

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4431 of 2019

1. Kavita Sharma, W/o Shri Neeraj Sharma, Aged About 34 Years, Vice President, Nagar Panchayat, Gharghoda, R/o Sharma Chowk, Gharghoda, District : Raigarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan Mantralaya, New Raipur, Atal Nagar, District : Raipur, Chhattisgarh
2. Joint Director, Urban Administration And Development Bilaspur, District : Bilaspur, Chhattisgarh
3. Collector, Raigarh, District : Raigarh, Chhattisgarh
4. Chief Municipal Officer, Nagar Panchayat, Gharghoda Gharghoda, District : Raigarh, Chhattisgarh

---Respondent

For Petitioner	:	Mr. Ashutosh Mishra, Advocate
For State	:	Mr. Ayaz Naved, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05.12.2019

1. The challenge in the present Writ Petition is to the orders dated Annexure P-1 and P-2 dated 13.09.2019 and 18.10.2019, whereby the respondents have forwarded the copy of the enquiry report dated 14.06.2019 to the petitioner.
2. The facts of the case is that the petitioner was the wife of the current president of Nagar Panchayat-Gharghoda, District : Bilaspur. The

petitioner was elected as a councillor on 04.01.2015 and later on elected as vice-president of the said Nagar Panchayat-Gharghoda. In the course of discharge of her duties, certain complaints were received against her in-respect-of committing certain irregularities in the course of certain purchases being made and also in-respect-of granting some contract work to the firm of the husband of the petitioner, namely, Neeraj Sharma.

3. On receipt of the said complaints, the respondents have decided to conduct an enquiry against the petitioner and for the purpose of conducting an enquiry, the Joint Director at the regional office, Bilaspur was entrusted. The said Joint Director vide his/her order dated 14.06.2019 has submitted an enquiry report wherein some of the complaints levelled against the petitioner was said to have been proved and established. Based upon the enquiry report dated 14.06.2019, the petitioner was issued with a show-cause notice by the State authorities under the provisions of Section 31 (1) and Section 31 (A)(1) of the Chhattisgarh Nagar Palika Abhiniyam, 1961. It is this show-cause notice and also the enquiry report dated 14.06.2019, which are under challenge in the present writ petition.
4. A plain perusal of record would show that the enquiry report was submitted by the Joint Director on 14.06.2019. In the enquiry report, he/she has given finding of facts, based upon the records available in the office of the respondents and the authorities concerned thereafter have proceeded further by issuing notice to the petitioner calling-upon the petitioner's explanation in-respect-of the enquiry report and the allegations levelled against her.

5. At the outset, the contention of the counsel for the petitioner assailing the show-cause notice is that, all the findings given by the enquiry officer is baseless and without properly verifying the factual matrix of the case from the records.
6. The counsel for the petitioner even submitted that the allegations of the petitioner showing favour of the husband by issuance of contract also is without any basis inasmuch as the petitioner has never given any contract to the petitioner's husband while she was a councillor and that the petitioner's husband is neither associated to the firm to which the contract belongs nor does the firm belong to the petitioner's husband and therefore the finding of the enquiry officer is factually incorrect.
7. It is further the contention of the counsel for the petitioner that neither has the petitioner been called-upon during the course of enquiry to submit any explanation or provide any defence in-respect-of the allegations /complaints levelled against her. It was the further contention of the counsel for the petitioner that even the date on which it is alleged that the petitioner has released payments in favour of her husband is incorrect as when the payments were made to the petitioner's husband, she was in-fact not a councillor and, therefore, she cannot be blamed for any alleged irregularity or illegality.
8. All the contentions and submissions raised are in-fact finding of facts. The order under challenge primarily is to the show cause notice dated 13.09.2019, the petitioner ought to have given a

detailed reply to the respondents' show cause notice categorically bringing out the contention that the petitioner intends to bring vide the present writ petition.

9. During the course of argument, the counsel for the petitioner submits that the petitioner in-fact subsequently has filed a detailed reply on 07.11.2019, which is not a part of the records of the present writ petition, neither has it been pleaded by the petitioner in the present writ petition.
10. Given the said facts, that the petitioner has already submitted a detailed reply to the Show-Cause Notice, this Court is of the opinion that the writ petition at this juncture is pre-mature as the authorities concerned are yet to take a decision on the reply of the petitioner that she has submitted to the show-cause notice dated 13.09.2019. The law so far as interference of the Supreme Court at the stage of issuance of show-cause notice/charge-sheet is by now well settled.
11. The High Court in exercise of its powers under Article 226 of the Constitution of India would not substitute itself as a fact finding body to ascertain the correctness in-respect-of the allegations made neither can this Court in exercise of writ jurisdiction conduct a roving enquiry against the allegations which have been levelled against the petitioner.
12. 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 interfered with the show cause notice.

13. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. v. Prabhask Chandra Mirdha [2012 11 SCC 565] in paragraph 8, 10 & 12 has held as under:-

“8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon.

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.

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed

at an initial stage as it would be a premature stage to deal with the issues.”

14. Keeping in view the aforesaid legal pronouncements as is laid down by the Hon'ble Supreme Court and also taking into consideration the fact that the petitioner has also submitted a detailed reply to the show-cause notice, the authorities are yet to take a decision on the show-cause notice. The present writ petition in its present form would not be sustainable. The authorities concerned are expected to take a decision objectively, considering all the submissions that the petitioner has made in the reply to the Show-Cause Notice .
15. With the aforesaid observations, the Writ Petition stands disposed-off.

**Sd/-
(P. Sam Koshy)
Judge**