

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6002/2013 and C.M.Nos.13222-25/2013

% Reserved on : 24th September, 2013
Date of decision : 30th September, 2013

R.P. KHOSLA & ANR. Petitioners
Through : Petitioner no.2 in person.

versus

HON'BLE COMPANY LAW BOARD&ORS ..Respondents
Through : None.

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

J.R. Midha, J.

1. The petitioners have challenged the order dated 16th September, 2013 passed by the Company Law Board in Company Petition No.110(ND)13.
2. Respondents No.5 to 7 filed the Company Petition No.110(ND)13 which was listed for hearing before the Company Law Board on 12th September, 2013 at 2.30 PM. The petitioners are not parties in that petition.
3. The petitioners, who had filed a caveat and applications for impleadment/intervention before the Company Law Board on 9th September, 2013, mentioned the matter before the Member (Judicial) of Company Law Board on 12th

September, 2013 at 10.30 AM when it was observed that the caveators were not entitled to advance copy of the petition as they have not been arrayed as respondents. With respect to the intervention application filed by the petitioners, it was observed that if the Bench was satisfied of the requirement of supply of the copy to the caveators, after hearing the submissions of the parties, the petitioners therein would be directed to serve the copy of the petition to the caveators and they would be heard before passing any orders in the company petition.

4. The petitioners challenged the order dated 12th September, 2013 before this Court in writ petition bearing W.P.(C) No.5889/2013, which was listed before DB-V on 16th September, 2013 when it was adjourned to 10th October, 2013. The first prayer made in the said petition is that the order dated 12th September, 2013 passed by the Company Law Board be declared as nullity.
5. On 16th September, 2013, the Member (Judicial) of Company Law Board heard the arguments of the petitioners therein and listed the matter for arguments of the respondents therein for 25th September, 2013 and, in the meantime, directed the *status quo* to be maintained with respect to the shareholding, board pattern and right of call option.

6. According to the petitioners, the order dated 16th September, 2013 passed by the Member (Judicial) amounts to review of the order dated 12th September, 2013 because neither the copy of the petition was served nor the petitioners were heard before passing the order dated 16th September, 2013. It is submitted that the Company Law Board has no power to review its own order and, therefore, the order dated 16th September, 2013 is a nullity.
7. In the order dated 12th September, 2013, the Company Law Board had observed that the petitioners would be directed to be served the copy of the petition and would be heard, if the Bench was satisfied about the requirement of supply of copy to the petitioners after hearing the submissions of the parties. Since the hearing of the submissions of the parties did not conclude on 16th September, 2013, the Company Law Board does not appear to have reviewed its order dated 12th September, 2013.
8. The petitioners have impleaded the Company Law Board and the Member (Judicial) of the Company Law Board as respondents No.1 and 2, which is not permissible in law. The petitioners have also sent the advance copy of the petition to them by email. Such a practice has been strongly deprecated by the Supreme Court in *Savitri Devi v. District Judge, Gorakhpur*, (1999) 2 SCC 577. The Supreme Court held that impleading the judicial officers as contesting

respondent amount to unnecessary disturbance to the functions of the judicial officers concerned. The observation made by the Supreme Court are reproduced hereunder:-

“14. Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. **There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.**”

(Emphasis supplied)

9. In *Fakeerappa v. Karnataka Cement Pipe Factory*, (2004) 2 SCC 473, the Supreme Court held that impleadment of the High Court of Karnataka and Supreme Court by the

petitioner was held to be gross abuse of process of law. The Supreme Court held as under:

“10. Before we part with the case we think it necessary to point out a somewhat shocking state of affairs which came to our notice. **In the claim petition filed before the Tribunal, this Court and the High Court of Karnataka, Bangalore were impleaded as respondents for no sensible reason, and in gross abuse of process of law, though by hindsight the absurdity seems to have been set right by ordering deletion.** Though these parties were given up during adjudication, it is clear that the claim petition was filed without any application of mind by the counsel concerned as to who would be proper or necessary party or even a formal party and great sense of responsibility is expected to be exhibited by those concerned. At least while impleading a party in a claim petition, proper attention ought to be devoted which sadly was not done.”

(Emphasis supplied)

10. Same view was taken by the Division Bench of this Court in *Union Public Service Commission v. Shiv Shambu*, 2008 IX AD (Del) 289 and Single Bench of this Court in *Sat Prakash Rana v. The Lieutenant Governor of Delhi*, AIR 2010 Del 100 and *R.K. Saxena v. Ravinder Balwani*, (2010) 174 DLT 203. In *Union Public Service Commission* (supra), the Division Bench also noted that this Court has repeatedly issued practice directions that the judicial or quasi-judicial body or tribunal, whose order is under challenge, should not be impleaded as a party respondent.

11. During the course of hearing, the judgment of *Savitri Devi* (supra) was specifically pointed out to Petitioner No.2 who insisted that he has rightly impleaded the Company Law Board and Member (Judicial) as respondents No.1 and 2 and he referred to *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 49, *C. Ravinchandaran Iyer v. Justice A.M. Bhattacharjee*, (1995) 5 SCC 457 and *P.L. Lakhanpal v. A.N. Ray*, ILR (1974) 1 Delhi 725 in support of his contention.
12. The submission of petitioner no.2 is misconceived and unsustainable. In *Pepsi Foods* (supra) relied upon by the petitioner, the Supreme Court struck down the name of Special Judicial Magistrate, whose order was under challenge, from the array of the parties. In *P.L Lakhanpal* (supra), the writ challenged the appointment of the Chief Justice of India and in *C. Ravichandran Iyer* (supra), the allegations were made against the Chief Justice of Bombay High Court and therefore, they were impleaded as the respondents. However, impleadment of a judicial officer, whose order/judgment is under challenge, was not an issue in both the cases.
13. This Court is of the view that the impleadment of the Company Law Board and Members (Judicial) of Company Law Board, whose order is under challenge, as contesting respondents amounts to gross abuse and misuse of process of

law by the petitioners . This issue is squarely covered by the judgments of the Supreme Court in *Savitri Devi (supra)* and *Fakeerappa (supra)* and of this Court in *Union Public Service Commission (supra)*, *Sat Prakash Rana (supra)*, *R.K. Saxena (supra)*. The writ petition is therefore not maintainable in the present form.

14. Section 10F of the Companies Act, 1956 provides an equally efficacious remedy of an appeal against every order of Company Law Board. Petitioner No.2 submits that the remedy of appeal under Section 10F of the Companies Act is not efficacious because in the event of being unsuccessful in the appeal, there is no further statutory appeal before the Division Bench whereas against the order in this writ petition, the petitioners have remedy of Letters Patent Appeal before the Division Bench of this Court. There is no merit whatsoever in this contention as the order under Section 10F of the Companies Act is appealable before the Division Bench of this Court. However, it may be added that even assuming there was no appeal against the order passed in appeal under Section 10F that would not by itself make the remedy of appeal under Section 10F as non-efficacious. The point to be considered by this Court is whether the remedy of appeal is efficacious. Non availability of further statutory appeal would not make the appeal non-efficacious.

15. Petitioner No.2 further submits that the remedy of appeal does not bar the writ jurisdiction of this Court. Petitioner No.2 further submits that since the impugned order is a nullity, it can be challenged in any proceedings and he referred to the judgments of *Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340; *Hasham Abbas Sayyad v. Usman Abbas Sayyad*, AIR 2007 SC 1077; *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221; and *Parmod Bagga v. State*, 2007 (98) DRJ 208.
16. It is well settled that under Article 226 of the Constitution, the powers of the High Court are very wide. Although existence of alternative remedy does not bar the writ jurisdiction, writ Court can exercise its discretion to decline to interfere under Article 226 where there is alternative remedy. The High Court has imposed on itself certain restrictions one of which is that if an efficacious remedy is available, the High Court would not normally exercise its writ jurisdiction. Rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. The judgments referred to by the petitioner mentioned above do not lay down that the writ jurisdiction should be exercised even when an equally efficacious remedy of appeal is available to the petitioner.
17. In *Nivedita Sharma v. Cellular Operators Association of India*, (2011) 15 SCC 337, the orders passed by the State

Consumer Disputes Redressal Commission were challenged by writ petition before this Court on the ground that the orders were passed without jurisdiction and *ex facie* beyond the scope of Consumer Protection Act, 1986. The writ petition was allowed by the Division Bench of this Court which was challenged before the Supreme Court on the ground that the writ petition should not have been entertained as a statutory remedy of appeal was available under Section 19 of the Consumer Protection Act. The Supreme Court after examining the plethora of case law on this point held that the High Court should not have entertained the writ petition under Articles 226 and 227 of the Constitution. The relevant portion of the said judgment is reproduced hereunder:

“1...The question which requires consideration in this appeal is: whether the Division Bench of the Delhi High Court was justified in entertaining the writ petitions filed by Respondent 1 and others against the order dated 26-12-2006 passed by the State Consumer Disputes Redressal Commission (for short “the State Commission”) ignoring that the statutory remedy of appeal was available to them under Section 19 of the Consumer Protection Act, 1986 (for short “the 1986 Act”)?”

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8. Shri Sanjeev Anand, learned counsel for the appellant argued that even though the exercise of power by the High Courts under Articles 226 and 227 of the Constitution is not hedged with any limitation/constraint, the Division Bench of the Delhi High Court committed serious error by entertaining the writ petition ignoring

that the 1986 Act is a code unto itself and the remedy of appeal available against an order passed by the State Commission is an equally efficacious alternative remedy.

9. Shri C.S. Vaidyanathan, learned Senior Counsel appearing for Respondent 1 and Shri R.S. Suri, learned Senior Counsel appearing for pro forma Respondent 4 argued that even though their clients could have availed the remedy of appeal under Section 19 of the 1986 Act, the Division Bench of the High Court did not commit any error by entertaining the petitions filed under Articles 226 and 227 of the Constitution because the directions given by the State Commission were ex facie beyond the scope of the 1986 Act. In support of this argument, Shri Vaidyanathan relied upon the judgments of this Court in *East India Commercial Co. Ltd. v. Collector of Customs* [AIR 1962 SC 1893 : (1963) 3 SCR 338], *State of W.B. v. North Adjai Coal Co. Ltd.* [(1971) 1 SCC 309], *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] and *Popcorn Entertainment v. City Industrial Development Corpn.* [(2007) 9 SCC 593]

10. Shri Vaidyanathan also submitted that the State Commission should have exercised restraint and deferred the hearing of the complaint because the writ petitions filed by the respondents questioning its jurisdiction to pass the order dated 27-9-2006 were pending before the High Court.

11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation—*L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577]. However, it is one

thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, **it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.**

12. In *Thansingh Nathmal v. Supdt. of Taxes* [AIR 1964 SC 1419] this Court adverted to the **rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person** and observed: (AIR p. 1423, para 7)

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* [1935 AC 532 (PC)] and *Secy. of State v. Mask and Co.* [(1939-40) 67 IA 222 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

14. In *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is

concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.”

15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556], it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, **the proposition laid down in Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] 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.”**

(Emphasis supplied)

18. On careful consideration of the contentions raised by the petitioners, this Court is of the view that the remedy of appeal under Section 10F is equally efficacious and therefore, the exercise of writ jurisdiction is not warranted in

this case. This Court therefore declines to exercise writ jurisdiction in this case.

19. There is no merit whatsoever in this writ petition. For all the aforesaid reasons, the writ petition as well as the applications are dismissed.
20. Copy of this order be sent to the Company Law Board. The petitioners are also directed to produce copy of this order before the Company Law Board on the next date of hearing fixed in the matter.
21. Copy of this order be sent to the Registrar (Filing) who shall issue appropriate instructions to ensure strict compliance of the judgments of Supreme Court in *Savitri Devi (supra)* and *Fakeerappa (supra)* and of this Court in *Union Public Service Commission (supra)*, *Sat Prakash Rana (supra)*, *R.K. Saxena (supra)*; and no matter be listed before the Court unless the name of the judicial officer or body, whose order or judgment is under challenge, is removed from the array of the parties.
22. Dasti under signatures of the Court Master.

J.R. MIDHA, J.

SEPTEMBER 30, 2013

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