

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.505 of 2016**

M/s Sarvamangla Construction Company Transporter/ Contractor A
 Proprietorship Firm, Through Its Proprietor Namely Rajkumar Agrawal, S/o Late
 Shri Chhotelal Agrawal, Aged About 58 Yers, R/o Agrasen Marg, Korba, Having
 Its Registered Office At Office 106, Transport Nagar, Stadium Road, Post
 Korba District Korba Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coalfields Limited Through Its Chief Managing Director, S.E.C.L. Bhawan, Seepat Road, Bilaspur Police Station And Post Bilaspur, Civil And Revenue District Bilaspur Chhattisgarh
2. General Manager, South Eastern Coalfields Limited, Korba Area, Post Korba Colliery, District Korba Chhattisgarh
3. Staff Officer (Mining), S.E.C.L. Korba Area, Office Of General Manager, South Eastern Coalfields Limited, Korba Area, Post Korba Colliery, District Korba Chhattisgarh
4. Sub Area Manager, Bagdeva Colleery, S.E.C.L. Korba Area, Post Korba Colliery, District Korba Chhattisgarh
5. General Manager (Operation) S.E.C.L. Korba Area, Post Korba Colliery, District Korba Chhattisgarh

---- Respondent

For Petitioner	:	Shri Manoj Paranjpe, Advocate
For Respondents	:	Dr. N. K. Shukla, Sr. Advocate with Shri Vinod Deshmukh, Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****17/03/2016**

With the consent of learned counsel for the parties, the matter is heard finally.

2. This petition has been filed by the petitioner assailing correctness and validity of impugned show cause notice dated 28-01-2016 (Annexure P-1) on the sole submission that the text and tenor of show cause notice is clearly indicative of

respondents having already pre-judged the issue.

3. Learned counsel for petitioner submits that the show cause notice records that the alleged act is in clear violation of terms of the agreement and work order executed by the petitioner. He submits that in view of above, the entire proceedings are reduced to empty formality. Hence, the notice may be quashed. Reliance has been placed on the decision in the cases of ***M/s. Siemens Ltd. v. State of Maharashtra & Ors.***¹ and ***Oryx Fisheries Private Limited vs. Union of India and others***².

4. On the other hand, learned Senior Counsel for respondents submits that whatever has been stated in the show cause notice is only proposed action and not the final decision. He submits that the recital in the show cause notice has to be understood in the context that the petitioner is required to show cause as to why panel action may not be taken against him. Therefore, according to him, the show cause notice does not reflect a pre-judged mind but it has left the entire matter open and final decision would be taken only upon receipt of reply of the petitioner. He also submits that if the petitioner submits his reply to the show cause notice, the same would be duly considered.

5. In the case of ***M/s. Siemens Ltd. (supra)***, the Supreme Court examined the similar issue that in such a situation, when show cause notice is issued, which creates an impression that the authority has already prejudged the issue, the proceedings become empty formality. In the aforesaid factual context, the Supreme Court held:-

11. “The said principle has been followed by this Court in [V.C. Banaras Hindu University and Ors. v. Shrikant](#) [2006 (6) SCALE 66], stating:

“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.

In *K.I. Shephard & Ors. etc. etc. v. Union of India & Ors.* [AIR 1988 SC 686], this Court held :

1 2006 AIR SCW 6380

2 (2010) 13 SCC 427

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

12. [See also [Shri Shekhar Ghosh v. Union of India & Anr.](#) 2006 (11) SCALE 363 and [Rajesh Kumar & Ors. v. D.C.I.T. & Ors.](#) 2006 (11) SCALE 409]

13. 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."

6. In a subsequent decision in the case of ***Oryx Fisheries Private Limited*** (supra), similar issue came up for consideration before the Supreme Court where the Supreme Court took note of the requirements and emphasized upon the requirements of show cause notice, held 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. It was propounded that the show cause proceedings is meant to give the person proceeded against, a reasonable opportunity of making his objection against the proposed charges indicated in the notice. On facts, it was found in that case that from the show cause notice, the authority has administered close mind at the stage of show cause notice itself and therefore, such close mind is inconsistent with the statutory scheme. The Supreme Court held as under :

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."

The principle that the justice must not only be done but it must eminently appear to be done as well was also emphasized, as below:-

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.

7. If the aforesaid principles are applied to the facts of the present case and show

cause notice is looked into, there appears to be a very strong view of the authority having formed opinion in the matter which is manifest from the recitals as below:-

“Such act is also violation of section 2 of the integrity pact signed between the SECL and the firm M/s Sarvmangla Construction Company which is read as below-

“The Bidder/Contractor commits itself to take all measures necessary to prevent corruption” and as per **section 03** of the integrity pact - **“Disqualification from tender process and exclusion from future contracts”** principal is entitled to take action.

The above act is clear violation of the terms and agreement and work order executed with you for the contract afore said and liable for the panel action.”

8. Though, learned Senior Counsel for respondents, fully aware of the legal requirements and legal position, has fairly submitted that the notice has to be treated as show cause notice and decision has to be taken only as proposed action which would be taking final shape only after consideration of the reply, this Court cannot ignore text and tenor of the show cause notice.

9. In view of above, it would be proper in the interest of justice to hold that the impugned notice in its present form is liable to be set aside and is accordingly set aside. The respondent, however, would be at liberty to issue fresh show cause notice to the petitioner, in accordance with law.

10. In the result, the petition is allowed. No costs.

SD/-
Manindra Mohan Shrivastava
Judge