
(2018) 07 MAN CK 0002
In the Manipur High Court
Case No : Writ Petition (c) No. 488 Of 2018

Md. Fajur Rahim And Others	Vs	APPELLANT
State Of Manipur And Others		RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Waqf Act, 1995 — Section 99

Citation : (2018) 07 MAN CK 0002

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : B.P. Sahu, N. Kumarjit, P. Tamphamani, H. Debendra

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri B.P. Sahu, the learned Senior Advocate appearing for the petitioners; Shri N. Kumarjit Singh, the learned Advocate General, Manipur assisted by Shri P. Tamphamani, the learned counsel and Shri H. Debendra, the learned Government Advocate appearing for the respondents.

[2] The subject matter in issue relates to the validity and correctness of the show cause notice dated 29/5/2018 issued by the respondents in contemplation of a proceeding for supersession of the Waqf Board by the State Government under the provisions of the Waqf Act.

[3.1] The Waqf Board, Manipur was constituted under the provisions of Waqf Act, 1995 and in order to supersede the Waqf Board, the Government of Manipur issued a show cause notice dated 31-01-2018 in a purported exercise of the power conferred under Section 99 of the Waqf Act, 1995 and in response thereto, a reply was submitted vide a letter dated 06-02-2018 of the Chief Executive Officer, Waqf Board. Thereafter, the Deputy Secretary (MOBC), Government of Manipur issued an order dated 01-03-2018, later followed by a corrigendum dated 27-03-2018, which came to be challenged before this Court by way of a

writ petition being WP(C) No. 217 of 2018 on the inter-alia grounds that the principles of natural justice were not observed while issuing the said notice for the reason that no copies of the documents on the basis of which the opinion was formed by the State Government, were furnished to the Waqf Board. The said writ petition being WP(C) No. 217 of 2018 was allowed by this Court on 18-05-2018 and consequently, the order dated 1/3/2018 and the corrigendum dated 27/3/2018 were quashed. The para 10 of the said judgment and order dated 18/5/2018 is as under:-

"10. Coming to the facts of the present case, it is not in dispute that the Waqf Board is a statutory body constituted under the provisions of the Waqf Act, 1995 and the members of the 6th Waqf Board were appointed vide Notification dated 05-06-2015 issued by the State Government. Section 99 of the Waqf Act, 1995 confers power upon the State Government to supersede the Waqf Board on any of the grounds mentioned in sub-section (1) and such power shall not be exercised unless there is a prima facie evidence of financial irregularity, misconduct or violation of the provisions of the Act. Therefore, before issuing any Notification under sub-section (1), the State Government shall give a reasonable time to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Waqf Board. As required under the provisions of sub-section (1), a show cause notice dated 31-01-2018 was issued by the Deputy Secretary (MOBC & SC), Government of Manipur and on perusal thereof, it is seen that the allegations include the fraudulent withdrawal of self cheques, improper maintenance of accounts, collection of money on promises of providing employment, fraudulent withdrawal of money meant for Madrasa Modernisation etc. which are made on the basis of news reports, representations submitted by some educational trusts and engagement of 150 teachers for Madrasa without prior approval of the State Government. The State Government appears to have formed its opinion on the basis of the said materials which are matters of record. The grievance of the petitioner is that not a single copy of the said documents was furnished to the Waqf Board and therefore, an explanation vide letter dated 06-02-2018 of the Chief Executive Officer, Waqf Board could only be given but the same had not been considered by the State Government while issuing the impugned order. The averment made in the writ petition that the copies of the documents have not been furnished by the State Government at the time of issuing the notice, has not been specifically denied in the affidavit and all that the State Government has stated in the affidavit, is that there are documentary evidences of misappropriation of fund and withdrawal of fund by referring to certain documents. The supersession of the Waqf Board, a statutory body by the State Government is a serious matter and therefore, the provisions of the Act as well as the principles of natural justice ought to be observed and followed by the State Government. The mere averment in the affidavit that there are sufficient documentary evidence, is not enough and copies thereof ought to have been furnished so that the Waqf Board could have prepared its effective defence. Without furnishing copies of the documents on the basis of which the

State Government had formed its opinion, it cannot be said in the facts and circumstances of the present case that the Waqf Board was given a reasonable opportunity to defend its case. Having heard the learned counsel appearing for the parties and perused the materials on record, this Court is of the view that non-furnishing of the copies of the documents has violated the principles of natural justice and has resultantly prejudiced the right of the Waqf Board to defend its case. Accordingly, the impugned order is bad in law and consequently, the Corrigendum dated 27-03-2018 cannot stand on its own and will be rendered bad in law.

However, it was open to the State Government to proceed afresh as regards the supersession of the Waqf Board in accordance with law.

[3.2] In terms of the said judgment and order dated 18-05-2018, the State Government issued a show cause notice dated 29-05-2018 which is being challenged herein on the ground that the same is similar to the one which was issued on 31-01-2018; that the said show cause notice is in violation of the provisions of the Act wherein it has been specially provided that the power of the State Government shall not be exercised unless there is prima facie evidence of financial irregularities, misconduct or violation of the provisions of the Act and that the present show cause is a mere formality because a decision for supersession of the Waqf Board has already been taken by the respondents. At the time of hearing, Shri B.P. Sahu, learned Senior Advocate appearing for the petitioners, relying upon the decision rendered by the Hon'ble Supreme Court in *Gorkha Security Services vs. Government (NCT of Delhi) and ors.*, (2014) 9 SCC 105 and in particular, para 21 thereof, has contended that the show cause notice does not contain a statement of imputations and that a copy of the written representation submitted by a Educational Trust is not furnished to the Waqf Board. The para 21 of the said decision is reproduced hereinbelow for ready reference:

"21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action."

On the other hand, Shri N. Kumarjit, learned Advocate General has submitted that para 21 of the said decision which is relied upon by the learned counsel appearing for the petitioners, is not applicable and that para 22 thereof is

applicable. The para 22 is reproduced hereinbelow for ready reference:

"22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

(i) The material/ grounds to be stated on which according to the Department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

Over and above, the learned Advocate General has submitted that since only the show cause notice has been challenged, the instant writ petition being premature, is liable to be dismissed, for which he has relied upon the decisions rendered by the Hon'ble Supreme Court in Secretary, Ministry of Defence and Ors. -v- Prabhash Chandra Mirdha, (2012) 11 SCC 565; Union of India -v- Kunisetty Satyanarayana, (2006) 12 SCC 28; The Special Director -v- Modh. Ghulam Ghouse, (2004) 3 SC 440; The Executive Engineer -v- Ramesh Kumar, (1996) 1 SCC 327 and State of Uttar Pradesh -v- Brahm Datt Sharma, (1987) 2 SCC 179.

[4] The first proviso to Section 99 of the Waqf Act mandates that before issuing a notification under sub-section (1), the State Government shall give a reasonable time to the Board to show cause as to why it shall not be superseded and shall consider the explanations and objections, if any, of the Board. The expression "show cause notice" is not defined in the Act and moreover, the learned counsels appearing for the parties have not brought to the notice of this Court any law enacted by the Union of India or any other State Government wherein the said expression "show cause notice" has been defined. It is well settled that the purpose of issuing show cause notice is to afford opportunity of hearing to the person/ body concerned and in other words, it is to make the person/ body concerned to understand the allegations made against him/ it so that he/ it can meet the same. It is true that in Gorkha Security Services case (supra), the Hon'ble Supreme Court has examined and considered the issue as to the contents of the show cause notice. Interestingly, the learned counsel appearing for the petitioners has relied upon para 21 of the said decision, while the learned Advocate General has relied upon para 22 thereof. On perusal of the said decision, it is seen that para 21 & 22 fall in the same category namely "contents

of the show cause notice" and therefore, both the paras are to be read together. It is also true that in para 21, the Hon'ble Supreme Court has observed that the show cause notice would require the statement of imputations detailing out the alleged breaches and defaults. But in para 22, the Hon'ble Supreme Court, while expressing its opinion as regards the fulfillment of requirement of principles of natural justice, has held that a show cause notice should meet two requirements-one, the materials/ grounds to be stated which according to the department necessitates an action and two, particular penalty/ action which is proposed to be taken.

Moreover, the decisions relied upon by the learned Advocate General and referred to in the preceding para, lay down the law that a writ does not lie against a show cause notice for the reason that it does not give rise to any cause of action and it does not amount to adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction/ competence to do so. In *Union of India Vs. Kunisetty Satyanarayana* case (supra), the Hon'ble Supreme Court held:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh*, *Special Director v. Mohd. Ghulam Ghouse*, *Ulagappa v. Divisional Commr., Mysore*, *State of U.P. v. Brahm Datt Sharma*, etc.

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.

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."

Similarly, in *Secretary, Ministry of Defence & ors. Vs. Prabhash Chandra Mirdha* case (supra), the Hon'ble Supreme Court held:

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It

does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma, Bihar State Housing Board v. Ramesh Kumar Singh, Ulagappa v. Commr., Special Director v. Mohd. Ghulam Ghouse and Union of India v. Kunisetty Satyanarayana.)"

The only exception that appears to have been carved out of the said law laid down in the said decisions, is that the High Court can interfere with the show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. It may be relevant to note that the said decisions relied upon the learned Advocate General, have not been referred to in Gorkha Security Case. Although the said decisions relate to the issuance of show cause notice in contemplation of disciplinary proceedings to be initiated against the employees, the fact remains that a show cause notice is nothing but a notice issued, depending upon the subject matter in issue, with a view to make the person/ body known about the allegation and proposed action to be taken against him/ it and in other words, whether a show cause notice is issued in contemplation of a disciplinary proceeding in respect of a service matter or otherwise, it will make no difference so far as the law laid down by the Hon'ble Supreme Court with respect to show cause notice is concerned. Moreover, the Hon'ble Supreme Court while rendering the said decisions, has expressed no opinion to mean only the show cause notice issued in respect of a matter arising under the service law.

[5] In the present case, it is not in dispute that only the show cause notice dated 29-05-2018 is under challenge and nothing else. In view of the facts and circumstances of the present case, it does not appear to have fallen in the exception as stated hereinabove. Therefore, in terms of law laid down in the said decisions, this court cannot go into the validity and correctness of it. The petitioners may submit their response to the said show cause notice within a week from the date of receipt of a copy of this judgment and order and on receipt thereof, the State Government shall consider them in terms of the provisions of Section 99 of the Act. It may be noted by the State Government that the opinion to be given by it for purpose of supersession of the Waqf Board, is not the subjective opinion but is the one to be based on objective findings and that the reasons thereof be recorded by it.

[6] In view of the above and for the reasons stated herein above, the writ petition fails and is accordingly dismissed with no order as to costs.