

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP(C) No. 1465 of 2020**

1. M/s Industrial Appliances And Technologies Through Its Proprietor Mr. Gautam Gupta, S/o Late Bipul Chandra Gupta, Aged About 62 Years, Having Its Office At Madhurima House, 83 And 84, Chanditala, Main Road, Kolkata - 700053.

---- Petitioner**Versus**

1. South Eastern Coalfields Limited Through The Chairman Cum Managing Director, Secl, Seepat Road, District Bilaspur Chhattisgarh.
2. The General Manager (Mm)/ Hod Secl, Seepat Road, District Bilaspur Chhattisgarh.
3. The Chief General Manager Safety And Rescue Department (Internal Safety Organization) Secl, Seepat Road District Bilaspur Chhattisgarh
4. The General Manager (Finance) Secl, Seepat Road District Bilaspur Chhattisgarh
5. The General Manager (Rescue) Mines Rescue Station, Amakherwa, Post Office Manendragarh, District Korba Chhattisgarh. 497442.

----Respondents

For Petitioner	:	Mr. Prasun Kumar Bhaduri, Advocate.
For Respondent/s	:	Mr. Vivek Chopda, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/08/2020**

1. Challenge in the present writ petition is to the show cause notice (Annexure P/1A) dated 15.06.2020 issued by the respondents.
2. The relevant facts for adjudication of the present dispute in the present writ petition is that the petitioner is carrying on the business of supply of rescue equipments in the mining industry. The petitioner is an importer of Self Contained Breathing Apparatus (in short 'SCBA') and he has a long standing agreement with one of the companies in Ukraine. The petitioner had participated in a tender proceedings initiated by the respondents for the supply of the aforesaid SCBA to the respondents. The supply order was passed by the respondents, upon the petitioner being found eligible on 21.08.2015 (Annexure P/10). Pursuant to the

supply order being received by the petitioner, it is said that the petitioner has supplied 27 numbers P.30 Self Contained Breathing Apparatus (referred as 'SCBA'). According to the petitioner, on 18.12.2015 Annexure P/12 he was issued with a letter of commissioning and a satisfactory report of commissioning of these 27 equipments. However soon thereafter the respondents started complaining amount the product not being up to the satisfaction or was not as per specification and the respondents were also finding it difficult to operate.

3. Thereafter, the respondents had on 24.05.2019 issued a letter to the respondents asking them to replace the 27 numbers SCBA by providing the products in-terms of the supply order issued on 21.08.2015. It was also intimated to the respondents that in case, if they fail to replace the defective materials within two weeks, they should refund the entire amount paid by the respondents to the petitioner towards the sale consideration of the 27 items along with interest which works out to be Rs. 1,50,53,806.17/-, and the respondents had also vide the same correspondence ordered that in the event if the petitioners fail to refund the aforesaid amount, penal action for suspension/banning of business shall be initiated.
4. This order dated 24.05.2019 was put to challenge by the petitioner in a writ petition that was registered as WP(C) No. 436 of 2020. The respondents in the said case on entering appearance had taken time to file their response. Meanwhile, it is said that the petitioner has refunded the aforesaid amount of Rs. 1,50,53,806.17/- by way of a demand draft, which according to the respondents, they have also received and have encashed the same.
5. Meanwhile, now the impugned show cause notice Annexure P/1A has been passed on 15.06.2020. Vide the aforesaid show cause notice, the respondents have called for the explanation of the petitioner as to why

penal action as per the purchase manual applicable in the respondents establishment be not issued. The response was to be given by the petitioner within 21 days, failing which it would be presumed that the petitioner has nothing to state and defend. In addition, the respondent had also as a precautionary measure suspended the entire business dealing with the petitioner for an initial period of six months pending enquiry/investigation contemplated pursuant to the show cause notice Annexure P/1A dated 15.06.2020. It is this show-cause notice which is under challenge in the present writ petition.

6. Today when the matter is taken up for hearing, it is almost two months from the date the show-cause notice was issued, though the writ petition was filed earlier but because of the Lock Down situation, the matter could not be taken up for hearing in between.
7. During the course of hearing, it has been informed by the Counsel for the petitioner that till now they have not responded to the show-cause notice which is under challenge in the present writ petition.
8. The contention of the petitioner was that it would be a futile exercise in submitting the response to the show-cause notice as the respondents are pre-determined to punish the petitioner and also banned the business dealing with the petitioner. According to the petitioner submitting the reply to the respondent and approaching them would be going from Ceaser to Ceaser's wife.
9. What is necessary at this juncture to be seen is that the nature of product supplied by the petitioner was one of a safety equipments which is issued in the mining activities for mine workers working in the underground mines of the respondents. Being a life safety equipment it has to be ensured that the product which is purchased for the safety of the mine workers has to be in accordance with the specification and standards prescribed for the same. There can be no doubt on the fact

that there cannot be any compromise made on the safety equipments which are life safety products used by the miners. Though there is a correspondence by the respondents on 18.12.2015 ascertaining the supply and the commissioning of the said products but it seems that deficiencies of the product work were detected at a later stage. It was at that stage that the respondents had made a correspondence with the petitioner on 24.05.2019 asking the petitioner to either replace the product or refund the amount paid by the respondents to the petitioner towards sale consideration of the aforesaid SCBA. For reason best known the petitioner availed the second option of refunding the entire sale consideration amount and paid the respondents the entire amount of Rs. 1,50,53,806.17/- which includes interest, by way of a demand draft.

10. Thereafter, now the show-cause notice has been issued by the respondents and the response has been called from the petitioner as to why penal action should not be taken against them. Meanwhile, the business dealing with the petitioner have also been suspended pending enquiry/investigation on the show-cause notice issued.
11. Prima facie, the action on the part of the respondents in refunding the entire sale consideration with interest to the respondents forces this Court to infer an admission on their part that the product supplied was either inferior, sub standard or defective.
12. Under the said circumstances, if the respondents have issued with a show-cause notice, this Court is of the view that interference to the said show-cause notice at this stage would be too premature. The petitioner has been called to give an explanation to the same. As per the contention of the petitioner, though about two months have passed, the respondent has still not responded to the show-cause notice. The fact that though almost two months have lapsed, if the respondents have not

taken a decision on the show-cause notice, it is also to be inferred that the respondents don't seem to be proceeding in a hasty manner, vindictive in their approach towards the petitioner.

13. The law so far as interference in a writ petition under Article 226 at the show-cause notice stage is well settled by now. Starting from the judgment of the Hon'ble Supreme Court in the case of *State of U.P. v. Brahm Datt Sharma & Anr.* (1987 2 SCC 179) so also in the case *Special Director & Anr. v. Mohd. Ghulam Ghoush* (2004 3 SCC 440), *Union of India & Anr. v. Kunisetty Satyanarayana* (2006 12 SCC 28).
14. The Supreme court in the case of **State of U.P. 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.
15. 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 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 summarized 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 initiate stage as it would be a premature stage to deal with the issues.”

16. Keeping in view the aforesaid legal pronouncements as is laid down by the Hon'ble Supreme Court 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 may make in their reply to the Show-Cause Notice if filed.
17. It has been reiterated time and again by the Hon'ble Supreme Court that the Court in exercise of its powers under Article 226 of the Constitution of India should be slow in interfering with a show-cause notice. It has been reiterated by the Supreme Court many a time that show-cause notice is not an action which could be assailable as pursuant to the reply which the petitioner may give there is also the possibility of the respondents dropping the penal action initiated, if the petitioner is able to provide satisfactory explanation as regards the quality of the product or banning of business part is concerned.
18. This temporary banning of business again in the opinion of this Court is not one which needs interference at this juncture for the reason that admittedly the product supplied by the petitioner are safety equipments and if the penal proceedings initiated through the show-cause notice is for an act of supply of inferior, sub standard or defective supply being made. The respondents are justifiable in temporarily suspending the business dealing with the petitioner pending the enquiry/investigation contemplated pursuant to the show-cause notice under challenge in the present writ petition. It can not be presumed that on one hand the enquiry/investigation is permitted to go and at the same time, the

petitioner is permitted to continue to make or supply the same product to the respondents, which has been found to be either defective or sub standard by the respondents, which led to the initiation of the show-cause notice. The issuance of show-cause notice has not been questioned on the ground of competency of the respondents or jurisdiction of the authorities.

19. Under the said circumstances, this Court finds it difficult to entertain the writ petition at the show-cause stage at this juncture, reserving the right of the petitioner to approach the authorities by responding to the show-cause notice and any action if detrimental to the petitioner thereafter the petitioner can still challenge the same.
20. In view of the same, keeping in view the principles laid down by the Hon'ble Supreme Court referred to in the preceding paragraphs, this Court does not find any merit in the writ petition challenging the show-cause notice and the same is liable to be dismissed, it is ordered accordingly.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha