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

Reserved on: 19.11.2013
% Date of Decision: 21.11.2013

\+ WP(C) No.8698 of 2011

G.K. GRANITES ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

TATA HITACHI CONSTRUCTION
MACHINERY COMPANY LIMITED & ORS. ..... Respondents
Through: Mr. Dileep Poolakkot, Adv.

\+ WP(C) No.8713 of 2011

G.K. GRANITES ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

TATA HITACHI CONSTRUCTION
MACHINERY COMPANY LIMITED & ORS. ..... Respondents
Through: Mr. Dileep Poolakkot, Adv.

\+ WP(C) No.8714 of 2011

VICNIVAAS AGENCY ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

MMTC LIMITED ..... Respondent
Through: Mr. Manish Sharma, Adv.

+ WP(C) No.8715 of 2011

G.K. GRANITES ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

TATA HITACHI CONSTRUCTION
MACHINERY COMPANY LIMITED & ORS. ..... Respondents
Through: Mr. Dileep Poolakkot, Adv.

+ WP(C) No.8716 of 2011

G.K. GRANITES ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

TATA HITACHI CONSTRUCTION
MACHINERY COMPANY LIMITED & ORS. ..... Respondents
Through: Mr. Dileep Poolakkot, Adv.

+ WP(C) No.8717 of 2011

G.K. GRANITES ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

TATA HITACHI CONSTRUCTION
MACHINERY COMPANY LIMITED & ORS. ..... Respondents
Through: Mr. Dileep Poolakkot, Adv.

+ WP(C) No.8750 of 2011

VICNIVAAS AGENCY ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

FOOD CORPORATION OF INDIA ..... Respondent
Through: Mr. Ajit Puduserry &
Mr. M. Chandra Sekhar, Advs.

+ WP(C) No.8753 of 2011

CROSS LAND MARKETING (2000) PTE. LTD. ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

THE FOOD CORPORATION OF INDIA & ORS. ..... Respondents
Through: Mr. Ajit Puduserry &
Mr. M. Chandra Sekhar, Advs. for FCI.
Mr. Manish Sharma, Adv. for MMTC.

+ WP(C) No.569 of 2012

APOORVA AGENCIES ..... Petitioner
Through: Mr. P. Sureshan, Adv.

*Versus*

FOOD CORPORATION OF INDIA & ANR. ..... Respondents
Through: Mr. Ajit Puduserry &
Mr. M. Chandra Sekhar, Advs. for FCI.
Mr. Manish Sharma, Adv. for MMTC.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGEMENT

V.K.JAIN, J.

The petitioners before this Court filed separate applications under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the 'MRTP Act'), seeking compensation on the ground that they had suffered loss and damage as a result of the monopolistic, restrictive or unfair trade practice carried out by the concerned respondent. A preliminary objection was taken by the respondents in the said case that such applications were not maintainable, in the absence of separate proceedings to prove the alleged monopolistic restrictive or unfair trade practices. Relying upon the judgement of the Supreme Court in Saurabh Prakash Vs. DLF Universal Ltd. (2007) 1 SCC 228 the Competition Appellate Tribunal, Delhi held that in the absence of separate proceedings alleging unfair, monopolistic or restrictive trade practice, an application for compensation under Section 12B of the MRTP Act was not maintainable. Being aggrieved from the said order of the Competition Appellate Tribunal, the petitioners are before this Court by way of separate writ petitions.

2. The respondents have contended as a preliminary objection that since an appeal to the Supreme Court is provided against an order passed by the Competition Appellate Tribunal, a writ petition under Article 226/227 of the Constitution of India is not an appropriate remedy.

3. Section 66 of the Competition Act, which came into force on 1.9.2009, to the extent it is relevant for these writ petitions, reads as under:

> "**66. Repeal and saving.** – (1) The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section(1) of section 5 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved:
>
> (1A)The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) shall, however, not affect,-
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> …. …. …. …. ….
>
> (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or
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> …. …. …. …. ….
>
> (d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.]
>
> [*Explanation.* – For the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses or damages under section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as it stood before its repeal.]
>
> …. …. …. …. ….
>
> "(3)All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such cases, in which any unfair trade practice has also been alleged), before the Monopolies and Restrictive Trade Practices Commission shall, [on the commencement of the Competition (Amendment) Act, 2009], stand transferred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the

provisions of the repealed Act as if that Act had not been repealed.]

[*Explanation*. – For the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses or damages under section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as it stood before its repeal.]

…. …. …. …. ….

[(5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act,]"

4. The MRTP Act did not provide for an appeal against the order passed by the MRTP Commission on an application under Section 12B of the said Act. However, Section 53T of the Competition Act, provides for an appeal to the Supreme Court against an order passed by the Competition Appellate Tribunal and reads as under:

"**53T. Appeal to Supreme Court**.- The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them:"

The contention of the petitioners is that since the petitions pending before the MRTP Commission which were transferred to the Competition Appellate Tribunal in terms of Section 66 of the Competition Act are required to be adjudicated in accordance with the

provisions of the repealed Act, i.e., the MRTP Act, and not in accordance with the provisions of the Competition Act, 2002, they do not have a right to challenge the impugned order by way of an appeal in terms of Section 53T of the Competition Act. The contention of the learned counsel for the petitioners is that the rights and obligations of the parties including the right to file an appeal, if any, get crystallized on the date the original petition is filed and since in the cases before this Court, the petitions under Section 12B were filed under the MRTP Act, the Competition Act came into force much later and no appeal against an order under Section 12B of the Act was provided in the MRTP Act, the right of appeal to the Supreme Court is not available to them. *Per contra* the learned counsel for the respondents contended that though the right to appeal is a substantive right to be conferred by a statute, such a right can certainly be conferred under the provisions of the repealing Act, even if it is not available under the repealed Act. In other words, the contention of the learned counsel for the respondents is that though a substantive right which accrued to a person under the repealed Act cannot be taken away there is no legal bar on conferring an additional right such as right to file an appeal, by making an appropriate provision in this regard in the repealing Act.

5. I find merit in the contention of the learned counsel for the respondents. It is by now a settled legal proposition that the right to file an appeal, created by statute is a substantive right which remains unaffected by the subsequent changes in law, unless taken away expressly or by necessary application, though the mechanism for enforcement of such a right being procedural in nature can be changed even retrospectively. However, the legislature, while repealing an Act,

in my view is certainly competent to confer an additional right by providing for an appeal to an appropriate forum. A party to the lis is not in any manner prejudicially affected on such an additional right being granted to him while repealing an enactment.

6. A careful perusal of Section 53T of the Competition Act would show that an appeal to the Supreme Court is provided against 'any order passed by the Appellate Tribunal' meaning thereby that the remedy is available against every order of the said Tribunal irrespective of whether the order is passed under the provisions of the Competition Act or under the provisions of the MRTP Act, 1969. Had the legislative intent been to grant right of appeal only against the orders passed under the provisions of the Competition Act, Section 53T would have been framed in a different manner by providing for an appeal only against an order passed by the Appellate Tribunal under the provisions of the said Act. No such restriction, however, finds place in Section 53T of the Act.

7. I find some support for the view being taken by me from the decision of the Supreme Court in Nathoo Lal Vs. Durga Prasad AIR 1954 SC 355. In the aforesaid case, a decree came to be passed by the High Court of former Jaipur State on 3.3.1949, concerning a suit for possession of property. The defendant applied for review of the said judgement. In the meanwhile the Jaipur High Court became defunct and review was heard by the Rajasthan High Court as successor to the Jaipur High Court and was partially allowed on 5.4.1950. An appeal against the said judgement and decree came to be preferred by leave of the Rajasthan High Court under Article 133(1)(c) of the Constitution. When the appeal came up for hearing the learned counsel for the respondents raised a preliminary objection as to the maintainability of

the appeal. He contended that according to the Code of Civil Procedure of the Jaipur State, the decision of the Jaipur High Court had become final as no appeal lay from it and, therefore, the appeal before the Supreme Court was incompetent. The contention, however, was rejected by the Apex Court noticing that the order under appeal was passed by the Rajasthan High Court after coming into force the Constitution of India and, therefore, the provisions of Article 133 were attracted to it and it was appealable to the Apex Court subject to fulfillment of other requirements of the said Article. It was further held that the Code of Civil Procedure of the Jaipur State could not determine the jurisdiction of the Apex Court and had no relevance to the maintainability of the appeal. Thus, despite the fact that no appeal against the order passed by the Jaipur High Court was available at the time lis before the said High Court was instituted, the Apex Court, considering that the order impugned before it had been passed after coming into force of the Constitution, upheld the right of appeal conferred under Article 133 of the Constitution.

In the case before this Court also the impugned orders came to be passed by the Competition Appellate Tribunal much after the MRTP Act had been repealed and the Competition Act had been notified. Therefore, despite the fact that the original application was filed under the provisions of Section 12B of the MRTP Act and in view of the provisions contained in Section 66 of the Competition Act as also Section 6 of the General Clauses Act, the said petitions had to be decided in terms of the provisions of the MRTP Act, an appeal against the order passed by the Competition Appellate Tribunal, after coming into force of the Competition Act would be maintainable.

8. The appeal under Section 53T of the Competition Act is provided against any decision or order of the Competition Appellate Tribunal irrespective of whether such decision or order be interlocutory, intermediate or final though the orders impunged in their petitions are final orders. Therefore, the appropriate remedy for the petitioners would be to file an appeal in terms of the aforesaid provisions of the Competition Act. It is settled legal proposition that the High Court in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution will not be justified in intervening in the matter, when an equally efficacious alternative remedy is available to the petitioners before the Court. The remedy of appeal is, in fact, more efficacious than the remedy by way of a writ petition under Articles 226/227 of the Constitution and there is no reason why the petitioners should not avail the said remedy.

In ***Titaghur Paper Mills Co Ltd vs. State of Orissa*** *(1983) 2 SCC 433*, a Three-Judges Bench of the Supreme Court, noticing that under the provisions of Central Sales Tax Act, 1956, the petitioners had right to prefer an appeal before the prescribed authority under sub-section (1) of Section 23 and in case dissatisfied with the decision in the appeal, a further appeal under sub-section (3) of the said Section, held that since the Act provided for a complete machinery to challenge an order of assessment, it could be challenged only by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. In this regard, the Court reiterated 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. The aforesaid view was reiterated in ***Assistant Collector of Central Excise, West Bengal vs.***

***Dunlop India Limited and Others*** (*1985) 1 SCC 260* holding that Article 226 is not meant to short-circuit or circumvent the statutory procedure. It is only where statutory remedies are entirely ill-suited to meet the demands of the extraordinary situations, for instance, where the very vires of the statute in question or vindication of public justice is required, that recourse may be had to Article 226 of the Constitution.

In ***Punjab National Bank v. O.C. Krishnan and Ors*** *(2001) 6 SCC 569*, Supreme Court declined to entertain a petition under Article 226 of the Constitution, noticing that the order passed by the Tribunal was appealable under Section 20 of the Recovery of Debut Due to Banks and Financial Institutions Act, 1993.

In a recent decision in ***GM, Sri Siddeshwara Co-operative Bank Ltd. And Anr. Vs. Sri Ikbal and Ors.*** *2013(10) SCALE 396*, Supreme Court, noticing that against the action of the bank under Section 13(4) of the SARFAESI Act, the borrower had a remedy of appeal to the Debt Recovery Tribunal and also noticing that the borrower did not avail of that remedy and further remedies from that order and approached the High Court in extraordinary jurisdiction under Article 226 of the Constitution, set aside the order of the learned Single Judge and Division Bench of the High Court, interfering in exercise of writ jurisdiction of the Court.

9. For the reasons stated hereinabove the writ petitions are hereby dismissed.

November 21, 2013 V.K. JAIN, J.

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