

Court No. - 6

Case :- WRIT - C No. - 29945 of 2023

Petitioner :- Brijraj Nishad

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Vivek Chaubey, Nipun Singh

Counsel for Respondent :- C.S.C., Gyanendra Prakash Srivastava

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Nipun Singh, learned counsel for the petitioner, Mr. Gyanendra Prakash Srivastava, learned counsel for the complainant and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed by the petitioner with a prayer to quash the impugned order dated 07.08.2023 passed by the respondent no.2; District Magistrate/Prescribed Authority, Mau, vide which the administrative and financial power of the petitioner as Gram Pradhan has been ceased and a further prayer to direct the respondent not to interfere in the peaceful functioning of the petitioner as Gram Pradhan of Gram Panchayat Madahapatti, Mau.

3. The facts, in brief, giving rise to the present writ petition are as under:-

(i) The petitioner was duly elected as *Gram Pradhan* of Gram Panchayat Madahapatti, Mau in the general panchayat election held in the year 2021. It appears that some complaint was made against him for not carrying out development and welfare work of the concerned village. Such complaint was made by a person, who had assaulted the petitioner for which the petitioner had lodged an FIR against him.

(ii) On the aforesaid complaint, a committee comprising of District Finance and Statistics Officer, Mau and Executive Engineer, Rural

Engineering Department, Mau was constituted to inquire into the matter, which submitted its report on 19.12.2022. Relying upon the aforesaid inquiry report, a show cause notice dated 14.02.2023 has been issued to the petitioner, to which he submitted his reply on 17.03.2023, relying upon which the impugned order dated 07.08.2023 has been passed ceasing financial and administrative powers of the petitioner-Pradhan under Section 95 (1) (g) of the Uttar Pradesh Panchayat Raj Act, 1947¹. Hence, the present writ petition has been filed.

4. Learned counsel for the petitioner submits that it is settled law that the show cause notice should be specific and unambiguous and should also mention the action proposed to be taken, in case the petitioner is found guilty of the charges as levelled against him. In support of his contention, he has relied upon the judgment of Apex Court in the case of ***UMC Technologies (P) Ltd. vs. Food Corporation of India and another² reported in (2021) 2 SCC 551***, wherein it has been held thus:-

*“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. **Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously.** An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Anr.*, has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.”*

5. He further submits that though the show cause notice mentions about the inquiry being conducted under Section 95 (1) (g) of the Uttar Pradesh Panchayat Raj Act, 1947 but the same also proposes about the recovery to

¹ “The Act, 1947”

² (2021) 2 SCC 551

be initiated in case of non-compliance of reply to the show cause notice. Thus, in case, the show cause notice is considered for recovery of loss from the petitioner under Section 27(1) of U.P. Panchayat Raj Act, 1947 read with rule 256, the assessment should have been done by the Chief Audit Officer. On the other hand, in case the show cause notice is taken for initiation of proceedings under Section 95 (1) (g) of the Uttar Pradesh Panchayat Raj Act, 1947, the punishment as proposed for initiating recovery proceedings against the Pradhan cannot be sustained, therefore, the show cause notice is bad and is *non est* in the eye of law. Hence, the order impugned dated 07.08.2023 ceasing administrative and financial powers of the petitioner-Pradhan relying upon the said show cause notice is illegal and the same is liable to be set aside.

12. On the other hand, learned Standing Counsel as well as learned counsel for the complainant could not dispute the aforesaid facts.

13. I have heard learned counsel for the petitioner and learned Standing Counsel and perused the records.

14. The question as to what would be the proper contents of the notice to show cause, so as to be consistent with the principles of natural justice, was considered by the Apex Court in the case of ***Oryx Fisheries Pvt. Ltd. vs. Union of India & Others***³ and it was observed as under:-

"24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objections" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India¹¹, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

3 (2010) 13 SCC 427

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand* held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is : (AIR p. 307, para 19)

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;"

27. *It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.*

28. *Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.*

29....

30. ...

31. *It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.*

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.*

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

15. The manner in which a show cause notice is to be issued to constitute a valid basis of a ceasing/blacklisting order in the context of government contracts and tenders was subject matter of consideration in a recent decision in the case of **UMC Technologies Private Ltd. (supra)** and after explaining the principles in regard to the same in detail, it was held that it is essential for the notice to specify the particular grounds on which an action is proposed to be taken so as to enable the notice to answer the case against him and in the absence of the same, a person cannot be said to be granted a reasonable opportunity of being heard. It was stated thus:-

*"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. **The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously.** An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Custodian General, Evacuee Property* [*Nasir Ahmad v. Custodian General, Evacuee Property*, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.*

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded

an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person."

16. To ensure conformity with the principles of natural justice, the show cause notice is required to specify what the consequences will be if the addressee of the notice does not satisfy the grounds on which the action is proposed. Besides the notice being sufficient, it is also necessary to state the grounds for need of action and also to specifically and clearly mention the proposed penalty. A show cause notice, particularly in a case where it proposes to impose an order of blacklisting or otherwise, i.e. recovery or ceasing administrative or financial powers as the case may be, it is required to adhere to the principles of natural justice and for the said reason, it is to fulfill the twin requirements of stating in unambiguous terms the grounds which according to the department necessitates an action, and also the penalty which is proposed to be taken in case the noticee is unable to furnish an adequate response to the grounds stated in the notice.

17. In the present case, though the show cause notice mentions about the inquiry being conducted under Section 95 (1) (g) of the Uttar Pradesh Panchayat Raj Act, 1947 but the same proposes about the recovery to be initiated in case of non-compliance of reply to the show cause notice. Thus, in case the show cause notice is considered for recovery of loss from the petitioner under Section 27(1) of U.P. Panchayat Raj Act, 1947 read with rule 256, the assessment should have been done by the Chief Audit Officer. On the other hand, in case the show cause notice is taken for initiation of proceedings under Section 95 (1) (g) of the Uttar Pradesh Panchayat Raj Act, 1947, the punishment as proposed for initiating recovery proceedings against the Pradhan cannot be sustained, therefore, the show cause notice is bad and is non est in the eye of law.

18. It is a settled legal proposition that if an initial action is not in consonance with law, all subsequent and consequential proceedings would be vitiated. The Apex Court in the case of ***State of Punjab vs. Davinder Pal Singh Bhullar***⁴, has held that if initial action itself is illegal, all subsequent actions emanating from that act are also a nullity.

19. In ***Badrinath v. State of Tamil Nadu & others***⁵ and ***State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr***⁶, the Apex Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, *quasi-judicial* and administrative proceedings equally.

20. Similarly in ***Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors.***⁷, the Apex Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be *non est* and have to be necessarily set aside.

21. On perusal of the Act and the Rules, the Court is of the clear view that an elected representative can be removed only and strictly in accordance with law and in this regard the law which provides for removal of an elected representative has to be strictly construed. In the present case, the Court finds that the show cause notice itself is bad as the same is vague and ambiguous. Since the show cause notice dated 14.02.2023 is nullity in the eye of law, therefore, it cannot be sustained, so its consequential proceedings, i.e. impugned order dated 07.08.2023 ceasing administrative and financial powers of the petitioner-Pradhan, stand automatically vitiated and is liable to be declared *non est* in view of law.

4 (2011) 14 SCC 771

5 AIR 2000 SC 3243

6 (2001) 10 SCC 191

7 (2005) 3 SCC 422

22. In view of the above, the impugned order dated 07.08.2023 passed by the respondent no.2 ceasing financial and administrative powers of the petitioner is hereby **quashed**.

23. However, the District Magistrate/Prescribed Authority, Mau, i.e. respondent no.2 is directed to proceed on the basis of inquiry as already conducted on the complaint so made against the petitioner and issue afresh and proper show cause notice, in accordance with the provisions of Uttar Pradesh Panchayat Raj Act, 1947 and read with Rules 1997 and pass a reasoned and speaking final order. Consequences shall follow accordingly, in accordance with law.

24. With the aforesaid observations and directions, the writ petition is ***allowed***.

25. Office is directed to give a copy of this order to learned Chief Standing Counsel, who shall communicate this order forthwith to the respondent no.2, i.e. District Magistrate, Mau for compliance.

(Manju Rani Chauhan, J.)

Order Date :- 23.11.2023

Jitendra/-