

(2022) 11 GUJ CK 0096

In the Gujarat High Court

Case No : R/Special Civil Application No. 12226 Of 2019

Lalitkumar Maganlal Ninama S/O Maganlal Jivabhai Ninama	APPELLANT
Vs	
Uttar Gujarat Vij Company Ltd	RESPONDENT

Date of Decision : 28-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2022) 11 GUJ CK 0096

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : DS Vasavada, Dipak R Dave

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present petition is filed seeking the following prayers(s):-

"9(A)Your Lordships may be pleased to admit and allow this petition with cost by issuing a writ of mandamus or any other appropriate writ, order or direction to the respondents under Article 226 of the Constitution of India.

(B)Your Lordships may be pleased to hold that the explanation / communication dated 15.06.2019 (Annexure-A hereto) is illegal, arbitrary, illogical, violative of Articles 14 and 16 of the Constitution of India and against the Service Rules;

(C) Your Lordships may be pleased to quash and set aside the explanation / communication dated 15.06.2019 (Annexure-A hereto) ;

(D) ...

(E) ..."

2. The prayers indicate that the petitioner is challenging the explanation / communication dated 15.06.2019.

3. Mr.D.S.Vasavada, learned advocate for the petitioner has submitted that the explanation dated 14/15.06.2019 is required to be quashed and set aside since the same is based on the charge-sheet or departmental proceedings for which already, the punishment orders are passed and hence, the petitioner would not be able to tender any explanation and the same would be futile. He has further referred to the various punishment orders annexed to the petition, as mentioned in the explanation dated 14/15.06.2019. Thus, it is submitted that the aforementioned explanation may be set aside. He further submitted that he has given reply to the aforesaid explanation on 08.07.2019 and the same is not decided.

4. Per contra, Mr.Dipak Dave, learned advocate for the respondents has submitted that the petitioner has no cause of action in filing the present writ-petition, as no decision is yet taken and the competent authority, after looking to the explanation, may not initiate the departmental proceedings. In support of his submission, learned advocate Mr.Dave has placed reliance on the decision of the Apex Court in case of Union of India Vs. Kunisetty Satyanarayana reported in 2006 (12) SCC 28. It is thus, submitted that even the writ-petition is not maintainable.

5. I have heard learned advocates appearing for the respective parties. As mentioned herein above, the petitioner is challenging the explanation dated 14/15.06.2019, whereby he is called upon to explain within 15 days as to why disciplinary action should not be initiated against him for the repeated lapses.

6. The Disciplinary Authority, in its wisdom, has placed reliance on various punishment orders, which are mentioned in the impugned explanation dated 14/15.06.2019. The petitioner replied to the aforesaid explanation vide communication dated 8. 07.2019. As on today, the respondent authorities have not taken any decision as to whether the departmental proceedings is required to be initiated against the petitioner or not? At this stage, it would be apposite to refer to the observations made by the Apex Court in case of Kunisetty Satyanarayana (supra). The relevant paragraph nos. 12 & 13 of the said judgment read as under:-

"12. 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 lies when some right of any party is infringed. A mere show -cause notice or charge-sheet does not infringe the right of any one. 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.

13. 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.”

7. Thus, in wake of the undisputed fact that as on today, no decision has been taken by the respondent authorities with regard to the initiation of disciplinary proceedings or any decision made on the representation made by the petitioner pursuant to the impugned explanation, this Court cannot entertain the writ-petition, as the same is premature.

8. As per the observations made by the Apex Court, a mere issuance of show-cause notice does not give rise to any cause of action, because it does not amount to any adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. In the present case, it is not the case of the petitioner that the respondent authorities do not have jurisdiction to issue such show-cause notice. Even otherwise, since the entire issue is under consideration by the Disciplinary Authority, no order can be passed at this stage for quashing and setting aside the impugned explanation dated 15. 06.2019. The present writ-petition is devoid of merits. Hence, the present petition stands rejected. Interim-relief, if any, stands vacated.

9. At this stage, learned advocate Mr.Vasavada requests for staying of the present order. The request is rejected in view of the aforesaid observations.