

AD-42
Ct No.16
23.12.2024
TN

FMAT 485 of 2024
IA No: CAN 1 of 2024

Asim Kumar Samanta
Vs.
Institute for Steel Development and
Growth (INSDAG) and others

Ms. Arunima Lala,
Ms. Ankita Singh

....for the appellant

Mr. Shiv Shankar Banerjee,
Mr. Soumon Nanda,
Mr. Nilarnab Paul

....for the respondent nos.1, 2 & 3

1. The present appeal has been preferred against the refusal of an ad-interim injunction in a suit challenging primarily a show-cause notice issued by the respondents on November 01, 2024. In view of short questions of fact and law being involved, the appeal is admitted and taken up for hearing.
2. Learned counsel for the appellant contends that the appellant has been victimized, particularly since the appellant had raised questions regarding the authority of respondent no.3, the current Director General and Disciplinary Authority of the respondent no.1/Institute, to issue the impugned show-cause notices.
3. In the first stage of litigation, the appellant had challenged the imposition of major penalty by demoting the appellant on the premise of a purported disciplinary action against the appellant by filing a

suit, in which initially ad-interim injunction was refused by the trial court. Upon an appeal having been preferred, an ad-interim order restraining the respondents from taking any coercive action against the appellant on the basis of the show-cause notice dated January 05, 2024, which was the genesis of the first suit, was passed by the appellate court.

4. Subsequently, allegedly as a vindictive backlash against the appellant, the respondents withdrew the job designation of the appellant and, as such, the appellant is at present working in the respondent no.1/Institute without any appropriate designation and is being paid at the rate of the demoted rank.
5. It is submitted that a second suit was filed challenging the authority and appointment of the respondent no.3, that is, the Director General and Disciplinary Authority currently functioning in the respondent no.1/Institute.
6. However, in the said suit as well, the plaintiff/appellant failed to obtain any ad-interim order of injunction.
7. As a vendetta was taken up against the appellant by the respondents, in particular, respondent no.3, a further show-cause notice was issued on November 01, 2024, to which a reply has been given by the appellant. The said notice is the subject-matter of the present and third suit. Without

considering the contents of the said reply, it is alleged, a charge-sheet was framed on November 28, 2024.

8. Learned counsel for the appellant takes the court through the said charge-sheet dated November 28, 2024 which, in the form of a memorandum of charges, refers to imposition of the provisions of the major penalties of the respondent no.1's Conduct, Discipline and Appeal Rules, 2022.
9. The very act of referring to the major penalties by bypassing the minor penalty provisions in the show cause notice itself, it is argued, is an indicator of the vindictive attitude of the respondents. The same, it is argued, shows that the respondents have already formed a preconceived notion as to the guilt of the appellant at the show cause stage even before giving him an opportunity of hearing.
10. It is, thus, submitted that unless a limited protection is given to the appellant, the appellant apprehends that his services would be terminated, since it is the only major penalty which is left to be inflicted upon the appellant.
11. It is further contended that in view of the pending challenge to the very authority of the respondent no.3 to initiate such show-cause notice and subsequently frame the charge-sheet, the respondent no.3 would

be in a position of a “judge, jury and executioner” in his own cause.

12. It is also contended that since the challenge to the authority of the Director General is *sub judice* before a competent civil court, further proceedings with regard to the penal action proposed against the appellant on the strength of the impugned show-cause notice dated November 01, 2024 ought to be stayed.
13. Learned counsel appearing for the respondents controverts the very challenge made in the suit from which the present appeal emanates. It is contended, by taking the court through the reply of the appellant to the impugned show-cause notice, that not a single specific allegation levelled in the show-cause notice has been met specifically in the said reply.
14. It is pointed out that the allegations in the purported reply to the show-cause notice are all repetitions of the allegations made by the appellant against the respondent no.3 in the previous suits, which have met with refusals to ad-interim prayers of injunction at every stage by the appellant. Although an order was passed by the Division Bench in connection with one of the appeals challenging the previous show-cause notice regarding no coercive action being taken in terms thereof, the present suit has arisen in connection with a subsequent cause of action, being

the show-cause notice dated November 01, 2024, where specific and pin-pointed allegations have been objectively made against the appellant on subsequent causes of action. However, in the reply, such allegations have not been answered at all.

15. Hence, it is argued that there cannot be any present apprehension of any vindictive action against the appellant, since the charge-sheet formulates the specific grounds on which enquiry has been proposed against the appellant.
16. Upon hearing learned counsel for the parties and perusing the materials on record, we find that the restraint order passed by the coordinate Bench in a previous matter against the respondents from taking any coercive action was restricted to the previous show-cause notice dated January 05, 2024.
17. The present impugned show-cause notice dated November 01, 2024 is on subsequent cause of action arising out of alleged breach of duty by the appellant with regard to the certain further deadlines/projects assigned to the appellant.
18. There is *prima facie* substance in the contention of the respondents that the reply to the show-cause notice rather reflects a victim-mentality more than an objective reply to the specific allegations made in the show-cause notice.

19. The argument that the respondents have formed a preconceived notion as to the guilt of the appellant is not justified in our view. In paragraph no.5 of the Memorandum of Charges dated November 28, 2024, although a reference has been made to the provisions of the Major Penalties of the Conduct, Discipline and Appeal Rules, 2022 of the respondent no.1-institute, the same has to be read in proper perspective. It is stated in the said paragraph that if the appellant does not appear in person before the Inquiry Authority or otherwise fails or refuses to comply with the provisions of the said Rules, or the orders/directions issued in pursuance of the same, the Inquiring Authority may hold the enquiry against him *ex parte*.
20. Thus, the appellant has not been deprived as yet of an opportunity of hearing; as such, it cannot be said that the principle of *audi alteram partem* has yet been violated by the respondents.
21. The reference to the major penalty rules might or might not be justified but it would be premature at this juncture to say that the respondents have wreaked vengeance against the appellant on the basis of such rules. Even otherwise, since the appellant has already suffered a major penalty by demotion from his previous rank, it is not entirely unjustified, at least *prima facie*, for the respondents

to refer to the major penalty rules for the purpose of issuing show-cause. Also, it might very well be that in view of the nature of the allegations made against the appellant, it is the major penalties which can now be invoked by the respondents.

22. However, all the above are merely in the realm of conjecture at this point of time, since no coercive action has been taken or enquiry has yet been concluded against the appellant.
23. Thus, in our opinion, it would be premature to admit the appeal or interfere with the learned Trial Judge's order, refusing ad interim order, at this stage. However, we make it amply clear that we have not entered into the merits of the matter at all and it will be open to the learned Trial Judge, while deciding any of the three pending suits or the connected interlocutory applications at further stages, to decide all questions independently and in accordance with law without being influenced in any manner unduly by any of our observations made above.
24. Accordingly, FMAT 485 of 2024 and consequentially CAN 1 of 2024 are dismissed without interfering with the impugned order. However, it is expected that the learned Trial Judge shall make all endeavour to dispose of the injunction application as expeditiously as possible, positively within February 15, 2025. To ensure such expeditious hearing, the respondents

shall positively file their written objection to the injunction application in the court below by January 10, 2025. Reply, if any, shall be filed thereto by January 17, 2025.

25. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)