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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 29.05.2018

+ **W.P.(C) 5993/2018**

HARYANA SHAKTI SENIOR SECONDARY SCHOOL

..... Petitioner

Through **Mr.Sanjay Sharawat, Adv.**

versus

DIRECTORATE OF EDUCATION AND ANR.

..... Respondent

Through **Mr.Subrahmanyam, Adv.**

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner/school, has impugned a show-cause notice dated 21.05.2018 issued by the respondent no.2 to it, wherein the respondent no.2 has come to a *prima facie* conclusion that the petitioner's management committee has not only acted in disregard of the provisions of the Rule 117, 118 and 120 of the Delhi School Education Act, 1973 (hereinafter referred to as "DSEA") and the Delhi School Education Rules, 1973 (hereinafter referred to as "DSER") but has also failed to comply with the directions of its order dated 12.06.2017. Vide the impugned show-cause notice, the respondent no.2 has given an opportunity to the petitioner to show-cause as to why action, as per Section 20 of the DSEA, of taking over

the management of the petitioner/school, should not be initiated against the petitioner for willful failure on the part of its managing committee in obeying the lawful directions of the Directorate of Education.

2. Mr. Sanjay Sharawat, learned counsel for the petitioner, while conceding that till date, the petitioner has not submitted any reply to the impugned show-cause notice, contends that the show-cause notice is wholly without jurisdiction. He submits that the order dated 12.06.2017, which is the basis of the impugned show-cause notice, was taken note of by the Division Bench of this Court in LPA No.279/2017 and on 30.11.2017, the statement made on behalf of the Directorate of Education, that they would take expeditious steps to enforce their order dated 12.06.2017, was recorded by the Court.

3. Mr. Sharawat submits that armed with the aforesaid order dated 30.11.2017 passed in the LPA No.279/2017, Mr. Virendra Singh, who was the appellant in the LPA No.279/2017, has already filed a contempt petition wherein notice has been issued to the respondents herein to explain, as to why, they have not taken any action to comply with their order dated 12.06.2017.

4. Mr. Sharawat submits that upon learning about the aforesaid order passed by the Division Bench, the petitioner filed a Review Petition, wherein a stay of the order dated 30.11.2017 has also been sought. He, however, concedes that though notice has been issued on the petitioner's Review Petition, no stay, either of the order dated 12.06.2017 or of the order dated 30.11.2017, has been granted by the Division Bench. Mr. Sharawat, however, submits that even though

the impugned show-cause notice is based on the order dated 12.06.2017, the same is not sustainable, as it has been passed without following the prescribed procedure.

5. On the other hand, Mr.Subrahmanyam, learned counsel, who appears on advance notice for the respondents, submits that the present petition impugning the show-cause notice is not maintainable, as the petitioner has, admittedly, not even submitted any reply to the impugned show-cause notice. He further submits that the petitioner, having sought a stay of the order dated 12.06.2017 before the Division Bench, cannot circumvent the proceedings pending before the Division Bench by invoking jurisdiction of this Court, by challenging the show-cause notice, which is based on the same order dated 12.06.2017.

6. Having considered the rival contentions of the parties, I find merit in the contention of learned counsel for the respondent that once the petitioner's grievance in respect of the very same order dated 12.06.2017, which is the basic premise for issuance of the impugned show-cause notice, is pending before the Division Bench, it would not be appropriate for this Court to entertain any challenge to impugned show-cause notice at this stage. I am of the considered opinion, that at this stage, when the petitioner's Review Petition, seeking recall of the order dated 30.11.2017 passed in LPA No.279/2017, is already before the Division Bench, there is no reason as to why the present petition should be entertained by this Court.

7. Even otherwise, the Petitioner having not submitted any reply to the impugned show-cause notice, the writ petition is, in my opinion, premature. Reference may be made to the observations of the Supreme Court in ***Union of India and Anr. v. Kunisetty Satyanarayana [(2006) 12 SCC 28]***, paras 14, 15 and 16 whereof read as under:-

“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 settled 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.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

8. In the present case, I do not find any such circumstance which warrants interference by this Court at this stage of the show-cause notice itself.

9. For the aforesaid reasons, there is no merit in the present petition which is accordingly, dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

MAY 29, 2018/sr

