
(2009) 11 SHI CK 0051
In the High Court Of Himachal Pradesh

Swaran Dass

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 ShimLC 485

Hon'ble Judges : R.B. Misra, Acting C.J.;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Brief facts necessary for the adjudication of this petition are that the petitioner was elected as a Pradhan of Gram Panchayat, Takka in the year 2000. He was re-elected in the month of December, 2005. Respondent No. 4 filed complaint against the petitioner to the Additional District Magistrate, Una on 24.12.2007. The enquiry was conducted by the Additional District Magistrate, Una on 27.5.2008. In sequel thereto, notice dated 25.8.2008 was issued to the petitioner calling upon him to file reply to the same within 15 days.

2. Mr. Ajay Sharma, Advocate has vehemently argued that the issuance of notice dated 25.8.2008 is without authority of law. According to him, once the matter has already been looked into by the Vigilance Bureau, it was not open to the Additional District Magistrate to hold another enquiry.

3. Mr. R.K. Bawa, learned Advocate General has supported the issuance of notice dated 25.8.2008. He then argued that the writ petition is pre-mature since the petitioner has approached the Court before filing reply to show cause notice.

4. We have heard the learned Counsel for the parties and have gone through the pleadings carefully.

5. The matter was entrusted to the Additional District Magistrate to look into the complaint filed by respondent No. 4. Additional District Magistrate furnished the

report, which has led to the issuance of notice dated 25.8.2008. The petitioner at the time of filing of the petition has not chosen to file the reply to the same. The reply to show cause notice, as per the contents of the reply filed by the respondent-State, was filed on 9.9.2008.

6. We are of the considered view that the present petition is premature. The petitioner has only been issued a show cause notice to which he has filed the reply. The State Government has not taken any decision after the filing of the reply due to ad-interim relief granted by the Court. The petitioner cannot presume that the reply filed by him on 9.9.2008 shall not be taken into consideration by the respondent-State before taking any penal action. It is settled law by now that the Courts can interfere at the stage of issuance of notice only if the same has been issued without jurisdiction and is in violation of the principles of natural justice and affects the fundamental rights of the citizens. The present case does not fall in this category.

7. Their Lordships of the Hon'ble Supreme Court in Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, have held the petition to be premature filed against the issuance of show cause notice. Their Lordships have held as under:

4. The first point raised in objection by the second respondent is that the writ petition is premature since no action has been taken finally against the appellant, the disciplinary proceedings are still pending and the explanation of the appellant is under consideration. It is only in the event of the appellant being punished that any grievance can arise for him to be agitated in the proper forum.

5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.

6. We are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to reopen what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we dismiss the appeal but, in the circumstances, without costs.

8. The Apex Court in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, has held that writ petition against a show cause notice is not maintainable. Their Lordships have held as under:

9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision -in the matter could be taken. Interference by the Court before that would be premature. The High Court in our opinion ought not to have interfered with the show cause notice.

9. In a similar case i.e. Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, where the petitioner instead of showing cause had straightway filed the writ petition in the High Court, their Lordships of the Hon"ble Supreme Court have held as under:

9. We heard counsel. It is common ground that Quarter No. M/11 (Old) Adityapur, near Jamshedpur, belongs to Board. "According to the Board and the 4th respondent the hire-purchase transaction is still in force, and the ownership of the building has not been finally transferred to the 4th respondent. The 1st respondent would say that the 4th respondent is the owner having purchased the building from the Board. The "basic" or fundamental fact is thus in dispute. the 3rd respondent is the competent authority notified by the State Government under the Bihar State Housing Board Act, 1982 to initiate summary proceedings for eviction against the sub-letting, unauthorised occupation by any person, of the premises, etc., belonging to the Board. Annexure Ext. P-4 notice, is the one so issued by the 3rd respondent. The appellant and the 4th respondent complained about the forcible or unauthorized occupation by the first respondent of the premises belonging to the Board. The 3rd respondent was competent to initiate the proceedings under the Act if the building still belongs to the Board and the ownership has not vested in the 4th respondent. It may be, that this basic fact is denied by the 1st respondent when he states that the 4th respondent is the owner having purchased the building from the Board and that he is a tenant under the 4th respondent. The basic facts, on the basis of which 3rd the jurisdiction of respondent to initiate/continue the proceedings, require investigation and adjudication. If, as pleaded by appellant and the 4th respondent, the Board is the owner and the 4th respondent is the hirer, it cannot admit of any doubt that the 3rd respondent has jurisdiction to initiate the proceedings as per Annexure Ext. P-4. If that basic fact is denied by the 1st respondent, that may require investigation of disputed facts and adjudication by the "competent authority" - the 3rd respondent. Without showing cause against Annexure Ext. P-4, notice, the 1st respondent straightway filed the Writ petition in the High Court and assailed Annexure Ext. P-4 and the eviction proceedings. The averments in this regard, contained in paragraph 13 (H) of the Special Leave

Petition, are not denied in the detailed counter affidavit filed by the 1st respondent in this Court.

10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is *ex facie* a "nullity" or totally "without jurisdiction" in the traditional sense of that expression- that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

10. Similarly, their Lordships of the Hon"ble Supreme Court in *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, have held the petition to be premature filed merely against the issuance of show cause notice. Their Lordships have held as under:

15. The petition filed by the writ petitioner before the High Court was entirely misconceived and, in a way, premature, The show cause notice issued by the sub-divisional officer cannot be said to be without jurisdiction. The appellant should have participated in the enquiry after showing cause. Instead he chose to rush post haste to the High Court. The High Court rightly turned down the writ petition.

11. Mr. Ajay Sharma has relied upon *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, What has been held by their Lordships of the Hon"ble Supreme Court in *Whirlpool Corporation's* case (*supra*) is that the Courts can interfere against the show cause notice if there is violation of any fundamental rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of the Act is challenged. The petitioner has been served with a show cause notice and he has filed the reply to the same. It was necessary for the respondents to get the matter enquired into in right perspective. In view of this, it cannot be held that the proceedings are without jurisdiction. It is open to the respondents to take appropriate action after considering the reply furnished by the petitioner to the show cause notice dated 25.8.2008. Accordingly, in view of the observations made hereinabove, there is no merit in the writ petition and the same is dismissed. No costs.