

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5417 of 2019

Nohar Singh Thakur S/o Late Shri Gautam Singh Thakur Aged About 40 Years R/o Shri Ram Plot No. 70, Zone 1, Street -1, Borsi Road New Adarsh Nagar Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Commercial Tax (Excise) Mahanadi Bhavan, Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh State Marketing Corporation Limited Raipur, Chhattisgarh, Through Its General Manager, Abkaari, Bhavan, Labhandi, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Animesh Netam Assistant Commissioner (Excise), Chhattisgarh, State Marketing Corporation Raipur., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Mateen Siddiqui, Advocate.
For State	:	Shri P. Acharya, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24.07.2019

1. The challenge in the present writ petition is to the order Annexure P-1 dated 01.06.2019. The impugned order in the present writ petition is the show cause notice in respect of some alleged irregularities committed by the petitioner while he was posted as Deputy General Manager in respondent No. 2 Corporation at Raigarh.
2. At the outset, this Court is not inclined to entertain the writ petition for the simple reason that the petitioner has been issued with only a show cause notice. The petitioner has been given a chance to reply to the show-cause notice and the respondents inturn are now

expected to properly appreciate the reply before they proceed further with the show-cause notice.

3. It is a settled position of law that the High Court under Article 226 of the Constitution of India would not sit as an Administrative Appellate Body on the show-cause notice issued and decide the veracity of contents of show-cause notice.
4. The Supreme Court in the case of **State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179]** dealing with the scope of judicial interference in disciplinary matters was of the opinion that, “the purpose of issuing show cause notice is to afford an opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfere with the show cause notice.
5. A similar view has been taken by the Supreme Court in case of **Union of India Vs. Kunisetty Satyanarayana**, reported in 2006 (12) SCC 28, the Supreme Court held that:-

“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 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.”

6. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565] in paragraph 10 & 12 has held as under:-

“10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.”

7. Reserving the right of the petitioner to give a detailed reply to the show-cause notice Annexure P/1 dated 01.06.2019 and respondents are expected to consider the objection/explanation that the petitioner shall submit in his reply to the show-cause notice objectively before proceeding further on it.
8. So far as the judgment cited by the counsel for the petitioner is concerned i.e. in the case of **Oryx Fisheries Private Limited Vs. Union of India & Others, (2010) 13 SCC 427**, this Court is of the opinion that the said judgment has been rendered under entirely different contextual background where the petition and the contents of the show cause notice was entirely different and Supreme Court had interfered with the show cause notice taking into consideration the fact that in the said show cause notice the action proposed was

also reflected in the show cause notice, whereas in the instant case no such terms have been used in the show cause notice and it is only in respect of alleged irregularities which has been committed by the petitioner. Subject to the petitioner submitting his reply the authorities are expected to proceed further in accordance with the rules and regulations without being under any sort of influence by this Court rejecting the present writ petition.

9. The writ petition thus fails and is accordingly rejected.

Sd/-

(P. Sam Koshy)
Judge

Rohit