1959. It is also stated by the respondents that EOW, though conducted an enquiry and closed the matter, this information was very much there in the knowledge of the authorities, still they proceeded with the enquiry. It is also stated in the reply that the petitioner being an Additional Collector, cannot grant permission under Section 165(6) & (7) of the Code of 1959 to the tribes for selling their land. The petitioner is also not entitled to get any benefit of protection as provided to the Judges under Act of 1985. It is also informed to the Court that the enquiry is at the stage of defence witnesses and can be concluded at any point of time and therefore, this petition,



according to the respondents, is misconceived and deserves to be dismissed.

**13.** The core questions emerged to be adjudicated are as under :-

- (i) Whether petitioner being an Additional Collector was competent to act as an Collector to grant permission under Section 165 (6) & (7) of the Code of 1959 or not ?
- (ii) Whether petitioner is entitled to get any protection treating him to be a Judge while dealing proceeding for granting permission under Section 165 (6) and (7) of Code of 1959 as per the Judges Protection Act ?
- (iii) Whether disciplinary proceeding is properly initiated against the petitioner or not ?

**14.** So far as question No.(i) is concerned, as per the submission made by parties and perusal of record, indisputably, the petitioner at the relevant point of time was holding the post of Additional Collector and pursuant to the work distribution order of the then Collector of the district, duty was assigned to the petitioner to hear the matters seeking permission under Section 165 (6) & (7) of the Code of 1959. Objection was raised by the respondents that this can be done only by the Collector and not by the Additional Collector and the work distribution order issued by Collector did not make the petitioner eligible and competent to decide those applications seeking grant of permission to sell under Section 165(6) & (7) of the Code of 1959. At this juncture, it is worth mentioning Section 11 of the Code of 1959 which defines 'Revenue Officers'. The same reads as under :-

**“11. Revenue Officers.-** There shall be the following classes of the Revenue Officers, namely :-

Principal Revenue Commissioner;  
Commissioner;  
Additional Commissioner;  
Commissioner Land Records;  
Additional Commissioner Land Records;  
Collector;  
Additional Collector;  
District Survey Officer;  
Sub Divisional Officer;  
Deputy Survey Officer;  
Assistant Collector;  
Joint Collector;  
Deputy Collector;  
Tahsildar;  
Additional Tahsildar;  
Assistant Survey Officer;  
Superintendent of Land Records;  
Naib Tahsildar;  
Assistant Superintendent of Land Records.”

**15.** In view of the aforesaid, it is clear that the Collector includes Additional Collector. Section 17 of the Code of 1959 further provides that an Additional Collector shall exercise such powers and discharge such duties conferred and imposed on a Collector by or under this Code or by or under any other enactment for the time being in force. It is also imperative to mention Section 17, which is reproduced as under :-

**“17. Power to appoint Additional Collectors.-** (1)  
The State Government may appoint one or more Additional Collector in a district.

(2) An Additional Collector shall exercise such powers and discharge such duties conferred and imposed on a Collector by or under this Code or by or under any other enactment for the time being in force, in such cases or class of cases as the State Government may, by a general order, notify or as the Collector of the district may, subject to any general or special restrictions imposed by the State Government, by an order in writing direct.

(3) This Code and every other enactment for the time being in force and any rule made under this Code or any such other enactment shall, except where expressly directed otherwise, apply to the Additional Collector, when exercising any powers or discharging any duties under sub-section (2), as if he were the Collector of the district.”

**16.** These two provisions make it clear that the Additional Collector has every competence to perform the duties as has been assigned to the Collector if occasion arises. In the present case, it is undisputed that the work distribution order of the Collector which has also been filed by the respondents along with their reply contain that the petitioner, at the relevant point of time, has been assigned the duties to entertain the applications seeking grant of permission under the respective provisions and therefore, the allegation of deciding the said applications illegally is not sustainable. So far as the allegation that the said power could have been exercised only by the Collector and not by the petitioner being Additional Collector, I am not satisfied with the said submissions of learned counsel for the respondents. This issue has earlier been dealt with by the Indore Bench of this High Court in one of the petitions i.e M.P. No.3679 of 2021 (*Dinesh Kumar vs. The State of Madhya Pradesh and*

*others*) wherein it has been held that the order passed by the petitioner therein being an Additional Collector, was competent to exercise such powers. The Court dealing with the said issue has observed as under :-

“17. In the considered opinion of this Court, the said finding that a separate/specific order is required to be passed by the Collector to assign the powers u/s. 165 is erroneous as it is not the requirement of law as the reference of word “*Notification*” in S. 165(6) & (7) is in respect of the land and tribe only, and not the powers of the Collector. It appears that the Commissioner was already prejudiced against the Additional Collector and set aside the order of sanction with that mindset only.”

17. Aforesaid observation of the High Court is very specific and is particularly in respect of Additional Collector holding that the petitioner is competent to decide the application under Section 165 of the Code of 1959 and no further permission and approval from the Collector is required. The High Court already in the case of **Dinesh Kumar (supra)** has observed that the Additional Collector can perform the functions as provided under the Code of 1959 which can be performed by the Collector and the Division Bench of this Court vide order dated 13.09.2024 has also dealt with this issue in W.A. No.234 of 2024 (*Anamika vs. The State of Madhya Pradesh and others*) and observed as under :-

“Thus, once there is a distribution of work, then Additional Collector exercising the same authority as that of the Collector in terms of sub-section (2) and sub-section (3) of Section 17 of the Madhya Pradesh Land Revenue Code, a mother statute from where the

Collector derives his power, it cannot be said that authority was sub-delegated by the Collector in favour of the Additional Collector. It was work distribution between the Collector and the Additional Collector for the smooth functioning of the work and, therefore, when tested, then Maxim “Delegatus non protest delegare” being applicable on in case of a statutory power will not be applicable to the facts and circumstances of the present case.”

As such, there is no dispute with regard to the fact that the permission granted by the petitioner being Additional Collector to decide the applications under Section 165 of the Code of 1959 in view of the powers provided to the petitioner to grant permission under Section 165 (6) & (7) of the Code of 1959. As such, nothing illegal has been done by him. The question no.(i) is answered accordingly.

**18.** So far as question no.(ii) is concerned whether the petitioner is entitled to get any protection treating him as a Judge while dealing with the applications seeking grant of permission under Section 165(6) & (7) of Code of 1959, it is clear from perusal of definition of ‘Judge’ provided under the Act of 1985 that the same includes not only the Judge but also the officers acting or purporting to act in the discharge of his official or judicial duty or function as a quasi-judicial officer. The Revenue Officers have also been considered to be a Judge at the time of performing the judicial proceeding and an order in this regard has been issued by the Revenue Department on 25.03.2021. The same is also available on record as Annexure P/10, in which quoting the definition of ‘Judge’ provided under the Judges (Protection) Act, 1985, the State Government has also granted protection as under :-

“2. अतः राजस्व न्यायालय के समस्त पीठासीन अधिकारी, जो मध्यप्रदेश भू-राजस्व संहिता की धारा 31 अथवा किसी विधिक प्रावधानों के अंतर्गत अर्द्ध न्यायिक/न्यायिक कार्यवाही कर रहे हैं, न्यायाधीश (संरक्षण) अधिनियम, 1985 की धारा 2 के अंतर्गत ‘न्यायाधीश’ हैं और उन्हें, ऐसी अर्द्ध न्यायिक/न्यायिक कार्यवाही के दौरान किये गये किसी कार्य के विरुद्ध सिविल अथवा दाण्डिक कार्यवाही से अधिनियम की धारा 3(2) के अधीन रहते हुए, संरक्षण प्राप्त है।”

19. Upon perusal of the order of Revenue Department, it is clear that the proceeding deciding the applications under Section 165 of the Code of 1959 is a quasi-judicial proceeding. The High Court recently in its order dated 21.05.2024 passed in W.P. No.23674 of 2023 (*Premnarayan vs. The State of Madhya Pradesh and others*) relying upon several decisions of the High Court, observed as under :-

“16. So far as the decision rendered by the coordinate Bench in the case of **Mrs. Manorama Koshti Malkapurkar Wd/ Shri Arun Rao Malkapurkar Vs. State of M.P. and other passed in W.P.No.1901/2017 dated 17.5.2019** is concerned, relevant paras of the same reads as under:-

11. Section – 2 of the Judges (Protection) Act, 1985 defines about the word “Judge” which reads as under –

"2. Definition.-- In this Act "Judge" means not only every person who is officially designated as a Judge, but also every person-- (a) who is empowered by law to give any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or judgment which, if confirmed by some other authority, would be definitive; or (b) who is

one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).

12. As per the said definition, any person who is empowered by law to give any legal proceeding a definitive judgment and any person who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Clause (a) is a Judge.

13. In the present case, the petitioner is empowered to give judgment, therefore, she is a judge as per definition given under the Act of 1985.

14. Section 3 of the Act of 1985 gives additional protection to Judges. The said section reads as under :-

"3. Additional Protection to Judges. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue Any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner, the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal or departmental proceedings or otherwise) against any person who is or was a Judge."

15. As per this Section, some protection has been given to the Judge while discharging her duty as Judge. The definition of judgment which is given under Section 2 of the Act is much wider and it includes an order which determines the right of the parties, for the reasons given in it.

16. The petitioner, exercising her power under the M.P. Land Revenue Code, is a Judge and, therefore, she is entitled to protection under Section 3 (1) of the Act and no Court could entertain any civil or criminal proceedings against her for any act, thing or word committed, done or spoken by her, or in the course of acting or purporting to act in the discharge of her official or judicial duty or function.

17. The Division Bench of this Court in the case of State of M.P Vs. Shriniwas Sharma & Anr. reported in 2005(2) M.P.L.J. 155 has held as under :-

“As per the settled legal position the officers who are discharging the duties as a quasi judicial authorities are protected under the umbrella of acts done in good faith. When law protects a judicial or quasi judicial authority in relating to his bonafide act then the concerned officer who discharges the duties cannot be brought in the net of the departmental enquiry unless something additional has been brought into existence. A mere mistake committed while passing a quasi judicial order does not partake the character or nature of misconduct. The Tribunal has analyzed the said aspect in a great detail we perceive no reason to differ with the same.”



18. As per the said judgment, the officers, who are discharging the duties as a quasi-judicial authorities are protected under the umbrella of acts done in good faith.

**(emphasis supplied)**

20. Thus, the Additional Collector has been considered to be judicial officer and held entitled to get protection as has been provided under the Act of 1985 and therefore, in the facts and circumstances of the case, when EOW and Lokayukt has already enquired the matter and has given specific opinion that the alleged act of petitioner granting permission under the Code of 1959 while deciding applications under Section 165(6) & (7) being an Additional Collector was without any oblique motive or without getting any personal profit or causing no financial loss to the Government Exchequer, thus, initiating disciplinary proceeding against the petitioner is apparently illegal and arbitrary and in violation of the protection provided to him. In the existing circumstances, if existing disciplinary proceeding is allowed to continue when everything has already been enquired about and nothing was found against the petitioner then keeping the said disciplinary proceeding pending depriving him from consideration for promotion to the post of IAS cadre, is nothing but an arbitrary and malicious exercise of powers just to keep the petitioner away from the said consideration. In my opinion, if such an exercise is kept alive that would also be an act to shaken the confidence of the authority performing quasi judicial function. We have to also consider the aspect that the same empowerment was assailed in number of cases and High Court has already proved and given stamp of approval to the orders passed by the present petitioner granting permission under Section 165 (6) & (7) of the Code of 1959 even though he is subjected to a disciplinary

proceeding. This otherwise indicates that there is some flaw in exercise of respondents-authorities and in my opinion, it is not permissible.

**21.** I can consider the submission made by Shri Kekre, learned counsel for the respondent that sub-section (2) of Section 3 of Act of 1985 gives power to the State Government to initiate disciplinary proceeding even against the Judges to whom protection is provided and no doubt, sub-section (2) provided a room empowering the Central or State Government or Supreme Court or any High Court or any authority under the law to take such action whether by way of civil, criminal or departmental proceeding or otherwise against a Judge but that action must be separated from the protection provided under sub-section (1). If a Judge while performing his duties acted beyond the scope of that function then I can understand that the action can be taken but here in this case as the discussion made hereinabove when there was nothing wrong committed by the petitioner and he has not acted beyond the scope of quasi-judicial proceeding for which he was empowered, even then, ignoring the said protection and initiating disciplinary proceeding against the said officer, cannot be said to be proper and that cannot be allowed to continue because it is otherwise contrary to law.

**22.** If the submission made by learned counsel for the respondent is accepted that in every case a Judge is subjected to a criminal and civil proceeding as per sub-section (2) of Section 3 then the said equation and analogy would create absurdity and make sub-section (1) of Section (3) of Act of 1985 otiose and the impact of the said clause would become redundant, therefore, this Court is not in agreement with the submission

advanced by Shri Kekre so far as sub-section (2) of Section (3) of Act of 1985 is concerned. Thus, in my opinion, the petitioner is also entitled to get protection under the Act of 1985 because he was a judicial officer at the time of deciding the applications under Section 165 (6) & (7) of the Code of 1959, therefore, the disciplinary proceeding initiated against him is not sustainable and the same deserves to be set aside. Question no.(ii) is answered accordingly.

**23.** Considering the discussion made hereinabove and the opinion of this Court about question no.(1) and (ii), it is needless to say that the instant disciplinary proceeding issuing chargesheet to the petitioner is not justified. It is also not proper on the part of the respondents to keep the disciplinary proceeding alive for such a long time. It is a case in which petitioner requested the authorities to take a decision on his reply to the chargesheet so that he could be considered for promotion to the post of IAS cadre but the authorities did not do so. The submission of learned counsel for the petitioner that the entire proceedings and the conduct of the respondents is malicious just to keep the petitioner away from consideration cannot be rejected because the over-all circumstance existing in the case, give a sign of malafide attitude of the respondents/authorities to make the petitioner's proceeding malicious for no reason, particularly, when the special agencies have opined that the conduct of the petitioner was without any oblique motive and has not caused any financial loss to the Government. However, I find substance in the submission of learned counsel for the respondent that in the normal course, chargesheet cannot be questioned because it has not punished the employee, no right of the petitioner is infringed and that does not give any

cause of action but at the same time, Court cannot ignore this aspect that any proceeding that is being initiated for no reason and for no fault of him, the same cannot be misutilized, merely because the power is available with the employer to initiate the same. Fair play is expected in every matter, whether it is judicial or it is an administrative. Proceeding, if any, when challenged before the Court then it is the duty of the Court to see whether it is bonafide or rightly initiated or not. Thus, this Court has also scrutinized the various aspects of the matter and ultimately came to the conclusion that the respondents have not acted fairly and used their powers illegally just to harass an employee and this practice in my opinion cannot be accepted by the Court. Exercising the jurisdiction under Article 226 Constitution of India is not confined so as to examine the facts which are projected by the State but it is the power to be exercised by the Court within the parameters of judicial requirements and to protect the rights of an individual. Accordingly, I find that the chargesheet issued against the petitioner is legally not permissible as he was acting as a judicial officer entitled to get protection under the provisions of Act of 1985 and his act, being a Judge, cannot be questioned in the existing circumstances where it was free from any oblique motive and had not caused any loss to the Government Exchequer.

**24.** Resultantly, the impugned chargesheet dated 29.04.2019 (Annexure P/9) is quashed. Consequently, the order dated 20.02.2023 (Annexure P/5) appointing enquiry officer and presenting officer is also set aside and the respondents/authorities are further directed that the petitioner be considered to be a candidate for promotion to the post of IAS cadre, if he is otherwise eligible for the same.

**25.** With the aforesaid, the petition is **allowed**.

**26.** No order as to costs.

**(SANJAY DWIVEDI)**  
**JUDGE**

PK