

(2020) 07 SHI CK 0219
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 4264 Of 2020

Lajender Singh Pathania

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 14-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 07 SHI CK 0219

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Dilip Sharma, Om Pal, Ashok Sharma, Desh Raj Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. It is really shocking to see the manner in which the instant petition has been filed and how thereafter the Tribunal proceeded to stay the impugned show cause notice.

2. It is by now settled that ordinarily a writ petition or even an original application filed against mere show cause notice would not be maintainable.

3. Reference in this regard can conveniently be made to the judgment of Hon'ble Supreme Court in Special Director and another Versus Mohd. Ghulam Ghouse and another, (2004) 3 SCC 440, wherein in paragraphs 5 and 6, it was held as under:-

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into

facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

6. In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which have weighed with it in granting such an extraordinary relief in the form of an interim protection. This, admittedly, has not been done in the case at hand."

4. Earlier to that, the Hon'ble Supreme Court in *Union of India and others Versus Jain Shudh Vanaspati Ltd. and another*, (1996) 10 SCC 520, observed as under:-

"10. It is relevant to bear in mind that the issuance of the show-cause notice under Section 124 contemplates that the respondents' response shall be considered and only thereafter will the matter be decided. The respondents shall therefore have full opportunity to satisfy the authorities that there was no importation of banned goods which makes them liable to confiscation.

13. We are also of the view that the High Court in an event, ought not to have allowed the writ petition without reserving liberty to the appellants to proceed against the respondents under Section 130 which, as the High Court looked at it, was the appropriate course of action."

5. Discussion on the subject would be incomplete in case reference is not made to the decision of the Hon'ble Supreme Court in *Union of India and another Versus Kunisetty Satyanarayana*, (2006) 12 SCC 28, wherein it was observed that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. The relevant observations as contained in paras 14 to 16 are reproduced herein-below:-

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does

not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show- cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

6. The petitioner has every right to file his reply to the show cause notice, which in turn, is required to be considered by the employer in accordance with law. The Tribunal or for that matter even the Court cannot substitute the views of the employer and evaluate the relative merits of the case.

7. Accordingly, we find no merit in the instant petition and the same is dismissed, reserving liberty to the petitioner to file reply to the show cause notice within a period of two weeks from today, which in turn, shall be considered by the employer and consequential action be taken within a period of four weeks thereafter. Pending miscellaneous application(s), if any, also stand disposed of.