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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 09.05.2024**Date of decision: 15.05.2024*

+ W.P.(C) 5898/2024 & CM APPL. 24330/2024 (stay)

UNION OF INDIA

..... Petitioner

Through: Mr.Chetan Sharma, ASG with
Mr.Anurag Ahluwalia, CGSC, Mr.Kaushal Kait,
Mr.Amit Gupta, Mr.Saurabh Tripathi &
Mr.Vikramaditya Singh, Advs.

versus

RAJ SINGH

..... Respondent

Through: Mr.Chinmoy Pradip Sharma, Sr. Adv.
with Ms.Mamta Sharma, Mr.Vineet Nagar,
Mr.Irfan Hasieb, Ms.Krishnajyoti Deka &
Mr.Subornadeep Bhattacharjee, Advs.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J****JUDGMENT**

1. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 20.03.2024 passed by the learned Central Administrative Tribunal, Principal Bench in O.A. No. 2357/2023. Vide the impugned order, the learned Tribunal has allowed the Original Application (hereinafter 'OA') preferred by the respondent by setting aside the charge memorandum dated 13.06.2023 issued by the petitioners against him and, has consequently, directed the petitioners to grant him



consequential benefits arising out of the quashing of the aforesaid memorandum.

2. Before dealing with the rival submissions of the parties, we may note the brief factual matrix as is necessary for adjudication of the present petition.

3. The respondent, who was working as Registrar of Companies (RoC), Himachal Pradesh in the year 2017, was transferred as Regional Director, Northern Region (North Region) (hereinafter 'NR'), Ministry of Corporate Affairs, where he continued to serve from 30.08.2018 till 28.09.2022. During this period, while the respondent was serving as Regional Director (NR), the petitioner, upon receiving a complaint from the Prime Minister's Office, along with a letter dated 13.03.2019, issued by the Serious Fraud Investigation Office (SFIO), took a decision to get an inspection conducted in the books and papers of one M/s Carnoustie Management (India) Private Limited and 22 related companies (hereinafter 'Carnoustie group'), which were, allegedly, being used as a conduit by promoters of M/s Unitech Limited for siphoning of funds of home buyers. At this stage itself, it may be noted that as the Board of Directors of M/s Unitech Limited had already been suspended by the National Companies Law Tribunal (hereinafter NCLT) in 2017, in terms of an order passed by the Hon'ble Supreme Court of India in January 2020, 7 nominee Directors of the Central Government were appointed to take care of the management of the said M/s Unitech Limited.

4. As out of these 23 companies, 10 companies were registered in the Northern Region and the remaining 13 companies in the Western Region, vide an order dated 26.03.2019, the Regional Directors of both the Northern Region and the Western Region were directed to get the inspection carried



out in respect of all the aforesaid companies. Based on this order dated 26.03.2019 issued by the petitioner, the respondent who was working as Regional Director (NR), on 12.04.2019, directed Mr. V.G. Sathya Moorthy, Joint Director (NR) to inspect the affairs of the 10 companies in the Northern Region falling under him.

5. However, shortly before this order directing the respondent and the Regional Director (Western Region) (hereinafter 'WR') to carry out inspection of the aforesaid 23 companies of the Carnoustie Group was issued by the petitioner, 4 of the subsidiary companies of the group, namely, M/s. Carnoustie Agro Private Limited, M/s. Carnoustie Leisure Private Limited, M/s. Carnoustie International Private Limited, M/s. Carnoustie Security Private Limited, filed applications between January to April 2019, seeking transfer of their registered office from Delhi to Maharashtra. A similar application dated 14.10.2020 was also filed by another M/s. Carnoustie Management (India) Private Limited for transfer of its registered office from Noida to Delhi.

6. Upon receiving these applications, the respondent requested the Registrar of Companies (hereinafter the 'RoC'), Delhi, as also the RoC, Kanpur to furnish their reports so as to enable him to consider the request of these companies for shifting of their registered offices. Pursuant thereto, the RoC, Delhi and RoC, Kanpur submitted their reports on 19.02.2019 and 04.11.2020 respectively, stating therein that there was no complaint, enquiry, inspection or investigation pending against any of these 5 companies. Based on these reports, the respondent passed orders allowing the transfer of all the said registered offices of the aforesaid 4 companies from Delhi to Mumbai on 03.06.2019, and of 1 company from Noida to Delhi on 06.11.2020. The details of the dates on which these applications were filed and allowed in a



tabular form, as noted by the learned Tribunal in its interim order dated 28.08.2023, for the sake of convenience, is reproduced hereinbelow:-

<i>S. No. Name of Company</i>	<i>Date of Application</i>	<i>Date of Order of shifting</i>	<i>Date of uploading the order on MCA site</i>	<i>Date of inspection Order</i>	<i>Duration of Inspection as per inspection report dossier</i>
<i>A</i>	<i>B</i>	<i>C</i>	<i>E</i>	<i>F</i>	<i>G</i>
<i>M/s Carnoustie Agro Pvt Ltd</i>	<i>29.01.2019</i>	<i>28.02.2019</i>	<i>28.02.2019</i>	<i>26.03.2019</i>	<i>July-Sep 2019</i>
<i>M/s Carnoustie Leisure Pvt Ltd</i>	<i>29.03.2019</i>	<i>13.05.2019</i>	<i>14.05.2019</i>	<i>26.03.2019</i>	<i>Aug-Sep 2019</i>
<i>M/s Carnoustie Security Pvt Ltd</i>	<i>09.04.2019</i>	<i>23.05.2019</i>	<i>03.06.2019</i>	<i>26.03.2019</i>	<i>Jul-Sep 2019</i>
<i>M/s Carnoustie International Pvt Ltd</i>	<i>03.04.2019</i>	<i>14.05.2019</i>	<i>03.06.2019</i>	<i>26.03.2019</i>	<i>Jun-Oct 2019</i>

7. Upon completion of the inspection in respect of the 10 companies of the Carnoustie Group, the respondent submitted a report on 29.11.2019, pointing out gross mismanagement and large-scale fraud resulting in acquisition of assets worth Rs. 870 crores by these companies on account of siphoning off funds of M/s. Unitech Limited. In his report, the respondent made specific recommendations for disgorgement of properties of the said Carnoustie Group worth Rs. 870 Crores. This report submitted by the respondent wherein recommendations for disgorgement of properties of the Carnoustie Group had been made, was accepted by the petitioner. Consequently, the respondent was directed to issue instructions for initiating penal action against the 10 companies of the said Carnoustie Group and its directors and also to approach the NCLT for seeking attachment and disgorgements of their properties as well. It is an admitted position that on the basis of this inspection report dated 29.11.2019, the Union of India/petitioner through the respondent, approached the NCLT, Principal



Bench for seeking disgorgements of the properties of the Carnoustie Group. Based on this application, an interim order was passed by the NCLT on 21.04.2022, directing attachment of properties of the Carnoustie Group worth Rs. 870 crores, some of which properties included properties owned by the 7 companies registered in the Western Region.

8. It was thereafter, that at this stage, on 27.09.2019 the Regional Director (WR), Mr. Manmohan Juneja, who, like the petitioner, had been directed to furnish a report pertaining to the affairs of the 13 companies of the same Carnoustie Group falling in his jurisdiction, submitted his report giving a clean chit to all these 13 companies. However, this report was not accepted by the petitioner and vide order dated 17.02.2020, Mr. Juneja was directed to re-inspect all the 13 companies and file a supplementary report within 30 days. Admittedly, Mr. Juneja did not submit a supplementary report during the aforesaid period nor during his tenure as the Regional Director (WR). In fact, he was subsequently on 31.08.2020, transferred as Officer on Special Duty (herein after OSD) to discharge the function of Director General (DG), which he continued to discharge till 30.05.2022 until his promotion as DG for a day and his eventual superannuation from the said post on the very next day i.e. 31.05.2022.

9. While these proceedings were ongoing, the respondent was, based on his performance on 01.01.2022, granted the Higher Administrative Grade (HAG) (non-functional) and continued to discharge his duties as Regional Director (NR). It is the respondent's claim that during his 4 years tenure as Regional Director (NR), before being transferred as Regional Director (South Region) on 29.09.2022, he had decided about 5000 applications of shifting of registered offices of companies and had in the year 2019-2020 itself, passed 4464 orders out of the total 8670 orders passed by the 6



Regional Directors taken together. This factual position has not been denied by the petitioner.

10. Thereafter, on 23.08.2022, when the respondent was still working as the Regional Director (NR), the petitioner for the first time issued a show cause notice calling upon him to give reasons as to why disciplinary action should not be initiated against him for permitting the shifting of the registered office of the 5 companies of the Carnoustie Group as the grant of this permission was stated to be in violation of Section 13 the Companies Act, 2013 (Act) read with Rule 30(9) of the Companies (Incorporation) 2014 Rules (Rules). In response, on 14.09.2022, the respondent submitted a reply, explaining that he had granted the permissions of shifting of registered offices of these 5 companies thereof on the basis of the reports of the concerned RoCs, as also the Processing Officer who had put up the file to him with a clear note that no enquiry, inspection or investigation was pending against these companies.

11. In his reply, the respondent also pointed out that the Charge Memorandum had been issued to him on the basis of the confidential proposal for disciplinary action submitted on 15.02.2022 under the directions of Mr. Juneja, acting as the officiating DG only because he wanted to take revenge against the respondent for obtaining an attachment order against the properties of the companies in respect whereof he had given a clean chit. The respondent also stated that Mr. Juneja was not competent to recommend any disciplinary against him, as like the respondent, he was also an SAG Officer, though wrongfully occupying the post of officiating DG without the approval of the Appointments Cabinet Committee (ACC).



12. It appears that almost 9 months after the respondent had submitted his reply, the matter was referred to the Central Vigilance Commission (CVC) on 08.05.2023 and upon receipt of advice from the CVC on 05.06.2023 followed by the approval of the disciplinary authority on 12.06.2023, disciplinary proceedings were initiated against the respondent. At this stage, it needs to be noted that as the then Director General (hereinafter 'DG') of the petitioner was to superannuate on 31.08.2023, a DPC for selecting a new DG was scheduled to be held by the UPSC on 30.05.2023. Further, since no action had been initiated against the respondent till then, he being the senior-most SAG officer with Non-functional HAG, was along with others to be considered by this DPC, however, the same was deferred to 14.06.2023, at the last minute, Whereafter, a Charge Memorandum dated 13.06.2023 was issued to the respondent, which, as per respondent, was served on him only on 16.06.2023, just one day before this revised date fixed for the DPC, that too without any annexures.

13. The two charges leveled in this memorandum pertained to non exercise of due diligence by the respondent while granting permission to 5 companies of the Carnoustie Group to shift their registered offices, four from Delhi to Maharashtra and the remaining one from Noida to Delhi. The two charges contained in the memorandum read as under:-

“

Article of charge-I

That the said Dr. Raj Singh while functioning as Regional Director, Northern Region (NR), New Delhi during the period from 30.08.2018 to 28.09.2022, committed misconduct by not observing due diligence in discharge of his official duties. Regional Director (NR) has approved the shifting of registered office of M/S Carnoustie Management (India) Private Limited (R67012617) from Noida (UP) to NCT of Delhi, effective from 06.11.2020 after about 9 months from the date of inspection follow up instructions issued by



the Ministry (on 28.02.2020), despite knowing all the provisions of law and facts. The said shifting of office by RD (NR) is in violation of section 13 of the Companies Act, 2013 r/w Rule 30(9) of the Companies (Incorporation) Rules, 2014.

By doing the aforesaid acts, Dr. Raj Singh, the then Regional Director, Northern Region (NR)) MCA [now Regional Director, Southern Region (SR), MCA] failed to maintain devotion to duty, failed to perform and discharge his duties with the highest degree of professionalism, acted in a manner which is highly unbecoming of a Government servant and also failed to take all possible steps to ensure the integrity and devotion to duty of all Government servants under his administrative control and authority, and has, thus, violated the provisions contained in sub-rules (1) (ii), (iii), (xix), (xxi) of Rule 3 and sub-rule (2) (1) of Rule 3 of the CCS (Conduct) Rules, 1964.

Article of charge - II

That the said Dr. Raj Singh while functioning as Regional Director, Northern Region (NR), New Delhi during the period from 30.08.2018 to 28.09.2022, committed misconduct by not observing due diligence in discharge of his official duties. In respect of 4 companies namely M/S Carnoustie Agro Private Limited (H43239818), M/S Carnoustie Security Private Limited (H50394501), M/S Carnoustie International Private Limited (H49564875) and M/S Carnoustie Leisure Private Limited (H48849434) the inspections of which were ordered on 26.03.2019, RD (NR) allowed and approved the change of registered offices of the companies from the state of Delhi to Maharashtra on 03.06.2019. Such approval of the shifting of the registered office in all the 4 companies is also unlawful and in violation of section 13 of the Companies Act, 2013 r/w Rule 30 (9) of the said Rules.

By doing the aforesaid acts, Dr. Raj Singh, the then Regional Director, Northern Region (NR), New Delhi, MCA (now Regional Director, Southern Region (SR), MCA] failed to maintain devotion to duty, failed to perform and discharge his duties with the highest degree of professionalism, acted in



a manner which is highly unbecoming of a Government servant and also failed to take all possible steps to ensure the integrity and devotion to duty of all Government servants under his administrative control and authority, and has, thus, violated the provisions contained in sub-rules (1) (ii) (iii), (xix), (xxi) of Rule 3 and sub-rule (2) (1) of Rule 3 of the CCS (Conduct) Rules, 1964."

14. Being aggrieved, the respondent approached the learned Tribunal by way of the aforesaid OA, being O.A. No. 2357/2023, wherein while issuing notice, the learned Tribunal, vide its interim order dated 28.08.2023, stayed the disciplinary proceedings against the respondent.

15. Before the learned Tribunal, the foremost contention of the respondent was that the charges of misconduct leveled against him for not observing due diligence in allowing shifting of the registered offices of the 5 companies of the Carnoustie Group were based on absolutely wrong conjectures and surmises. It was his case that he had, on the basis of the reports furnished by the RoC, Delhi and RoC Kanpur with respect to shifting of registered offices, acted *bonafidely*. Further, neither the Dealing Assistant or the Processing Officer nor the MCA21 Electronic Processing Alert System provided any information regarding any pending inspections against any of the said 5 Companies. He urged that the grant of these permissions was a *bona fide* act in exercise of his quasi-judicial functions, which clearly would not fall within the ambit of 'misconduct' as envisaged under the Central Civil Service (Conduct) Rules (1964). Further, by relying on the decision of the Apex Court in ***Zunnajaro Bhikaji Nagarkar vs. Union of India* [(1999) 7 SCC 409]** he had contended that a quasi-judicial authority should not be subjected to disciplinary action, unless his action is found to be actuated by corrupt motives or is otherwise reckless.



16. The respondent had also urged that the memorandum against him was issued with malicious intent only to deprive him of his due promotion to the post of Deputy General, Corporate Affairs. This, he claimed, was evident from the fact that the memorandum was issued just a day before the DPC was scheduled for the said post, i.e on 14.03.2023. It was his plea that the charges against him were framed only on the basis of a note prepared by Mr. Juneja, while acting as the officiating DG, who was clearly biased against him. It was also his plea that on account of his earlier challenge to the appointment of Mr. Juneja as a Joint Director under the OBC category, he was nursing a grievance against him. The respondent had also urged that the petitioners had deliberately omitted to supply the complete set of documents as mentioned in Annexure III of the charge memorandum. He, therefore, sought quashing of the Charge Memorandum dated 13.06.2023 along with a declaration by the Tribunal that the initiating disciplinary proceeding against him was unwarranted.

17. On the other hand, the petitioner had urged that the respondent committed a grave misconduct in permitting the shifting of the registered offices of the 5 companies in violation of Section 13 of the Act read with Rule 30 of the Rules. It was the case of the petitioner that the respondent, having himself ordered inspection against these companies, was all along aware about the pending inspection proceedings against them. It had placed reliance on its follow up letters dated 28.02.2020 and 11.03.2020, whereby the respondent was directed to take necessary action for disgorgement of assets of these companies. The petitioner had further claimed that the allegation of bias in framing of the issues was wholly misplaced as the disciplinary enquiry against the respondent was initiated in February, 2022 itself, upon a reference being made from the Vigilance Section, which was



way before the process of holding the DPC commenced. Lastly, with respect to the non-furnishing of documents along with the Charge Memorandum, the petitioner had contended that since a disciplinary enquiry was yet to be initiated against the respondent, there was no requirement of providing him documents at the time of issuance of chargesheet under the Rules.

18. After considering the submissions made by both the sides, the learned Tribunal has allowed the OA by holding that even though the petitioner had urged that the respondent's action in allowing the shifting of the registered offices of the 5 companies without exercising due diligence, was in violation of Section 13(4) of the Act and 30(9) of the Rule, no financial irregularity in discharge of his official duties had been alleged. The Tribunal, after observing that when the order of approving the shifting of the registered office of M/s Carnoustie Management (India) Private Limited from Noida to Delhi was passed on 06.11.2020, which was the subject matter of the first Charge, the inspections had already been completed, opined that the charge has been made without application of mind.

19. In respect of the second charge, the Tribunal held that the respondent had acted with due diligence as his opinion was based on the reports of the RoCs and other officers as also the update of the MCA21 system. In these circumstances, by relying on the decision of the Apex Court in ***Zunnajaro Bikaji Nagarkar (Supra)***, the Tribunal held that while passing the orders for shifting of the registered offices of the 5 companies of the Carnoustie Group, the respondent was exercising quasi-judicial functions and since his orders could be subjected to judicial review, the passing of the same could not be the subject matter of disciplinary proceedings.

20. Consequently, vide its impugned order, the Tribunal quashed the charge memorandum issued against the respondent on 13.06.2023 and



directed the petitioner to grant him all the consequential benefits flowing from setting aside of the charge memorandum.

21. It is in these circumstances, that the petitioner has approached this Court by way of the present writ petition.

22. Before us, the learned Additional Solicitor General, appearing for the petitioner, besides reiterating the pleas taken before the learned Tribunal, has urged that the impugned order is wholly perverse and therefore, liable to be set aside. He submits that the learned Tribunal has proceeded on an erroneous presumption that the respondent was acting as a quasi-judicial authority, whereas grant of permission for shifting of the registered office of a Company under Section 13 is purely an executive function under the Act. By relying on *State of Andhra Pradesh vs. S.M.K Parasurama Gurukul, 1973 (2) SCC 232*, he contends that the test to determine as to whether a decision of an authority is a quasi-judicial decision or an administrative one is threefold, i.e. (i) it must decide a *lis* between two parties; (ii) opinion of the authority ought to be based on an objective satisfaction; and (iii) duty to act judicially. On application of this test laid down by the Apex Court, it is clear that the actions of the respondent in exercise of powers under Section 13 of the Act read with Rule 30 of the Rules cannot be termed as quasi-judicial functions as they were purely executive actions.

23. Further, he submits that the finding of the learned Tribunal about the respondent being unaware about the pending inspection against the companies is also perverse. This is belied by the fact that the respondent had himself on 12.04.2019, directed Mr. V.G. Sathya Moorthy to carry out an inspection in the affairs of 10 companies and had also submitted his report thereafter on 29.11.2019 to the petitioners. Further, follow up directions by the petitioner on 28.02.2020 and 11.03.2020, had admittedly been received



by him. In these circumstances, it was evident that the respondent, despite having knowledge of the ongoing inspection against the aforesaid 5 companies of the Carnoustie Group, allowed the shifting of registered offices of these companies in violation of Section 13(4) of the Act and Rule 30(9) of the Rules.

24. Lastly, he submits, that the Tribunal has also erred in holding that the petitioner has not been able to point out any financial implications as the financial implications, if any, will be clear only after the disgorgement application is finally decided by the NCLT. In these circumstances, the learned Tribunal ought not to have interfered with the Charge Memorandum at this stage, when the respondent would have every opportunity to defend himself in the departmental inquiry. He, therefore, prays that the impugned order be set aside.

25. On the other hand, learned senior counsel for the respondent supports the impugned order and submits that not only was the issuance of the charge memorandum against the respondent actuated by bias on the part of Mr. Juneja, but even otherwise, the grant of permission of shifting the registered offices was as per the laid down procedure. By drawing our attention to Rule 30 of the Rules, which prescribes the procedure to be followed while allowing an application for shifting of registered office of a Company, he contends that since shifting orders are required to be passed after considering all relevant factors including objections which are called for from the general public in accordance with Rule 30(5) to Rule 30(8) as per the prescribed statutory procedure and it is not a policy decision. As per the learned senior counsel this grant of permission for shifting of the registered office is evidently a quasi-judicial function.



26. Further, he submits that the petitioner's plea that for a function of an authority to qualify as a quasi-judicial function, there must necessarily be a *lis* between two competing parties, is wholly misconceived. By placing reliance on the decision in ***Orissa Administrative Tribunal Bar Association vs. Union of India and Ors.* 2023 SCC OnLine SC 309**, he submits that the test laid down by the Apex Court is to see whether the authority is required to act judiciously. In case, the authority has the power to do something which will prejudicially affect the subject, the decision is necessarily a quasi-judicial act. He also places reliance on the decision in ***P.Surendran vs. State by Inspector of Police (2019) 9 SCC 154*** to contend that in a case where the authority is required to consider the proposal as also the opposition thereto and then arrive at a decision after consideration of all facts and circumstances, the function will necessarily qualify as a judicial function.

27. He next submits that the petitioner's presumption that the respondent, despite being well aware about the inspections against the 5 companies of the Carnoustie Group, has allowed the shifting of the registered offices in violation of Section 13 of the Act and Rule 30 of the Rules which amounts to misconduct, is absolutely misplaced. With respect to the first charge, he contends that on the day when the order allowing the shifting of the registered office of M/s Carnoustie Management Private Limited from Noida to Delhi was passed, i.e. on 06.11.2020, the inspection against the said Company had already taken place. Further, by relying on the respondent's hand written note dated 05.11.2020 on the application for shifting, he submits that the respondent had specifically noted that permitting the shifting of the Company's registered office from Noida to Delhi, would make it possible for a disgorgement case to be filed at Delhi



itself. This, he submits, was certainly in the larger public interest for which act the petitioner could, by no means, can be said to have committed any misconduct.

28. Further, with respect to the second charge qua shifting of the registered offices of 4 other companies of the Carnoustie Group, he submits that though the respondent had, on 12.04.2019, directed the Joint Director(NR), Mr. Moorthy to carry inspections qua the 10 companies of the said Group, this order for inspection was one of the many inspection orders, which the respondent as the Regional Director was routinely passing. As action on the inspection order was initiated by Mr. Moorthy only after the shifting applications had been allowed, the respondent could not be expected to remember that any inspection had been directed against these companies. He, therefore, acted diligently as per the reports submitted to him as per the RoC as also the processing officers. Furthermore, even though the shifting orders were passed between 28.02.2019 to 23.05.2019, the inspection of these companies continued in the Northern Region and consequently a detailed report showing gross mismanagement and large-scale fraud by these companies on account of siphoning off of funds was submitted by the respondent on 29.11.2019 based on which, an application for disgorgement was filed in Delhi and an order of attachment passed by the NCLT, Delhi on 21.04.2022. He thus contends that proceedings against these companies were not hampered in any manner due to the shifting orders. He, therefore, prays that the writ petition be dismissed.

29. Having considered the rival submissions of the parties, we may begin by noting that the parties are *ad idem* as under that:



- (i) In compliance of the petitioner's order dated 26.03.2019, the respondent had on 12.04.2019, directed Mr. Moorthy to inspect the affairs of 10 companies of the Carnoustie Group.
- (ii) Inspection report submitted by the respondent on 29.11.2019 pointing out gross mismanagement and large-scale fraud, resulting in acquisition of assets worth Rs. 870 Crores by these companies on account of siphoning off of funds of M/s. Unitech Limited. The report had therefore, recommended disgorgement of the assets of the companies of the Carnoustie Group, which recommendations were accepted by the petitioner.
- (iii) On the basis of this report, proceedings were initiated before the NCLT against the companies by the petitioner through the respondent, resulting in attachment of assets of the group worth Rs.870 crores vide order dated 21.04.2022.
- (iv) As per the report submitted by Mr. Manmohan Juneja on 27.09.2019, the Regional Director (WR), no financial irregularity qua the 13 other companies of the Carnoustie group was found. This report was rejected by the petitioner and Mr. Juneja was, vide order dated 17.02.2020, directed to re-inspect the companies and thereafter file a supplementary report within 30 days. He, however, neither carried out any further inspection nor submitted any report and was on 31.08.2020, posted to Delhi to discharge the functions as an officiating DG.
- (v) The RoC, Delhi and RoC, Kanpur as also the Processing Officer and the Dealing Assistant, who processed the application for shifting of registered office of the 5 companies of the Carnoustie Group, had not given any report regarding pendency of any complaint, inquiry, inspection or investigation against these 5 companies. Furthermore, no alert message was



generated from the MCA 21 System regarding pendency of any such inspection, investigation, etc against these companies.

(vi) The DPC for the post of Director General was initially scheduled for 30.05.2023 but was deferred to 14.06.2023 and a Charge Memorandum was issued to the respondent on 13.06.2023, i.e a day before the DPC was held.

(vii) The disciplinary proceedings against the respondent were initiated on the basis of a confidential report prepared by Mr. Juneja on 19.01.2022, when he was functioning as officiating DG, which report was forwarded by the Joint Director on 15.02.2022.

(viii) Both the charges levelled against the respondent pertain to lack of due diligence with these being no allegation of financial irregularity or corruption against him.

(ix) Insofar as the first charge is concerned, the inspection qua M/s Carnoustie Management (India) Pvt. Ltd. was already concluded by the time the application for shifting of its registered office from Noida to Delhi was allowed by the respondent, with a specific endorsement by him thereon that this shifting would enable the petitioner to file a case disgorgement at Delhi itself.

30. Having summed up the undisputed facts on which the parties are not at variance, we may now refer to the relevant extracts of the impugned order, which read as under: -

“6. As has already been noticed while granting interim stay on 28.08.2023, the first charge levelled against the applicant is that 'he shifted registered office of M/s Carnoustie Management (India) Private Limited from Noida (UP) to Delhi and the second charge is that the shifted other four companies from Delhi to Maharashtra'.

6.1 We have gone through the submissions made by learned counsel for the respondent in counter affidavit and sur-



rejoinder filed on behalf of the respondents and find that no new material has been mentioned, except that the action of the applicant is in violation of Section 13 (4) of The Companies Act, 2013 read with Rule 30(9) of the Companies (Incorporation) Rules, 2014. The said submission of the respondent has already been considered by this Tribunal in its order dated 28.08.2023. Learned counsel for the respondent was not even able to point out any financial angle involved in discharge of official functions by the applicant as a quasi-judicial officer.

6.2 It is not in dispute that when the shifting was ordered by the applicant, inspection had already been completed and in fact, the report was submitted on 29.11.2019. Hence, the first charge apparently has been framed without application of mind. Though the respondent has vehemently argued that the report of RoC, Delhi and RoC, Kanpur has nothing to do with the present case, but the Charge Memo issued to the applicant does not reveal such facts. Hence, the stand taken by the respondent cannot be sustained in the eyes of law.

6.3 As far as the second charge is concerned, learned counsel for the applicant asserted that the applicant, while allowing shifting of registered offices of the companies, adopted due diligence and relied upon certain details to buttress his arguments, which have already been extracted by this Tribunal while passing the interim order dated 28.8.2023. However, we feel it appropriate to reproduce the same as under:-

“1. Perusal of declaration given by the company in the application form for shifting of the registered office. In column No 09 of Form No INC-23, which is an application to the Regional Director for shifting of the registered office from one state to another state, there is a specific question as to whether any enquiry investigation/inspection is initiated against the Company and if yes, brief details is to be submitted in the same column. In all the four applications mentioned in Article of Charge II, None of the companies declared that any enquiry/ investigation/inspection has been initiated.

2. Report of the ROC. Before passing any order of shifting of a registered a office of any company, the RD seeks a report



from the ROC of the concerned state and there has to be a special mention about the initiation of enquiry/investigation/inspection against any such company and also to report about any pending prosecution against the applicant company. In all the reports of the companies mentioned in Article of charge II, the ROC Delhi, submitted in his report that no enquiry/ investigation/inspection has been initiated against these companies and no prosecution was pending.

3. Notings of the Dy. Director and the Asst who examined the compliance of all the provisions of law dealing before placing the matter before the regional Director have not mentioned about any enquiry/ investigation/inspection initiated against these companies.

4. Alerts in the electronic processing system- MCA21. The processing and approval of applications for shifting of registered office is done in hybrid mode where applications are received in electronic mode but orders are passed in physical mode. In the instant case, the inspection of these companies were ordered by the office of DG Corp Affairs on 26.03.2019 but no entry was made by the Office of DG in the MCA-21 system and therefore, no alert message was generated by the system while processing the said applications by the by the office of RD and the office of ROC. Interestingly, in the instant case the Min has not initiated any action for filing prosecution against the company for declaring false information, no action against the ROC for giving wrong information in his reports against the Asst. Director for not mentioning about the inspections in his note and no action against the office of Director General of Corporate Affairs for not making the entry in the electronic processing system MCA-21 about the order of inspection, if, we assume that there is a technical error while passing the order of shifting of the registered office. Had an entry of the inspection order been made in the MCA -21 system, by the office of Director General of Corporate Affairs at the time of order of inspection, the MCA-21 system would have prevented even the fling of application, leave aside the question of approval of the application by RD.”



6.4 We have perused the application for shifting of address of the concerned companies, which are annexed with this O.A. After perusal of the same, we find that these companies in their applications have not given any details about the pendency of inspection.

6.5 Learned counsel for the applicant also referred to the report of the ROC. We have perused the same and find that even the ROC in his report has not stated anything about the pendency of inspection against the said companies. Even the noting of the Deputy Director and dealing assistant do not show that the applicant, in his capacity as a Regional Director, was apprised of the pendency of any inspection report. The applicant asserted that there was no alert in electronic processing system MCA 21 about pending investigation etc. That apart, admittedly, the applicant was exercising a quasi-judicial function while allowing shifting of the registered companies.

6.6 In view of the above discussion, we are of the considered opinion that the action of the applicant exercising his powers as quasi-judicial authority is subject to judicial supervision in appeal, therefore, the said authority cannot be subjected to disciplinary action as the judicial/legal errors committed while passing order can always be corrected in appeal as has been held by the Hon'ble Supreme Court in *ZunnajaroBhikajiNagarkar (supra)*.

6.7 In the conspectus of the facts and circumstances brought out above, we are of the considered opinion that the respondent has erred in issuing the impugned Charge Memo to the applicant for the act exercised by him as a quasi-judicial officer, without subjecting him to judicial supervision in appeal. We are also of the view that the applicant has exercised due diligence. Coupled with these facts, when there is no financial implication, we allow the present OA with the following directions:-

- i) Charge Memo No.C-14011/2/2023-Vigilance-MCA dated 13.06.2023 (Annexure A-1) is quashed and set aside;
- ii) The respondent is directed to grant the applicant all consequential benefits flowing from setting aside of the Charge Memo; and



iii) The exercise, as ordained above, shall be completed by the respondents within a period of six weeks from the date of receipt of a certified copy of this Order.”

31. Having noted the aforesaid extracts of the impugned order, we may now proceed to deal with the rival submissions of the parties. The primary ground on which the petitioner has assailed the findings of the learned Tribunal is that the respondent’s action of approving the request of shifting of the registered offices of the 5 companies of the Carnoustie Group was not a quasi-judicial function but an executive act. It has therefore, been urged by the learned ASG that the very premise of the Tribunal’s decision that since the respondent was discharging quasi-judicial function while allowing the shifting applications, no disciplinary proceedings could be initiated against the respondent in respect of these orders, is erroneous. By placing reliance on the Apex Court’s decision in *State of Andhra Pradesh (supra)*, the learned ASG has vehemently urged that the action of the respondent in passing these shifting orders under Section 13 of the Act is purely an executive action and not a quasi-judicial act, as presumed by the learned Tribunal. He has, therefore, urged that since the very premise of the Tribunal’s decision is erroneous, the impugned order is liable to be set aside on this ground alone.

32. On the other hand, the respondent has urged that taking into account that before passing an order under Section 13 of the Act, the respondent was required to follow a detailed procedure as laid down under Rule 30, the learned Tribunal was correct in holding that allowing shifting of registered office of a company is a quasi-judicial function. It has been urged that when an authority is required to adopt a objective criteria prescribed under a statute, to arrive at a decision, the same would necessarily qualify as a quasi-



judicial act, irrespective of whether the adjudication involves two competing claims or not. He has, therefore, urged that decision on an application under Section 13 of the Act read with Rule 30 of the Rules, unlike a purely policy decision, necessarily entails objective appreciation of facts and would, thus, undoubtedly be a quasi-judicial function.

33. Having given our thoughtful consideration to the rival submissions of the parties on this primary issue involved, we find that the main plank of the petitioner's contention that under Section 13 of the Act an authority cannot be treated as an authority discharging quasi-judicial function is that, unless the authority is required to determine a *lis* between two contesting parties, the exercise of deciding shifting application cannot be treated as a quasi-judicial act. In support of this plea, the learned ASG has relied on the decision in *State of Andhra Pradesh (supra)*. On a perusal of the said decision, we are, however, unable to agree with the petitioner and, in fact we find no such proposition of law has been laid down in this decision. In this regard, it would be apposite to refer to the relevant extracts from paragraph no.3 of the said decision wherein the Apex Court, by relying on its earlier decision in *Province of Bombay v. K N Advani & Ors.* 1950 SCC OnLine SC 26 , had observed as under:-

"In Province of Bombay v. K. S. Advani and Others. Kania, C. J. with whom Patanjali Sastri, J. agreed, said:

The respondent's argument that whenever there is a determination of a fact which affects the rights of parties, the decision is quasi-judicial, does not appear to be sound."
Further on the learned Chief Justice said:

"It is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is quasi-judicial. This last



statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step in the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari."

To the like effect is the observation of Fazl Ali, J. in the same case:

"The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is: Is there any duty to decide judicially? As I have already said, there is nothing in the Ordinance to show that the Provincial Government has to decide the existence of a public purpose judicially or quasi-judicially."

Dealing with the essential characteristics of a quasi-judicial act as opposed to an administrative act, Das, J. (as he then was) observed:

".....the two kinds of acts have many common features. Thus a person entrusted to do an administrative act has often to determine questions of fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes a liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the



question of fulfilment of which may, nevertheless be left to the subjective opinion or satisfaction of the executive authority, as was done in the several Ordinances, regulations and enactments considered and construed in the several cases referred to above..... The real test which distinguishes a quasi-judicial act from an administrative act is... the duty to act judicially.

What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are:

- (i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other; there is lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and*
- (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."*

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

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In Gullapalli Nageswara Rao and Others v. Andhra Pradesh State Board Transport Corporation and Another. Subba Rao, J., after referring to the various decisions on this subject held:



“..... whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially.”

34. What emerges from the aforesaid dicta of the Apex Court is that, for an act of an authority to qualify as a quasi-judicial act, it is not a *sine qua non* that there must be two competing parties. No doubt when there are two parties to the *lis*, the decision of the authority qua their *inter se* claims will necessarily be a quasi-judicial act. This, however, does not imply that unless there are two parties whose competing rights the authority is required to decide, and the function of the authority can never be a judicial function. In our considered view, the question whether an authority is required to act judicially and whether its function can be termed as quasi-judicial, would have to be gathered from the cumulative effect of all attending circumstances, including the nature of rights affected by its decisions, as also the manner in which the duty imposed on the authority is to be discharged. Cases where policy and expediency are the guiding factors for a final decision, would no doubt be an executive decision, while on the other hand, where objective criteria are required to be adopted and objections to claims need to be considered, the act would generally qualify as a quasi-judicial function.

35. At this stage, it would be also apposite to refer to a recent decision of the Apex Court in ***Orissa Administrative Tribunal Bar Association (Supra)***, relied upon by the respondent, wherein the Apex Court has reiterated that the question as to whether the function of an authority is quasi-judicial or



administrative, is not always well defined and has to be determined after considering several factors, including the nature of the rights affected. The relevant extracts of the said decision as contained in paragraph nos.57, 59 & 60 read as under:-

57. In Indian National Congress (I) (supra), this Court held that:

“29. ... another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency.”

59. From the above decisions, it emerges that: (a) The decision of an authority is prima facie, and in the absence of any other factor, a quasi-judicial act when there is a lis before it, with two parties with competing claims; (b) When the authority has the power to do something which will prejudicially affect the subject, the decision it takes is a quasi-judicial act even in the absence of a lis and two parties with competing claims, when the authority is required by the statute in question to act judicially. The express provisions of the statute, the nature of the right affected, the manner of disposal, the objective criterion (if any) to be adopted while deciding one way or the other, the effect of the decision, and other signs in the statute may be considered when evaluating whether there is a duty to act judicially; and (c) The decision of an authority is quasi-judicial when it is made in accordance with rules. The decision is administrative when it is dictated by policy and expediency.

60. Having laid down the above principles, it must be realised that the distinction between quasi-judicial and administrative acts is not always well defined and its application is not always certain. Doctrine and practice are not necessarily happy partners. The instant case evidently does not involve a lis or two parties with competing claims appearing before an



authority who will determine their respective rights. Further, the act of the Union Government establishing the OAT did not prejudicially affect the subject in any manner. Litigants or other citizens were not left without a forum. They could continue to pursue their remedies before the OAT when it was first established, instead of before the Orissa High Court.”

36. In light of the aforesaid dicta we are of the view that, unlike as contended by the learned ASG, the Apex Court has consistently held that for determining as to whether an action of an authority is a quasi-judicial act or an administrative one, it is not necessary that there must be adjudication of a *lis* between the two parties before the authority. Thus, holding otherwise would be going against the settled position of law,.

37. Now, we shall turn to examine the nature of functions the respondent was required to discharge while deciding applications for shifting of registered offices of companies. For this purpose, it would be apposite to refer to Rule 30 of Rules, which lays down the procedure for deciding an application for shifting of the registered office of a company, as under: -

“30. Shifting of registered office from one State or Union territory to another State.-

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-

- (a) a copy of the memorandum and articles of association;*
- (b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;*
- (c) a copy of the special resolution sanctioning the alteration by the members of the company;*



(d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;

(e) an affidavit verifying the application;

(f) the list of creditors and debenture holders entitled to object to the application;

(g) an affidavit verifying the list of creditors;

(h) the document relating to payment of application fee;

(i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities: Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

(3) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory

(4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the



same on payment of a sum not exceeding ten rupees per page to the company.

(5) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(6) The company shall at least fourteen days before the date of hearing-

(a) advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;

(b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(7) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.

(8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.

(9.) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

(10.) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks



fit, and may make such order as to costs as it thinks proper: Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.”

38. From a bare perusal of the aforesaid, it is evident that before passing an order under Section 13, the competent authority is required to not only seek information regarding the creditors and debtors of the applicant company, but is also obliged to invite objections from the general public. Further, in case objections are received, an oral hearing is required to be granted to all the parties and it is only upon examination of these objections, that a shifting order can be passed and that too, after considering the reports of the concerned RoCs. What, thus, emerges is that an elaborate procedure has been laid down under Rule 30 for dealing with a shifting application filed under Section 13 of the Act; it being incumbent upon the authority to not only take into account the detailed information supplied by the company under Rules 30(1) to 30(4), but also to hear objections. We are, therefore, of the considered view that while discharging functions under Section 13 of the Act, the authority has a duty to act judicially by considering all objective criteria prescribed under the statutory rules. The function of the authority, in such circumstances, cannot be termed as a mere executive act and has to be necessarily treated as a quasi-judicial act. Thus, the Tribunal was correct in holding that the orders passed by the respondent on applications under Section 13, having been passed after following the detailed procedure laid down under Rule 30, were passed in exercise of his quasi-judicial function. We, therefore, find no infirmity with the finding of the learned Tribunal in



this regard and hold that the act of the respondent in allowing the shifting applications was only in discharge of a quasi-judicial function.

39. Once the action of the respondent is found to be in exercise of a quasi-judicial function, the next issue which needs to be examined is whether in the absence of any allegation of recklessness or financial impropriety against the respondent, the initiation of disciplinary proceedings against him was unjustified. This question as to when disciplinary action can be taken against an officer qua exercise of judicial or quasi-judicial function by him has been considered by the Apex Court in a number of decisions, including that in a recent decision in ***Krishna Prasad Verma (Dead) Through LRs v. State of Bihar & Ors. (2019) 10 SCC 640***, wherein the Apex Court, while dealing with a case of disciplinary action against a judicial officer emphasized that unless there are clear allegations in the nature of misconduct, extraneous influence or gratification, etc, no disciplinary action should be initiated. It would, therefore, be apposite to refer to paragraph nos.4, 11 & 16 of the said decision, which read as under:-

“4. No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming of a judicial officer, these must be dealt with strictly. However, if wrong orders are passed that should not lead to disciplinary action unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file

11. The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26-11-2001 [Shivnath Rai v. State of Bihar, Criminal Misc. No. 30563 of 2001, order dated 26-11-2001 (Pat)]. It would be pertinent to



mention that the High Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the lower court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail.

16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.”



40. In the light of the aforesaid, it is evident that disciplinary action should not be initiated against an authority exercising quasi-judicial or judicial function merely on the strength of the order passed by him being wrong or erroneous or there has been negligence on his part in passing the order. *De hors* that, if the allegations against him include any financial irregularity, exercise of any undue influence or any such conduct which reflects extraneous consideration, disciplinary proceeding may be justified even in respect of quasi-judicial or judicial orders. So there has to be something other than merely a bald suspension before any disciplinary proceedings can be initiated against an employee in exercise of his judicial or quasi-judicial function.

41. From the factual matrix noted herein above, it is evident that despite the respondent having allowed the applications for shifting of the registered offices of all the 5 companies of the Carnoustie Group, which action the petitioner contends constitutes misconduct, he continued with the inspection not only against these companies but against other companies of the said Group. It is based on this inspection that the respondent submitted a detailed report setting out the gross mismanagement and siphoning off of funds, not only by these 5 companies but also other companies of the same Group. There is no dispute about the fact that this report was promptly accepted by the petitioner and directions were issued to the respondent to take penal and other appropriate actions against the said companies.

42. Consequently, without stopping there and based on the directions issued by the petitioner, the respondent filed a disgorgement application before the NCLT, Delhi, where an order for attachment of assets of these companies worth Rs.870 crores was passed on 21.04.2022. Interestingly, we may also, at this stage, note that in respect of 1 company, qua which shifting



orders were passed, the respondent had himself noted that the same would facilitate the filing of a disgorgement application at Delhi, thus rendering the earlier opinion of the respondent to be true. Consequently, the attachment order passed by the NCLT, includes the properties of all these 5 companies of the Carnoustie Group. These steps taken by the respondent were, therefore, clearly in public interest and it cannot be said that he was trying to show any favour to any of the said companies. There is, admittedly, no allegation of any financial gain against the respondent or of his having shown any undue favour to any company of the group. Further, there is also no denial that as per the reports of the RoC as also the notings of the Dealing Assistants and Processing Officer that there was no inspection pending against these companies. This was perhaps on account of the fact that though an order for inspection had been passed against the companies on 12.04.2019, the actual inspection of these companies commenced only after July 2019, by which time the shifting applications qua 4 companies had already been allowed, with the shifting of the last fifth company having been allowed after the inspection concluded.

43. In fact, from the nature of charges leveled against the respondent, it is clear that the petitioner was well aware about all these aspects but still on the basis of the confidential report submitted by the office of the officiating DG, which during arguments it was conceded by the petitioner was forwarded at the behest of Mr. Juneja, has sought to embroil the respondent in disciplinary proceedings. However, knowing well that the actions of the respondent had helped in discovering the fraud committed by the companies of the Carnoustie Group, the petitioner has sought to level allegation of only lack of due diligence against him with no charge of any financial impropriety or undue favour.



44. In the light of the aforesaid, it clearly emerges that the respondent has been carrying out his duties in a most diligent manner as it is based on his report that the fraud committed by 10 companies of the Carnoustie Group being unearthed and an attachment order passed against a number of companies of the said Group, which were being used as a conduit by promoters of M/s. Unitech Limited for siphoning of funds of innocent Home Buyers. In this factual situation, the action of the petitioner in entangling him in disciplinary proceedings and that too after postponing the DPC at the last minute, does lead credence to the respondent's plea that disciplinary proceedings have been initiated against him only on account of the vindictiveness of Mr. Juneja, who was officiating for almost two years as the DG and was nursing a grudge against him not only on account of the respondent's earlier challenge to his appointment as Joint Director but also because while Mr. Juneja had given a clean chit to as many as 13 companies of the Carnoustie Group, the respondent had reported about the fraud committed by the 10 companies of the very same Group. Moreover, since in the considered opinion of this Court, the said steps taken against the respondent were sheer after-thoughts as they were never taken before Mr. Juneja became active in the whole scheme of affairs of the companies of the Carnoustie Group.

45. At this stage, deflecting from the main issue, we are constrained to observe that pursuant to the directions of the petitioner, the respondent diligently carried out inspections in respect of 10 companies falling in the northern region and discovered a fraud of Rs. 870 Crores, Mr. Juneja, who was also entrusted with a similar task of carrying out inspections qua the remaining 13 companies of the said Carnoustie Group, gave a clean chit to all the companies in the western region, where he was the Regional Director.



Even though, the report of Mr. Juneja was later rejected by the petitioner and he was directed to carry out a fresh inspection, he overlooked these directions for over six months and when later assigned the charge of officiating DG, submitted a confidential report against the respondent, which became the basis of initiation of disciplinary action against the respondent. Even though, we are constrained to observe that in the present case, some disturbing questions arise in the manner in which these 13 companies of the said Carnoustie Group in the western region were given a clean chit and no fresh inspection was carried out by Mr. Juneja despite specific directions by the petitioner, since he is not a party before us, we are refraining from commenting on this aspect.

46. Having said so, we may observe that though there is no gain saying that the Courts should be very slow to interdict departmental proceedings at the stage of charge sheet, however, in a case like the present one, considering the factual matrix noted hereinabove and the reasons which appear to be the basis for initiating departmental proceedings against the respondent for a particular reason, permitting the enquiry to continue against him, would, in our view, be grave injustice to him and ought not to be permitted.

47. Before we conclude, we may also deal with the petitioner's plea that the learned Tribunal has erred in presuming that just because the RoC and the Dealing Assistant as also Processing Officer did not bring to the notice of the respondent any pending inspection against these companies of the Carnoustie Group and since the system MCA 21 did not generate an alert in this regard, he was unaware of this fact and consequently, it could not be held of the respondent being guilty of violating Rule 30(9) of the Rules. Though, taking into account that the respondent had, himself, vide order dated 12.04.2019 directed the Joint Director (NR) Mr. Moorthy to carry out



inspections as per directions issued by the petitioner on 26.03.2019 and further allowed the shifting of the registered office of the 5 companies of the Carnoustie Group around the same time, appears to be attractive on the first blush, however, upon a closer scrutiny of the dates on which these applications for shifting registered offices of the companies were received in the office of the respondent coupled with the dates on which the inspections actually commenced, which were after July, by which date application for transfer of the registered office of the 4 companies had been allowed and inspection qua the 1 leftover company had already been concluded, we are unable to accept the petitioner's plea that the respondent had deliberately overlooked the pendency of the inspections qua these companies.

48. Furthermore, taking the case of the petitioner to the hilt, there certainly seems to be more than one officer barring the respondent involved in processing of the application, however, strangely and for no plausible reason absolutely no explanation has been provided by the petitioner as to why no action has been initiated against the two RoCs as also the other officers involved in forwarding the files to the respondent for approval, who failed to inform him about the order for inspections against the 5 companies of the Carnoustie Group. Strangely, the petitioner is also silent as to why no alert message was generated in the MCA 21 system.

49. Simultaneously, we cannot lose sight of the fact that the respondent, as a Regional Director, was dealing with about 500 cases every month and therefore, had to rely on the information supplied by the RoCs as also the officers dealing with the files. In the present case, these officers had while putting up these applications before the respondent admittedly annexed a check-list where there was no mention of any pending inspection against any of the company. It is also not the case of the petitioner that there are any



other allegations and/ or complaints of the similar nature or of any other kind filed/ pending against the respondent.

50. We, therefore, find no reason to differ with the finding of the Tribunal that the respondent was not apprised of the pending inspections when he allowed the shifting applications.

51. For the aforesaid reasons, we find no infirmity with the impugned order. The writ petition being meritless is, along with the pending application, dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 15, 2024
kk/dv