(2012) 04 CHH CK 0018

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 1680 of 2012

Santyosh Kumar Dewangan APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2012) 2 CGBCLJ 446

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prateek Sharma, for the Appellant; Y.S. Thakur, D.A.G. for the State/ Respondent No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the show cause notice dated 20th September, 2011 (Annexure P/1), alongwith charge-sheet, article of charges and list of documents and witnesses, for initiating a departmental enquiry against the petitioner. The facts, in brief, relevant for adjudication of the lis involved in this petition are that the petitioner was working as Deputy Collector, Raigarh at the relevant time, according to him he was allocated inter alia, the work of Nazul Officer. The petitioner was authorized to assess the Nazul tax on the basis of applications and after completing the entire process of calling objection and issuance of advertisement, Nazul tax is assessed. It is further submitted that one Inder Pal Singh Bhatia. (sic) an (sic) (sic) on 19th January, 2005 which was registered as Revenue Case No. 31/A-4/2004-05 and after following the due process, the entire case was submitted before the Collector, who in turn, accorded approval on 18th August, 2005 (Annexure P/2). There were complaints made against the petitioner and an enquiry was conducted by the Additional Collector, Shri'' S.L. Ratre on the basis of complaint dated 03rd March, 2007. Shri Ratre submitted his enquiry report on 11th May, 2007 to the Collector, Raigarh, holding that the documents submitted by the complainant were not correct and as such, it was found that there was no irregularity. The complaint of. the respondent No. 5 was not found correct and based en no material. Subsequently, another enquiry was conducted by Shri A.N. Ekka, Additional District Magistrate, Raigarh, who, vide his report dated 14.06.2007. held that the complaint was false. Another enquiry was conducted by the City Superintendent of Police, Raigarh, and by communication dated 25.07.2007, he also informed the Superintendent of Police. Raigarh, that there was no error in the report filed by Shri Ratre and no irregularity has been found. The Government, thereafter, further directed an enquiry to be conducted by the, then, Nazul Officer, Raigarh, who submitted his report on 13th August, 2007 (Annexure P/6) holding that the conduct of the petitioner in respect of nazul land which was transferred to other person, was not proper and allegation was proved.

2. Shri Sharma, learned counsel appearing for the petitioner would submit that several enquiries, as aforestated were conducted during the same period on the basis of a single complaint. A report dated 23 June, 2009, of the Nazul Officer, was submitted to the Collector, holding that the assessment of the Nazul Tax was done at the instance of Inder Pal Singh in respect of the Nazul land wherein, there was no construction thereon. The Board of Revenue, Bilaspur, in a revision filed by the Government, it appears, against the order passed by the petitioner was also dismissed. Shri Sharma would further submit that the show cause notice dated 31st July 2010 was issued for the same allegations as well as other allegations with regard to the Nazul Land Sheet No. 53, Plot No. 2, area 24886 sq. ft (Annexure P/10) which was responded to by the petitioner on 06th September, 2010 (Annexure P/11). The aforesaid show cause notice and the reply were forwarded to the Commissioner, Bilaspur Division, on 09th December, 2010 (Annexure P/12). The Collector, on notice, submitted his report to the Commissioner on 13th April, 2011 stating that the conduct of the petitioner comes within the definition of misconduct as defined under Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules. 1965. The Commissioner, agreeing with the report dated 13th April, 2011 of the Collector, submitted a report to the State Government. The State Government, thereon, issued the impugned show cause notice with charge sheet.

3. Shri Sharma would further submit that the show cause notice was prepared earlier also in the year 2009 (Annexure P/14) on the same charges which was responded to by the petitioner. Thus, the instant entire proceedings leading to issuance of the show cause notice with charge sheet, is vitiated and the same was done with malafide intention. Shri Sharma would further contend that the impugned show cause notice was issued with an inordinate delay with an intention to harass the petitioner and since action of the petitioner as Nazul Tax Officer was in the nature of quasi-judicial proceedings, the same cannot be questioned in a departmental enquiry. Calling various reports from various authorities time and again tantamounts to malafide exercise of power. In support of his contention, Shri Sharma relies on decision of the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,], R.C. Sood Vs. High

Court of Judicature at Rajasthan and Others, Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, , Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju, Surath Chandra Chakrabarty Vs. State of West Bengal, and Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others,

4. On the other hand, Shri Thakur, learned Deputy Advocate General appearing for the State/respondent No. 1 to 3 would submit that the show cause notice with charge sheet is not a punishment order and having regard to the facts of the case wherein huge loss to the public exchequer is involved, it was necessary to find out the truth by holding enquiry after affording lull opportunity of hearing to the petitioner about the allegations. The petitioner is'' free to put forward his case, to examine his witnesses and to produce records of the relevant document before the Enquiry Officer.

5. Having heard learned counsel appearing for the parties, and on perusal of the documents appended thereto, it is found that the facts averred by the petitioner are the subject matter of the enquiry. Thus, without expressing any opinion on the facts of the case, this Court is of the view that the above stated facts do not disclose prima facie malice against the petitioner. It is true that several reports were submitted for and against the allegations, however, since the allegation is of huge loss to the public exchequer, it will not be proper to quash the charge sheet at this stage. Issuance of show cause notice with charge sheet is neither punitive nor adverse, which may entail quashing of show cause notice'' containing charge sheet, at this stage, on the basis of averments made by the petitioner. Even if all the facts, as aforestated, are taken together, it cannot be held that the enquiry is frivolous and the petitioner would suffer unnecessarily as no prima facie case has been made out for initiation of disciplinary enquiry.

6. Reliance of Shri Sharma on the decision of Swath Chandra Chakravarty (supra) is misplaced as in that case, the issue involved therein was on the aspect of affording reasonable or adequate opportunity of defending to the delinquent employee, after enquiry, an order of removal was passed. In the case on hand, the charges are not vague which is not capable of reply.

7. The case of A.L. Kalra (supra), relied on by Shri Sharma, is also in respect of charges which are vague and the said case arose after removal of the petitioner therein after proper enquiry. Thus, the same is also not relevant to the facts of the case on hand, at this stage.

8. In R.C. Sood (supra), the Supreme Court after holding that a committee two transferred judges was set up with a local judge sitting alone and collecting a menagerie of witnesses who had a grudge against the petitioner and were thus sure to depose against him, it was held that the action taken by the Court was not bonafide and amounts to victimization. There is no such allegation in the instant petition and it cannot be held that it was either a case of victimization or harassment.

9. In Zunjarrao Bhikaji Nagarkar (supra), relied on by Shri Sharma, is in regard

to the authority as to whether a charge sheet may be issued against a quasi judicial authority. In the case on hand, the petitioner has raised the question that it was a quasi judicial authority but the same can be decided by the authorities concerned during the course of the disciplinary proceedings.

10. In Chairman & M.D. Bharat Pet. Corpn. Ltd. & Others (supra), relied on by Shri Sharma, the matter arose after the delinquent employee was found guilty in the departmental proceedings. In the case on hand, no enquiry has been conducted and the matter ''V at the stage of issue of show cause notice with charge sheet.

11. The case of Chairman-cian-Managing Director, Coal India Ltd. & Others, relied on by Shri Sharma is also not relevant to the facts of the case on hand.

12. The Supreme Court, in The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, has 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.

13. In Union of India & Another v. Kuniselty Satyanarayand\\Supreme Court observed as under:

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. Ghidam Ghouse, Ulagappa v. Divisional Commr., Mysore, State of U.P. v. Brohm 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.

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.

14. Thus, from the dicta laid down by the Supreme Court in the aforestated case, it is established that the petitioner should respond to the show cause notice, and take up the steps highlighted in the writ petition including jurisdictional issue before the authority concerned and the same can be adjudicated by the authority issuing the show cause notice, initially.

15. Thus, it is not a case wherein there is no material to initiate disciplinary proceeding or the authority is not competent to initiate disciplinary proceedings. Applying the well settled proposition of law, as aforestated, to the facts of the case, the writ petition, being devoid of merit, is dismissed at the admission stage itself.