

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI**

Writ Appeal Nos.732, 733, 734, 735 and 736 of 2018
&
Writ Petition Nos.6967, 6965, 6963, 6956 and 6954 of 2018

COMMON JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

These five writ appeals are preferred against the interlocutory orders passed in five different writ petitions. Since parties to all the writ petitions are the same, both Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the appellant, and Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would agree that a common order be passed in all these cases. It would suffice, therefore, for the disposal of all the five appeals, if the facts in W.A.No.732 of 2017 are noted.

The respondent herein filed W.P.No.6967 of 2018 seeking a mandamus to declare the action of the appellant (respondent in the writ petition) in issuing a show cause notice dated 13.02.2018, reopening an adjudicated issue vide Previous Order dated 15.10.2015, as arbitrary and capricious. A consequential direction was sought to set aside the same.

Facts, to the limited extent necessary, are that an order was passed by the appellant against the respondent-writ petitioner on 17.07.2013 which was subjected to challenge by the respondent-writ petitioner in W.P.No.6604 of 2014. The said writ petition was disposed of with a direction that the said order dated 17.07.2013 be treated as a show cause. The respondent-writ petitioner filed their reply thereto on 30.03.2015 resulting in an order being passed on 15.10.2015, the operative portion of which reads as under:

“Firm’s representation against all the above cases were received and considered. After going through the statements given by the firm in its representations and legal opinion of RDSO legal cell, it has been

decided that at this stage no penal action against the firm regarding delisting/closure of the case of the initial registrations is being taken & at present the firm will be treated like any other approved vendor in the RDSO's approved list for all the 5 items for which it is approved & the case of initial registration for one item i.e true colour will be processed further. However, a suitable action will be considered if at a later stage any direction is received against the firm either from Railway Board or Vigilance or any other law enforcing agency."

Thereafter, the impugned notice dated 13.02.2018 was issued asking the respondent-writ petitioner to show cause why the punitive action, of outright delisting for the subject item, should not be taken against their company as per Clause No.4.2.4.1 (ii) of RDSO Apex Document QO-D-7.1-11 Ver.14.2. The respondent-writ petitioner was called upon to submit their reply within 30 days of issue of the letter for further course of action. Aggrieved thereby, the respondent-writ petitioner invoked the jurisdiction of this Court.

In the order under appeal the Learned Single Judge, after extracting the operative portion of the order dated 15.10.2015, observed that the impugned show cause notice dated 13.02.2018 came to be issued, admittedly, on no fresh allegations. The Learned Single Judge noted the submissions of Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the appellant (respondent in the writ petition) that, before the impugned show cause notice was issued, the matter was under examination at the Railway Board level; the legal opinion at the Railway Board level pointed out some issues which necessitated the impugned show cause notice being issued; and, therefore, there was justification in issuing the show cause notice.

The Learned Single Judge, thereafter, observed that, as rightly pointed out by Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, neither a direction was directly received from the Railway Board or Vigilance or any other law enforcing agency; and only on obtaining a fresh legal opinion, and on the same

old grounds, the impugned show cause notice was issued. In that view of the matter, the Learned Single Judge was of the considered view that the respondent-writ petitioner had made out valid and sufficient grounds and a *prima facie* case, for grant of an interim order, was made out. An interim order of stay of the show cause notice dated 13.02.2018 was passed. Aggrieved thereby, the present appeal.

Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the appellant, would draw our attention to the earlier order dated 15.10.2015 to submit that the respondent-writ petitioner had accepted the said order, and had not questioned the conditions imposed therein; the order dated 15.10.2015 made it clear that suitable action would be considered if, at a later stage, any direction was received against the firm either from the Railway Board or Vigilance or any other law enforcing agency; in the counter-affidavit, the appellant had categorically asserted that directions were issued by the Railway Board to re-initiate action; and, though the counter-affidavit was on record before the interim order under appeal came to be passed, the Learned Single Judge failed to note the specific averment in the counter-affidavit which remains undisputed, since no reply affidavit was filed by the respondent-writ petitioner thereto.

The finding recorded by the Learned Single Judge that there was no direction from the Railway Board or Vigilance or any other law enforcing agency, and that the decision was taken on a fresh legal opinion, is incorrect. A copy of the proceedings dated 05.01.2018 has been placed before us by Sri L. Ravichander, learned Senior Counsel, in support of his submission that action has been initiated only because the Railway Board had asked them to do so.

On the other hand Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that, since on

identical facts the matter was closed, by order dated 15.10.2015, the appellant is not entitled to reopen the issue, and cause an enquiry all over again; investigation was caused on the very same allegations by the Central Bureau of Investigation; and, while a charge sheet has been filed by the CBI, the criminal case instituted against the Director of the respondent-writ petitioner firm is still pending; and the appellant is, therefore, not justified in issuing the impugned show cause notice.

It must be borne in mind that the proceedings under challenge in the writ petitions before the Learned Single Judge were merely show cause notices. A show-cause notice does not give rise to any cause of action as it is not an adverse order which affects the rights of a party. It is quite possible that, after considering the reply to the show-cause notice, the authority concerned may drop the proceedings and/or hold that the allegations are not established. A show-cause notice does not infringe the rights of anyone. It is only when a final order, adversely affecting him, is passed that the said person can be said to have any grievance. (**Union of India v. Kunisetty Satyanarayana**¹; **Saravani Impex Pvt. Ltd. v. Additional Director General, Directorate of Revenue Intelligence, Chennai**²). When a notice is issued calling upon a person to show-cause he must, ordinarily, place his case before the authority by showing cause. The purpose of issuing a show-cause notice is to afford an opportunity of hearing to the person concerned, and this Court would be reluctant to interfere at that stage as the Writ Petition would be premature. (**State of U.P. v Shri Brahma Datta Sarma**³; **M/s Vasavi Business Combines v. Commissioner of Customs**⁴; **M/s Jasper**

¹ (2007)1 SCJ 102(2007)1 SCJ 102

² 2010(1) ALD 40 (DB)

³ AIR 1987 SC 943

⁴ Judgment of A.P.H.C. D.B in W.P.No.16170 of 2010 dated 28.7.2010

Industries Pvt. Ltd v. Commercial (CT), (Audit), Hyderabad⁵).

The appropriate course for the recipient is to reply to the show-cause notice enabling the authorities to record their findings. (**Union of India v Bajaj Tempo Limited⁶; M/s Vasavi Business Combines⁴; M/s Jasper Industries Pvt. Ltd⁵).**

Interference would be justified only when the notice is ex-facie a 'nullity' or non-est in the eye of the law for absolute want of jurisdiction of the authority to even examine the facts, or totally "*without jurisdiction*" in the traditional sense of that expression i.e., even the commencement or initiation of the proceedings on the face of it, and without anything more, is totally unauthorised. In all other cases it is only appropriate that the party shows cause before the authority concerned and takes up all objections, including regarding jurisdiction, therein. (**Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh⁷; Special Director v. Mohd. Ghulam Ghouse⁸; Divisional Forest Officer v. M. Ramalinga Reddy⁹; Saravani Impex Pvt. Ltd²).**

Whether or not the show cause notice was founded on any legal basis can also be urged by the recipient in his reply to the notice, and such issues can be adjudicated by the authority issuing the very notice before the person aggrieved can approach the Court. (**Mohd. Ghulam Ghouse⁸; M. Ramalinga Reddy⁹; Saravani Impex Pvt. Ltd²; M/s Vasavi Business Combines⁴; M/s Jasper Industries Pvt. Ltd⁵).**

Ordinarily, a writ court would not exercise its discretionary jurisdiction to entertain a writ petition questioning a notice to show cause unless the same, *inter alia*, appears to have been issued without jurisdiction. (**Shri Brahm Datt Sharma³; Mohd.**

⁵ Judgment of A.P.H.C.D.B. in W.P.No.18725 of 2010 dated 27.8.2010

⁶ 1997 (94) ELT 285 (SC) = JT 1998 (9) SC 138 = (1998) 9 SCC 281

⁷ (1996)1 SCC 327

⁸ (2004) 3 SCC 440

⁹ (2007)9 SCC 286

Ghulam Ghouse⁸; Kunisetty Satyanarayana¹; Ramesh Kumar Singh⁷, Ulagappa v. Divisional Commr., Mysore¹⁰ and Siemens Ltd. v. State of Maharashtra¹¹). The practice of entertaining Writ Petitions, questioning the legality of a show-cause notice, stalling the proposed enquiry, and retarding the process of ascertaining facts with the participation of the parties, must be deprecated. Unless the High Court is satisfied that the show-cause notice is non-est, Writ Petitions should not be entertained for the mere asking, and as a matter of routine, and the petitioner should, ordinarily, be directed to respond to the show-cause notice and take all stands, highlighted in the Writ Petition, therein. **(Mohd. Ghulam Ghouse⁸; M. Ramalinga Reddy⁹; Saravani Impex Pvt. Ltd.²; M/s Vasavi Business Combines⁴; M/s Jasper Industries Pvt. Ltd⁵; and Shakti Met Dor Ltd v. Commissioner of Customs and Central Excise¹²).**

The basis on which the orders under appeal came to be passed, and the show cause notice was interdicted, is that no permission was granted by the Railway Board or the Vigilance Department or any other law enforcing agency; and that action was initiated only on the basis of a fresh legal opinion. In the counter-affidavit filed by the Director of the appellant (respondent in the writ petition), it is specifically stated that, by letter dated 15.10.2015, the competent authority had passed an order that no penal action against the respondent-writ petitioner would be taken at that point of time; in the communication dated 15.10.2015 it was also intimated to the firm that penal action would be taken against the firm if, at a later stage, any direction

¹⁰ (2001) 10 SCC 639

¹¹ (2006) 12 SCC 33

¹² Judgment of A.P.H.C. D.B. in W.P. No.11855 of 2010 dated 16.11.2010

was received against the firm from the Railway Board or Vigilance or any other law enforcing agency; as the case was referred to the Railway Board, now directions from the Railway Board were received to re-initiate action citing certain facts which were not considered earlier; and, hence, the present show cause notice had been issued. This specific assertion in the counter-affidavit, that the action was initiated afresh on the basis of the direction from the Railway Board, has not been dealt with by the Learned Single Judge in the orders under appeal.

While Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, sought to contend that the letter dated 05.01.2018 addressed by the Director of Vigilance to the appellant does not fall within the ambit of the earlier proceedings dated 15.10.2015, we see no reason to delve on this issue in an intra-Court appeal under Clause 15 of the Letters Patent, as the Learned Single Judge has neither examined the contents of the letter dated 05.01.2018, nor did he deal with the specific assertion in the counter-affidavit as referred to hereinabove. In any event, the question whether the said letter dated 05.01.2018 would amount to a direction either from the Railway Board or Vigilance or any other law enforcing agency, as referred to in the order dated 15.10.2015, can always be agitated by the respondent-writ petitioner before the competent authority in reply to the show cause notice.

While the action initiated against the respondent-writ petitioner earlier resulted in the order dated 15.10.2015 being passed, it was made clear to the respondent-writ petitioner that suitable action would be considered if, at a later stage, any direction was received either from the Railway Board or Vigilance or any other law enforcing agency. It is

not as if the Railway authorities had given a quietus to the earlier show cause notice after examining the allegations on merits. The decision not to take penal action against the respondent-writ petitioner, as is evident from the operative portion of the order dated 15.10.2015 itself, is that no action was being taken at that stage, and suitable action would be considered at a later stage if so directed by the Railway Board or Vigilance or any other law enforcing agency. It is only if an enquiry is caused into the allegations resulting in an order being passed giving a final closure to the issue, can the respondent-writ petitioner be heard to contend that action cannot be permitted to be initiated afresh in respect of the very same allegations which were earlier examined and closed. There was no final closure of the allegations, levelled against the respondent-writ petitioner by the appellant, in their order dated 15.10.2015. On the other hand the respondent-writ petitioner was specifically informed that suitable action would be taken, if need be, later. We see no reason, therefore, to interfere with the show cause notice.

Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that, since the show cause notice was subjected to challenge in the writ petitions, the respondent-writ petitioner did not file their reply to the show cause notice; and four weeks' time be granted to them to file their reply to the show cause notice. Since the respondent-writ petitioner had questioned the validity of the show cause notice in the writ petitions filed before this Court, and their failure to submit a reply to the show cause notice was because they had availed their judicial remedies, we consider it appropriate to direct the appellant to consider the respondent-writ petitioner's reply to the show cause notices if it is submitted within four weeks from today. It is open to the appellant, thereafter, to take

necessary action in accordance with law. Needless to state that the appellant shall examine the respondent-writ petitioner's contention, as put forth in the reply to the show cause notices, on its merits uninfluenced by any observations made either in the orders under appeal or in the order now passed by us.

Sri S.Ravi, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that, in the light of the order now passed by this Court, the cause in the Writ Petitions do not survive. The Writ Appeals are, accordingly, disposed of, and the Writ Petitions are closed as infructuous. Miscellaneous Petitions pending, if any, shall also stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

06th June, 2018
JSU



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