

Court No. - 3

Case :- WRIT - C No. - 31059 of 2023

Petitioner :- Ramlala

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shailesh Kumar Pathak

Counsel for Respondent :- C.S.C

Hon'ble Siddhartha Varma,J.

Hon'ble Shekhar B. Saraf,J.

1. Heard learned counsel for petitioner and learned Chief Standing Counsel for the State.
2. On 31.05.2022, the District Magistrate, Sonebhadra, based on some inspection report, issued a show cause notice as to why the petitioner may not be punished for having excavated over Plot No.824 Kha. The petitioner replied to the said notice and submitted that he had a lease of mining work with regard to Plot No.421 Ga area 0.506 hectare and he also submitted that the petitioner was continuing with the mining work on the aforesaid plot alone. However, when final order dated 20.6.2022 was passed, it dealt with illegal mining over Plot No.421 Kha, which was definitely not the subject matter of the show cause notice dated 31.05.2022.
3. Learned counsel for the petitioner states that since the show cause notice was with regard to Plot No.824 Kha, the order ought to have been dealt with illegal mining over Plot No.824 Kha and no other plot. He has relied upon a judgment of Supreme Court rendered in the case of **State of Punjab v. Davinder Pal Singh Bhullar and others; 2011 (14) SCC 770** and submitted that if the show cause notice is defective then the consequential proceedings cannot stand. He further submits that if the show cause notice was with regard to some other plot and the punishment is being imposed with regard to some other plot then it would be deemed that the authority, which had issued the show cause notice, was not clear

of the subject matter and, therefore, when there is no clarity in the show cause notice itself, the authority which has passed the impugned order could not have passed the same with regard to some other plot. Learned counsel for the petitioner also states that when final order mentioned some other plot and the show cause notice mentioned some other plot then the entire proceedings were null and void.

4. Learned Chief Standing Counsel Sri Sandeep Kumar Singh, however, submits that the order impugned was passed with regard to Plot No.421 Kha and during the proceedings the petitioner had participated and given explanation, therefore, there was no error in the order impugned and this Court may not interfere with the same.

5. Learned counsel for the petitioner relied upon the judgment of Supreme Court in **Davinder Pal Singh Bhullar's case (supra)** to buttress his arguments in relation to the above submissions. He placed reliance on paragraph Nos.107 to 110 of the said judgment, which are extracted as under:

“107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In *Badrinath v. State of Tamil Nadue & Ors.*, AIR 2000 SC 3243; and *State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr.*, (2001) 10 SCC 191, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in *Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors.*, (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110. In *C. Albert Morris v. K. Chandrasekaran & Ors.*, (2006) 1 SCC 228, this Court held that a right in law exists only and only when it has a lawful origin.

(See also: *Upen Chandra Gogoi v. State of Assam & Ors.*, (1998) 3 SCC 381; *Satchidananda Misra v. State of Orissa & Ors.*, (2004) 8 SCC 599; *Regional Manager, SBI v. Rakesh Kumar Tewari*, (2006) 1 SCC 530; and *Ritesh Tewari & Anr. v. State of U.P. & Ors.*, AIR 2010 SC 3823).”

6. It may further be noted that the Supreme Court in a catena of judgments has held that the grounds, upon which the action is to be taken against a person, are required to be mentioned in the show cause notice. In ***Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd.***, (2006) 7 SCC 592, the Supreme Court has held as under:

“16. Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the Revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither the adjudicating authority nor the Appellate Authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show-cause notice as well. The Department cannot travel beyond the show-cause notice. Even in the grounds of appeals these points have not been taken.”

7. Furthermore, in **Commissioner of Central Excise, Bhubaneswar v. Champdany Industries Ltd., (2009) 9 SCC 466**, the Supreme Court has held as under:

“38. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case is made out in the show-cause notice, the Revenue cannot in Court argue a case not made out in its show-cause notice. (See *Commr. of Customs v. Toyo Engg. India Ltd.* [(2006) 7 SCC 592]) Similar view was expressed by this Court in *CCE v. Ballarpur Industries Ltd.* [(2007) 8 SCC 89] In para 27 of the said Report, learned Judges made it clear that if there is no invocation of the Rules concerned in the show-cause notice, it would not be open to the Commissioner to invoke the said Rules.”

8. Finally, one may take further recourse to the judgment of the Supreme Court in **Commissioner of Central Excise, Chandigarh v. Shital International, (2011) 1 SCC 109**. Relevant paragraph of the said judgment is delineated below:

“19. As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee. (See *Commr. of Customs v. Toyo Engg. India Ltd.* [(2006) 7 SCC 592] , *CCE v. Ballarpur Industries Ltd.* [(2007) 8 SCC 89] and *CCE v. Champdany Industries Ltd.* [(2009) 9 SCC 466]) Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show-cause notice dated 22-6-2001 relating to Assessment Years 1988-1989 to 2000-2001. However, in the show-cause notice dated 12-12-2000, the process of electrifying polish finds

a brief mention. Therefore, in the light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show-cause notice nor can it be allowed to take contradictory stands in relation to the same assessee.”

9. The principle that emerges from the above judgements is patently clear that a show cause notice is required to provide details of the nature of the offence and the grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalise the noticee on grounds that were not stated in the show cause notice.

10. The rationale for not allowing the respondents from going beyond the realm of the show cause notice is that the petitioner has to be given a chance to put up his case with regard to the said show cause notice. In the event, a particular case is made out in the show cause notice and the order passed subsequently is beyond the said show cause notice, the same would amount to violation of the principles of natural justice, as the petitioner would not have been aware of the new grounds or new factual elements and could never have placed his case for the above before the authority concerned. It is in this background that the Supreme Court in umpteen judgments has laid down the law that an order passed by an authority cannot go beyond the scope of the show cause notice. In fact, the Supreme Court in the case of **The Board of High School and Intermediate Education, U.P. and Others v. Kumari Chitra Srivastava and Others; 1970 (1) SCC 121** has categorically stated that the principles of *audi alteram partem* are required to be followed even if the same is burdensome in nature. Justice S.M. Sikri in his inimitable style stated as follows:

“Principles of natural justice are to some minds burdensome but this price – a small price indeed – has to be paid if we desire a society governed by the rule of law.”

11. Having heard learned counsel for the parties, we find that in the show cause notice dated 31.5.2022, the District Magistrate, Sonebhadra had directed the petitioner to show cause with regard to the illegal mining over Plot No.824 Kha but when the order impugned was passed we find that it is with regard to Plot No.421Kha. We also find that the plot, which was mentioned in the show cause notice, had no bearing with the order impugned in the instant writ petition. In the light of above, it is crystal clear that not only is show cause notice badly drafted and incomplete but also the order passed subsequently is inherently misconceived going way beyond the show cause notice issued. Ergo, show cause notice dated 31.05.2022 and the order dated 20.6.2022 are quashed and set aside.

12. Needless to mention, it shall be open to the District Magistrate, Sonebhadra to initiate the proceedings afresh in accordance with law.

13. With these observations, the writ petition is allowed.

Order Date :- 21.11.2023

Kuldeep