
(2020) 11 JH CK 0008
In the Jharkhand High Court
Case No : Writ Petition(C) No. 1547 Of 2020

Neha Enterprises

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 11 JH CK 0008

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Rahul Kumar, Ashish Priyadarshi

Final Decision : Disposed Of

Judgement

1. The present writ petition is taken up today through Video conferencing.

The present writ petition has been filed for quashing the final show cause notice as contained in letter no. 168 dated 07.03.2020 (received on 17.03.2020) issued under the signature of the respondent no. 5 - the Secretary, Jharkhand Industrial Area Development Authority (JIADA), Bokaro Steel City, Bokaro, whereby the petitioner has been called to submit a reply as to why the allotment of Plot No. C-31(P) measuring an area of 0.50 acre (21750 sq.ft.) in its favour be not cancelled.

2. The factual background of the case as stated in the writ petition is that the petitioner filed an application dated 08.01.1992 for allotment of land before the Bihar Industrial Area Development Authority (BIADA) for establishing a factory for processing and screening of mixed coke/breeze coke, domestic coke briquettes, processing of C.I. and steel scraps, agricultural implements, household iron goods, decoiling of HR/CR coils etc., which was accepted by the BIADA and Plot No. C-31(P) measuring an area of 0.50 acre (21750 sq.ft.) was allotted to the petitioner. A lease deed between the BIADA and the proprietor of the petitioner was executed on 27.08.1997. The then Development Officer,

BIADA vide letter no. 1463 dated 13.10.2000 issued show cause notice to the petitioner calling upon to submit its reply informing that during inspection of the unit, it was found that there was no production in the unit for last three years and no commercial activity was going on there. Moreover, it was also mentioned in the said show cause notice that the Department of Industries, Government of Bihar vide letter no. 2005 dated 29.06.2000 had instructed BIADA to cancel the registration of all closed units based on coal. The petitioner filed reply to the said show cause notice on 10.11.2000 stating therein that the unit was not coal based as it did not consume coal, rather its registration was for processing and screening of coal and coke and further, the unit was in a running condition and had been regularly submitting the quarterly utilization report to BIADA. The Development Officer, BIADA on receipt of the reply submitted by the petitioner, did not pass any order. However, again vide letter no. 26 dated 05.01.2002, the said authority served another show cause notice to the petitioner seeking reply as to why the allotment of the aforesaid plot be not cancelled for alleged closure of production activities in the unit detected during site inspection. The petitioner filed reply to the said show cause notice vide letter dated 16.02.2002 denying the allegations and the said authority again did not respond to the said reply filed by the petitioner. However, after 18 years, the respondent no. 5 served final show cause notice to the petitioner vide impugned letter dated 07.03.2020 calling upon it to reply as to why the allotment of Plot No. C-31(P) measuring an area of 0.50 acre (21750 sq.ft.) be not cancelled for alleged closure of production activities in the unit detected during the site inspection. The petitioner filed point-wise reply to the said show cause notice on 13.05.2020. The petitioner further forwarded the relevant information concerning its unit to the respondent no. 3 - the Managing Director, Jharkhand Industrial Area Development Authority (JIADA), Government of Jharkhand, Ranchi on 22.05.2020 explaining inter alia that the petitioner was engaged in the business of screening and processing of mixed coke/breeze coke and breaking of big size coke in crusher machine fitted with diesel engine and the unit has been running since the date of establishment i.e., 25.03.1992 to the extent of its own capacity with sufficient stock of precious raw material laying at the unit.

It was further explained that due to imposition of nationwide lockdown, presently the activities in the unit have been completely suspended, however, the same will be resumed after lifting of the lockdown.

3. The learned counsel for the petitioner submits that the respondent authorities carried out another site inspection making videography on 22.05.2020 without any prior information to the petitioner. It is further submitted that the petitioner wrote letter on 25.05.2020 to the respondent no. 5 with a copy forwarded to the respondent no. 2 - the Secretary, Department of Industries, Government of Jharkhand, Ranchi for providing copies of inspection report as well as videography of the unit done on 22.05.2020 for submitting proper reply and requested to keep all coercive action against the petitioner in abeyance till the lockdown is finally withdrawn. The petitioner specifically mentioned in the said

letter that all relevant documents/evidences were available with it to prove that the commercial activities of the unit were being done since its inception and can be presented if asked for after withdrawal of the lockdown. It has also been mentioned in the said letter that the respondent authorities are aware of the fact that the Government of India is planning to give incentives to the entrepreneurs for enabling them to come out of the prevailing financial distress owing to the lockdown situation in the wake of Covid-19 pandemic and, therefore, requested to desist themselves from taking any further coercive action as the same would be violative of the fundamental rights to carry out business and right to life. It is also submitted that the final show cause notice has been issued to the petitioner out of biasness and preoccupied mind and as such, the same is nothing but merely a ritual/formality. It is further submitted that the respondents must keep all coercive actions in abeyance for at least 90 days till the lockdown is finally withdrawn and the unit starts functioning to its full utilization capacity through regular supply of raw materials, proper market for the end products and uninterrupted availability of man power.

4. The learned counsel appearing on behalf of the respondents raises the issue of maintainability of the present writ petition on the ground that the same has been filed prematurely at the stage of issuance of show cause notice, the reply to which has already been filed by the petitioner. It is submitted that the impugned notice has been issued to the petitioner in compliance of the principles of natural justice and any decision in the matter will be taken after considering the grounds taken in the reply filed by the petitioner.

5. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the State of Jharkhand. The petitioner has sought intervention of this Court against the show cause notice as contained in letter no. 168 dated 07.03.2020 issued by the respondent no. 5 alleging therein that during site inspection, the petitioner unit was found closed and it appeared that the production was not being done in the said unit since long and to that effect, previously also the petitioner unit was served the show cause notices twice, however, it did not start production which is in violation of the terms of the lease deed. It has further been stated inter alia that the item allotted in favour of the petitioner unit is not value based and the plot is lying unused causing loss of revenue to the State Government. The said show cause notice has been also replied by the petitioner, however, no decision has yet been taken.

6. So far entertaining the writ court at the stage of issuance of show cause notice is concerned, the Hon'ble Supreme Court in the case of "Union of India & Anr. Vs. Kunisetty Satyanarayana" reported in (2006) 12 SCC 28, has held as under:

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.

7. Thus, unless there is an exceptional circumstance, the High Court should not entertain writ petition at the stage of issuance of show cause notices. The petitioner has not explained any such exceptional circumstance so as to convince this Court to entertain the present writ petition at this stage. Moreover, the allegation in the impugned show cause notice is factual in nature said to be based on the site inspection of the petitioner unit carried out by the respondents. The petitioner has also filed reply to the show cause notice and has denied the allegation made therein.

8. Under the said circumstance, I am of the view that all the plea raised before this Court can very well be raised before the concerned authority and as such, without entering into the merit of the case of the parties, the present writ petition is disposed of with a direction to the respondent no. 5 to take appropriate informed decision, in pursuance of issuance of the impugned show cause notice after taking into consideration the reply of the petitioner as well as on providing sufficient opportunity of hearing to its representative, within a period of three months from the date of receipt/production of a copy of this order.

9. The writ petition is accordingly disposed of.