

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 451 of 2024

Thongam Shyamo Singh

...***Petitioner***

Vs.

State of Manipur & 2 ors.

...***Respondents***

**BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

28.08.2024

Heard Mr. I. Denning, learned counsel appearing for the petitioner; Mr. Phungyo Zingkhei, learned Dy. GA appearing for respondent Nos. 1 & 2; Mr. S. Nepolean, learned GA appearing for respondent No. 3 and Mr. L. Shashibhushan, learned senior counsel assisted by Md. Fakirrudin, learned counsel appearing for respondent No. 4.

[2] The present writ petition has been filed challenging the show cause notice dated **19-06-2024** issued by the respondent No. 2 against the petitioner. In the said show cause notice, it has been, inter alia, alleged that the petitioner has violated the provisions of Section 29(2)(d) read with Section 59 of the Manipur Municipalities Act, 1994 by having share and interests in the execution of contract works of the Thoubal Municipal Council and directing the petitioner to submit his show cause as to why appropriate action shall not be taken against him.

The learned counsel appearing for the respondents raised a preliminary issue with regard to the maintainability of the present writ petition. It has been submitted by the learned

counsel appearing for the respondents that the impugned show cause notice does not rise to any cause of action inasmuch as, no right of the petitioner has been affected nor any action affecting the petitioner's right to be a councilor has been infringed by the said show cause notice. It has also been submitted that the competent authority issued the show cause notice in terms of the relevant provisions of the Manipur Municipalities Act 1994 and Rules made thereunder and the same is perfectly valid and legally tenable and that the present petition is premature and liable to be dismissed in the threshold. In support of the contentions, the counsel for the respondents have relied on the following decisions of the Hon'ble Apex Court:-

"(i) "State of Uttar Pradesh –vrs.- Brahm Datt Sharma & anr." reported in (1987)2 Supreme Court Cases 179 wherein the Hon'ble Apex Court in paragraph No. 9 of the judgment 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 government servant under a statutory provision calling upon him to show cause, ordinarily the government 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 government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government

servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage should be premature. The High Court in our opinion ought not have interfered with the show cause notice."

(ii) "Union of India & anr. –vrs.- Kunisetty Satyanaraya" reported in (2006)12 Supreme Court Cases 28 wherein the Hon'ble Apex Court in paragraph No. 13 & 14 of the judgment held as under :-

"13. *It is well settle 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 –vrs.- Ramesh Kumar Singh, Special Director –vrs.- Mohd. Ghulam Ghouse, Ulagappa –vrs.- Divisional Commr., Mysore, State of U.P. –vrs.- 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 settle 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."

(iii) "Special Director & anr. –vrs.- Mohd. Ghulam Ghouse & anr." reported in (2004)³ Supreme Court Cases 440 wherein the Hon'ble Apex Court in paragraph No. 5 of the judgment 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. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the

writ petitioner even at the threshold by the interim protection granted.”

[3] Relying on the law laid down by the Hon’ble Apex Court in the aforesaid judgments, it has been submitted by the learned counsel appearing for the respondents that the present writ petition is premature and not maintainable and the same is liable to be rejected.

[4] Mr. I. Denning, learned counsel appearing for the petitioner submitted that the petitioner has assailed the impugned show cause notice on the following two grounds :-

(i) The authority who issued the show cause notice has no jurisdiction to issue the said show cause notice ;

(ii) The show cause notice has been issued with predetermined minds.

Elaborating the above points, it has been submitted by the learned counsel for the petitioner that the petitioner had been appointed as a Caretaker Chairperson of the Thoubal Municipal Council by virtue of the order passed by this Court on **19-01-2023** in **WP(C)No. 935 of 2022** and batches of writ petitions. In the said order, one of the directions given by this court is that the interim order granted by the court on **04-11-2022** in the said writ petitions should continue till issuance of the notification of the Election of the Urban Local Bodies (ULBs) and Autonomous District Council.

[5] In compliance with the said directions given by this court, the Under Secretary (MAHUD), Government of Manipur, issued an

order dated **06-03-2023** allowing the concerned Ex-Caretaker Mayor, Ex-Caretaker Chairpersons and Ex-Caretaker Councilors of the previous terms/Councils of the Urban Local Bodies, including the present petitioner, to continue as Ex-Caretaker Mayor, Ex-Caretaker Chairpersons and Ex-Caretaker Councillors of the concerned Urban Local Bodies till the issuance of the notification of the Election of the Urban Local Bodies (ULBs) by the Election Commissioner. The learned counsel further submitted that since the petitioner had been appointed by an executive order pursuant to the direction given by this Court, the provision of the Municipality Act and Rule are not applicable to the petitioner. In such view of the matter, it has been submitted that the authority, who issued the impugned show cause notice, does not have the power or jurisdiction to issue the said show cause notice.

[6] Elaborating the second point, it has been submitted by the learned counsel appearing for the petitioner that initially 10(ten) Caretaker Councillors of the Thoubal Municipal Council made a written complaint against the petitioner to the Commissioner (MAHUD), Government of Manipur, raising certain allegations against the petitioner, however, subsequently 3(three) of the said complainants have withdrawn themselves from the said complaint. However, the authorities never disclose such development. The learned counsel further submitted that even though the petitioner has submitted his written reply to the show cause notice, no action has been taken up by the respondents and that such factum of submitting reply to show cause notice has not also been disclosed by them. In view of the above, it has been submitted by the learned counsel that the action of

the respondents in issuing the show cause notice is a predetermine action.

[7] Mr. I. Denning, learned counsel appearing for the petitioner cited the case laws reported in (2006)12 SCC 33 "**Siemens Ltd. –vrs.- State of Maharashtra & ors.**" wherein the Hon'ble Apex Court held as under :-

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma, Special Director v. Mohd. Ghulam Ghouse and Union of India v. Kunisetty Satyanarayana, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India). It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. *The said principle has been followed by this Court in V.C., Banaras Hindu University V. Shrikant, stating : (SCC p. 60, paras 8-9)*

"48. *The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.*

"49. *In K.I. Shephard v. Union of India this Court held : (SCC p.9, para 16)*

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.'"

11. *A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."*

[8] I have carefully perused the aforesaid judgment rendered by the Hon'ble Apex Court and this Court is of the considered view that the said principle of law had been laid down in the peculiar facts and circumstances of the case and such principle of law are not applicable in the present case for the simple reason that the facts and

circumstances of the present case and the facts and circumstances of the cases cited by the counsel for the petitioner are totally different.

[9] I have heard at length the submissions advanced by the learned counsel appearing for the parties and considered the rival submissions. In my considered view, even though, the petitioner was appointed by the Under Secretary (MAHUD), Government of Manipur, by an order dated 06-03-2023 issued in compliance with the direction given by this Court, the facts still remains that he is acting as a Councillor of the Thoubal Municipal Council and he is discharging his duties and functioning within the four corners of provisions of the Manipur Municipalities Act and Rules made thereunder. Accordingly, this court is of the considered view that the provisions of the Manipur Municipality Act and Rules made thereunder are applicable to the petitioner and as such, this Court cannot agree with the submission advanced on behalf of the petitioner that the authority who issue the show cause notice has no jurisdiction or power to issue the said show cause notice.

[10] So far as the second contention made by the learned counsel appearing for the petitioner is concerned, this court is of the considered view that there is no substance or merit in such contention, inasmuch as, the competent authority issued the show cause notice on the basis of the complaint made by some Councillors of the Thoubal Municipal Council alleging commission of illegal acts by the petitioner. On the basis of such complaint, the competent authority issued the show cause notice in terms of the provision of the aforesaid Act and Rules to find out the veracity or truthfulness of such allegations and for taking appropriate action if required.

Moreover, since no adverse action has been taken against the petitioner, this court cannot agree with the submission made by the learned counsel for the petitioner that the show cause notice had been issued with a predetermined mind. This Court is also of the view that the present writ petition is premature. Accordingly, at this stage, this Court is not inclined to interfere with the impugned show cause notice. In the result, the writ petition is hereby dismissed as it is not maintainable.

It is made clear that this Court has not decided or consider any merit of the present petition and the authorities are at liberty to proceed with any further action relating to show cause notice, if so advised and complete the same within a period of 3(three) months from today by passing appropriate order as deem fit and proper.

JUDGE

Dhakeshori