THE HIGH COURT OF MADHYA PRADESH
WP No.3719/2016
Balbir Singh Rawat vs. The Hindustan Petroleum Corporation Ltd. & Ors.

Gwalior, Dated :18/02/2020

Shri M.P.S. Raghuvanshi, Counsel for the petitioner.

Shri Harish Kumar Dixit, Counsel for the respondent No.2.

Shri Vivek Jain, Counsel for the respondent No.3.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

> (i) That, the respondents be directed to produce the entire selection procedure/records of selection for award of RO dealership at "Amrol" (advertisement dt. 10.10.2014 at serial no.251) and accordingly the decision to cancel the candidature of the petitioner be set aside with a direction to open the financial bid envelop of the petitioner and to act there upon by grant of contract in favour of the petitioner.
> (ii) That, the LOI and agreement in question in relation to RO dealership at Amrol, issued in favour of respondent no.3 be also quashed.
> (iii) That, the other relief doing justice including cost be awarded.

2. It is submitted by the counsel for the petitioner that an advertisement was issued by the respondents to award retail outlet dealership at "Amrol" within 2 Kms. from Government school towards Gwalior under open category. It is submitted that the petitioner has been declared disqualified because on the envelop "financial bid" was neither typed nor written in handwriting but a slip was stapled. This Court by order dated 6.9.2016 had issued

notices and an interim order was passed directing the parties to maintain status quo as it was prevailing on the said date.

3. A preliminary objection has been raised by the counsel for the respondents that under the guidelines there is a Grievance Redressal Cell and the petitioner has not availed the departmental remedy available to him.

4. Heard the learned counsel for the parties.

5. As per the guidelines for selection of dealers for regular and rural retail outlets, Grievance Redressal Cell has been provided. Clause 18 of the guidelines read as under:-

> **"18. GRIEVANCE REDRESSAL SYSTEM**
>
> Any complaint should be accompanied by a fee of Rs.5000/-, only in the form of demand draft of schedule bank, in favour of the Oil Company. Any complaint received without this fee will not be entertained. The complaint received against the selection including eligibility will be disposed off as under :-
>
> (i) Complaints received before or after draw of lots/bidding process along with requisite fee of Rs. 5000/-, will be kept in record and investigation carried out after 30 days of Draw of Lots/bidding process only in following cases :-
>
> * General complaints with verifiable facts
> * Complaints against selected candidate
>
> (ii) Any complaint received after 30 days from the date of draw of lots/bidding process will not be entertained.
>
> (iii) Anonymous complaints without verifiable facts will not be investigated.

(iv) On receipt of a complaint a letter will be sent by the oil company to the complainant through Registered Post, asking him to submit details of allegation with a view to prima facie substantiate the allegations along with supporting documents, if any, within 20 days from date of dispatch of letter. While seeking documents and details, the complainant will be advised that if during the investigations, complaint is found to be false and/or without substance, the Oil Company reserves the right to take action against the complainant as provided under the law and fee forfeited.

(v) In case a complaint is received against an applicant, who has not been selected in draw of lots/bidding process, the same will be kept in abeyance. In case the LOI against selected candidate is cancelled and the applicant against whom the complaint was received gets selected in the next draw or on account of bidding process, the complaint will only then be investigated.

(vi) If the complaint is not required to be investigated the fee received will be refunded to the complainant informing that the complaint has been made has not been selected. The fee will be refunded after issuance of LOA to the selected candidate.

(vii) In case complaint is received without the requisite fee of Rs. 5000/-, or received after 30 days of declaration of results, the complaint would not be entertained and complainant would be advised reasons for the same.

(viii) Corporation will examine response of the complainant and if it is found that the complaint does not have specific and verifiable allegations, the same will be filed and complaint fee will be forfeited. Complainant will be advised accordingly.

(ix) If a decision is taken to investigate the complaint, decision on the complaint will be taken as under and intimated to the complainant:-

> **a) Complainants not substantiated:**
>
> In case the complaint is not substantiated it will be filed and complaint fee will be forfeited. Complainant will be advised accordingly.
>
> **b) Established Complaints:**
>
> In case of established complaint, the complainant will be advised accordingly and suitable action should be taken. In this case the complaint fee collected of Rs. 5000/- will be refunded.
>
> (x) In all cases, disposal of complaint should be in the form of speaking order."

Admittedly, the petitioner has not approached the Grievance Redressal Cell and has filed this petition directly before this Court.

6. The next question for consideration is that once the show cause notice was issued by this Court, then whether the petition filed by the petitioner can be dismissed on the ground of availability of alternative remedy.

7. The question is no more *res integra*.

8. The Supreme Court in the case of **Genpact India Private Limited vs. Deputy Commissioner of Income Tax & Anr. by order dated 22.11.2019 passed in Civil Appeal No.8945/2019** has held as under:-

> 15. We now turn to the question whether the High Court was justified in refusing to entertain the writ petition because of availability of adequate appellate remedy. The law on the point is very clear and was summarised in **Commissioner**

of Income Tax and others v. Chhabil Dass Agarwal as under:-

"**11.** Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh, Titaghur Paper Mills Co. Ltd. v. State of Orissa, Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and State of H.P. v. Gujarat Ambuja Cement Ltd.)

12. The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission , Sangram Singh v. Election Tribunal , Union of India v. T.R. Varma , State of U.P. v. Mohd. Nooh and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in

extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [*See N.T. Veluswami Thevar v. G. Raja Nainar, Municipal Council, Khurai v. Kamal Kumar, Siliguri Municipality v. Amalendu Das , S.T. Muthusami v. K. Natarajan , Rajasthan SRTC v. Krishna Kant , Kerala SEB v. Kurien E. Kalathil, A. Venkatasubbiah Naidu v. S. Chellappan , L.L. Sudhakar Reddy v. State of A.P., Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra, Pratap Singh v. State of Haryana and GKN Driveshafts (India) Ltd. v. ITO.*]

…

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for

redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

Recently, in ***Authorised Officer, State Bank of Travancore & Anr. v. Mathew K.C.***, the principles laid down in ***Chhabil Dass Agarwal*** were reiterated as under:

> "The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal …"

16. We do not, therefore, find any infirmity in the approach adopted by the High Court in refusing to entertain the Writ Petition. The submission that once the threshold was crossed despite the preliminary objection being raised, the High Court ought not to have considered the issue regarding alternate remedy, may not be correct. The first order dated 25.01.2017 passed by the High Court did record the preliminary objection but was prima facie of the view that the transactions defined in Section 115QA were initially confined only to those covered by Section 77A of the Companies Act. Therefore, without rejecting the preliminary objection, notice was issued in the matter. The subsequent order undoubtedly made the earlier interim order absolute. However, the preliminary objection having not been dealt with and disposed of, the matter was still at large.

In ***State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others*** this Court dealt with an issue whether after admission, the Writ Petition could not be dismissed on the ground of alternate remedy. The submission was

considered by this Court as under:

"**38.** With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case, AIR p. 331)

"2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed."

(emphasis supplied)

Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in

> view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner.

9. Thus it is clear that even if the petition has been admitted but still it can be dismissed on the ground of alternative remedy. Accordingly, it is directed that in case if the petitioner approaches the Grievance Redressal Cell within a period of 15 days from today, then his objection shall be decided on merits without considering the question of limitation as this petition is pending before the Court from the year 2016. Further, this Court by order dated 9.6.2016 had passed an interim order, accordingly, it is directed that if the complaint is filed within a period of 15 days from today, then the interim order dated 9.6.2016 passed by this Court shall remain in force till the filing of the complaint and in case if an application for stay is moved, then it shall be decided by the authorities strictly in accordance with law without getting influenced by the interim order passed by this Court.

10. With aforesaid liberty, the petition is **dismissed.**

(G.S. Ahluwalia)
(alok) **Judge**