

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4376 of 2019

M/s Bihar Construction And Asha Construction (JV) Having Office At Darri Road, Korba, Chhattisgarh, Through Its Lead Member M/s Bihar Construction Company At Darri Road, Korba, Chhattisgarh.-495677,

**---- Petitioner
Versus**

1. South Eastern Coalfields Limited Through Its Charimari Cum Managing Director At Seepat Road, Bilaspur, Chhattisgrah.
2. The General Manager (CMC) SECL Headquarters, Seepat Road, Bilaspur, Chhattisgarh.
3. The General Manager SECL Raigarh, Raigarh Area, Chhote Atarmuda, Raigarh, Chhattisgarh
4. Sub Area Manager SECL Jampali Sub Area, SECL Raigrh Area, Raigarh, Chhattisgarh
5. Central Mine Planning And Design Institute Through Its Chariman Cum Managing Director, Gondwana Place, Kanke Raod, Ranchi, Jharkand

---Respondents

For Petitioner	:	Shri Kshitij Sharma, Adv.
For Respondents	:	Shri Vaibhav Shukla, Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.12.2019

1. The challenge in the present writ petition is to the show-cause notice dated 29.08.2019. Vide the said show-cause notice, the respondents have called upon the petitioner to submit his explanation as to the stoppage of work abruptly by the Petitioner against the work order awarded to the petitioner for removal of overburden since August 2019 onwards.
2. From the Perusal of the records, it clearly reflects that the Petitioner was initially awarded a contract for removal of overburden. Vide the order dated 01.06.2017, the petitioner started working as awarded to

him but abruptly since 20.08.2019, the Petitioner had stopped his work with a intimation to the respondent. It is this stoppage of work by the petitioner which has been taken note by the respondents and the show-cause notice has been issued to the Petitioner calling for his explanation in respect of stoppage or work.

3. Another aspect which is apparently clear is that the work assigned to the petitioner was arising out of a contractual agreement entered into between the petitioner and the respondents, contractual agreements has its own terms and conditions.
4. It is settled position of law that the High Court in the exercise of writ jurisdiction would not entertain a petition at the show-cause notice stage. Whatever contentions and the submissions of the Petitioner which he intends to raise in the present writ petition are all his defence. The petitioner would be at liberty to apprise the respondent No. 4 by giving a reply to the show-cause notice. Show-cause notice in the instant writ petition was issued as early as 29.08.2019 that is almost more than 3 months have lapsed. It does not appear from the records that the Petitioner has tendered his reply to the show-cause notice to the respondents. If the Petitioner has his own justification for stoppage of work by him arising out of contractual agreement between parties, the petitioner should have apprised the authorities by way of a proper reply to the said show-cause notice and permitted the respondents to take a decision on the said show-cause notice proceedings drawn. It would be that order which the petitioner would be at liberty to question in a Court of law. As of now this Court is of the opinion that, the writ petition at the show-cause

notice stage that too without a reply of the petitioner being filed to the concerned authorities is premature to be entertained under writ jurisdiction.

5. Shri Vaibhav Shukla, appearing for the respondent/s submits that so far as the claim for payment against the running bills is concerned, the petitioner had already preferred a writ petition i.e. WPC No. 1284/2019 and the said writ petition was finally unconditionally withdrawn by the petitioner on 20.06.2019 without there being any liberty. This all the more strengthens the ground for this Court not to entertain the said relief put forth in the present writ petition.
6. 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.
7. 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,ordinariiy the High Court should not interfere in such a matter.”

8. 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.”

9. So far as the relief sought by the petitioner in paragraph 10.2 of the petition which is for payment for a direction to the respondents for releasing the payment in respect of running bills put forth by the Petitioner against the work executed by him, this Court is of the opinion that, the said relief of the petitioner would not be one which could be dealt by the High Court in exercise of its writ jurisdiction. That from the submission that the petitioner has made there appears, some dispute between parties so far as some excess payment being made to the petitioner against the previous running bill as compared to the work that he has executed.
10. Given the said fact as there is a dispute in respect of payment between the parties the dispute could only be resolved after verification of the facts and records by the parties which again would

be outside the purview of the writ Court. For this reason, the said relief of the petitioner would not be sustainable in the present writ petition. So far as show-cause notice proceedings is concerned subject to the petitioner filing a detailed reply, the authorities shall take a decision on the same in accordance with law.

11. The observation made by this court for compliance would be required only in the event, respondents have not taken a final decision on the show-cause notice or against the claim of the petitioner for releasing of the payment against the running bills.

12. Accordingly, the writ petition stands dismissed.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha