HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Writ Petition No. 2046/2018

Sanjay Malveeya & others …..... PETITIONERS

Versus

State of Madhya Pradesh & others …..... RESPONDENTS

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Appearance:

Shri Amitabha Gupta, Advocate for the petitioners.

Shri Sanjay Dwivedi, Deputy Advocate General for the respondents/State.

Whether Approved for Reporting : **Yes**

Law Laid Down:

- A show cause notice can be challenged in a writ petition only if it has been issued without jurisdiction or that the Authority competent to issue notice could not have issued such a notice. In the absence of any allegation of lack of jurisdiction, it is for the petitioners to submit reply as they may consider appropriate to enable the competent Authority to take a decision but we do not find that the petitioners can be permitted to challenge the show cause notice in writ petition without submitting the reply.

Judgments followed**:**

(2006) 12 SCC 33 (*Siemens Ltd. vs. State of Maharashtra and others*)

(2004) 3 SCC 440 (*Special Director and another vs. Mohd. Ghulam Ghouse and another*)

(1987) 2 SCC 179 (*State of Uttar Pradesh vs. Brahm Datt Sharma and another*);

Significant Paragraph Nos.: 5 to 9

Reserved on : 29.01.2018

O R D E R
(01-02-2018)

Per : Hemant Gupta, Chief Justice:

The challenge in the present petition is to a show cause notice dated 06.01.2018 (Annexure P-4) whereby the petitioners have been called upon to submit their explanation in respect of use of unfair means in Police Constable Recruitment Test-2012 (for short "the PCRT-2012"). The petitioners were called upon to reply to such show cause notice on or before 23.01.2018.

2. The petitioners were selected in PCRT-2012 conducted by the M.P. Professional Examination Board (for short "the Board"). Initially, the selection of 34 candidates was cancelled vide order dated 26.05.2014 (Annexure P-4) inter alia on the ground that illegalities in the said examination have led to registration of Crime No.18/2013 by Special Task Force, Bhopal. The order is based upon a communication received from the Deputy Superintendent of Police, Special Task Force, Bhopal (M.P.) that OMR answer-sheets of 34 candidates were examined by the State Examiner of Questioned Documents, Police Headquarter, Bhopal. As per the report, the answer-sheets have been found to have marked in different inks. Therefore, in terms of Clause 2.12 of the Instructions for Police Constable Recruitment Test-2012, the cases of use of unfair means were found to be proved and the candidature of all the 34 candidates was cancelled. The said cancellation was challenged before this Court by filing number of writ petitions. The decision of the Board was quashed but was given liberty to

proceed on its own merits. The relevant extract from the order passed on 10.11.2014 in W.P. No.10133/2014 (Rakesh Gurjar and others vs. State of M.P. and others) and other writ petitions read as under:-

> "In all these matters, the petitioners are challenging the decision of VYAPAM, who cancelled examination results of the respective petitioners.
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> It is noticed that that action was taken by VYAPAM merely on the basis of intimation received from Special Task Force (STF) about the unfair means committed by the concerned petitioners during the subject examinations. Admittedly, no independent enquiry was conducted by VYAPAM or for that matter opportunity was given to the petitioners.
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> The argument of the respondents that no opportunity was necessary and other contentions raised on behalf of the petitioners have already been considered by the Division Bench of this Court in the case of **Shishuvendra Singh Tomar vs. State of Madhya Pradesh and others**, in Writ Petition No.9690/2014 and companion cases, decided on 24th September, 2014. For the same reasons, even these petitions ought to succeed and deserve to be disposed of on the same terms as noted in the above said decision. In that, VYAPAM will be at liberty to commence independent enquiry on the basis of information received from the Investigating Agency (Special Task Force) and to proceed against the concerned petitioners and similarly placed persons on the basis of view formed by it in the proposed enquiry. The enquiry to be resorted by VYAPAM must proceed on its own merits and in accordance with law. All questions in that behalf are left open.
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> Accordingly, impugned decision of VYAPAM in the respective petitions is **quashed** and **set aside** with liberty to VYAPAM as aforesaid."

It is, thereafter, the impugned show cause notices have been served upon the petitioners.

3. The argument of the learned counsel for the petitioners is that the show cause notice does not give any reason as to why the candidature of the

petitioners is liable to be cancelled and that, in fact, the show cause notice appears to be a formality as the Board has already formed an opinion that the candidates are guilty of adopting unfair means. In support of the argument that the show cause notice itself is not tenable, the learned counsel for the petitioners relies upon an order of the Supreme Court reported as **(2008) 12 SCC 73 (Raymond Woollen Mills Limited** (now known as Raymond Limited) **and another** vs. **Director General (Investigation and Registration) and another** and **(2010) 11 SCC 278 (Indu Bhushan Dwivedi vs. State of Jharkhand and another)** as well as a Division Bench order of this Court rendered in **W.P. No.3983/2013** (**Arun Sharma vs. State of M.P. and others**) and other writ petitions decided on 01.12.2014. The argument is that in absence of the material, which was directed to be given by this Court, the petitioners cannot submit any reply to the show cause notice, therefore, the show cause notice itself is illegal. It is also argued that out of 403253 candidates appeared in the said examination, but the shortlisting of 34 candidates alone seems to be an act of arbitrariness and without any reasonable basis.

4. We have heard learned counsel for the petitioners and find no merit in the present petition.

5. In the case of **Raymond Woollen Mills** (**supra**), the Supreme Court was seized of a matter where, after the show cause notice, reply was filed and the Competent Authority passed an order under the Monopolies and Restrictive Trade Practices Act, 1969. That is not a case wherein the show cause notice was interfered with for the reason that the same is

arbitrary or illegal. In **Indu Bhushan Dwivedi**'s case **(supra**), again it was not the show cause notice, which was interfered with but the final decision taken in pursuance to the show cause notice in which the delinquent submitted his reply. Even that is not a case where the show cause notice was interfered with soon after the same was issued. Even in **Arun Sharma**'s case (**supra**) the petitioners were served with the show cause notice whereby the petitioners were directed to submit their photographs annexed by them along with the on-line application forms submitted for appearing in the Premedical Test Examination. The writ-petitioners denied that they are not in possession of the photographs. Thereafter, the impugned order of cancellation of admission was passed. Again that is not a case where this Court interfered with the show cause notice wherein the direction was issued for production of the photographs.

6. On the other hand, the Supreme Court in a judgment reported as **(1987) 2 SCC 179 (State of Uttar Pradesh vs. Brahm Datt Sharma and another**) has held that when a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the Authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice has been issued palpably without any authority of law. The relevant extract of the said judgment reads as under:-

> "**9**. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily

> the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice."

7. In another judgment reported as (**2004) 3 SCC 440** (**Special Director and another vs. Mohd. Ghulam Ghouse and another**), the Supreme Court has deprecated the practice of the High Court in entertaining the writ petitions questioning the legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. The relevant extract from the said decision is reproduced as under:-

> "**5**. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could

> approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection, granted."

8. The principle laid down in the aforesaid two judgments rendered by the Supreme Court in **Brahm Datt Sharma** (**supra**) and **Mohd. Ghulam Ghouse (supra**) was reiterated by the Supreme Court in its later judgment reported as **(2006) 12 SCC 33 (Siemens Ltd. vs. State of Maharashtra and others**) wherein it was held as under:-

> "**9**. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCC 28*], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See *K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686*]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

9. There is no allegation that the notice has been issued without jurisdiction or that the Authority competent to issue notice could not have issued such a notice. In fact, the notice has been issued in terms of the

liberty granted by this Court in its order passed on 10.11.2014 in **W.P. No.10133/2014 (supra**). This Court has set aside the candidature of 34 candidates including the petitioners were found to have indulged in use of unfair means as the order of cancellation of the result passed on 26.05.2014 was not preceded by any show cause notice. It is well settled that any adverse order could be passed only after complying with the principles of natural justice. Therefore, this Court directed the Board to issue show cause notice. Such show cause notice now issued, has to be read in continuation of the earlier order of cancellation of candidature passed on 26.05.2014 that the petitioners have used different pens for answering the multiple choice questions. It is for the petitioners to submit reply as they may consider appropriate to enable the competent Authority to take a decision but we do not find that the petitioners can be permitted to challenge the show cause notice in writ petition without submitting the reply.

10. The argument that action is being taken only against 34 candidates as against more than four lac candidates who appeared in the examination seems to be an act of arbitrariness, is again untenable. In fact, the fact that action has been taken only against 34 candidates shows that the Board is not acting arbitrarily but must be on positive evidence against such candidates. Therefore, we do not find that there is any arbitrariness in shortlisting of 34 candidates.

11. Another argument of the learned counsel for the petitioners that the department has already held the petitioners guilty of use of unfair means is again not tenable. Para-3 of the show cause notice has to be read in its

entirety, which is to the effect that as per the facts on record the petitioners are guilty of use of unfair means; therefore, examination result can be cancelled. Therefore, the decision that the petitioners have been found guilty of use of unfair means is a tentative decision, which may result into cancellation of result. Thus, it is not a decision to cancel the candidature but only to elucidate response from the petitioners to enable the competent Authority to take a final decision as to whether admission of the petitioners is liable to be cancelled or not.

12. We do not find any merit in the present writ petition and consequently, the same is **dismissed**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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