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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) No. 1319/2010

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11th December , 2014

ADARSH GRAMODHYOG SAMITI

.....Petitioner

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Sunil Kumar and Ms. Aastha
Dhawan, Advocate.

VERSUS

**KHADI & VILLAGE INDUSTRIES COMMISSION THROUGH ITS STATE
DIRECTOR AND ORS.**

..... Respondents

Through: Mr. J.M. Sabharwal, Senior Advocate
with Mr. G.K. Srivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition is filed under Article 227 of the Constitution of
India and the heading of the petition reads as under:-

**“PETITION UNDER ARTICLE 227 OF THE CONSTITUTION
OF INDIA CHALLENGING THE REPORT DATED 1.9.2010
OF THE ONE MAN TRIBUNAL CONSTITUTED BY THE
MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISE
VIDE NOTIFICATION NO.S.O. 1399 (E) DATED 9TH JUNE
2010.”**

2. The reliefs which are claimed in this writ petition are as under:-

“On the facts mentioned and premise set forth hereinabove, it is most respectfully prayed that this Hon’ble Court may be gracious enough to:

i. requisition the complete record of the Respondents KVIC pertaining to the Khadi Institutions, which took part in the implementation of the aforesaid Pilot Scheme-3; Liberalized MDA Scheme including all records pertaining to the release of Market Development Assistant to different Khadi Institutions including Khadi Gramodhyog Bhawans; and

ii. set aside the impugned report dated 1.9.2009 of the Ld. One Man Tribunal constituted by the Ministry of Micro Small and Medium Enterprises vide Notification No.S.O. 1399(E) dated 9th June 2010; and

iii. direct the Respondent KVIC to return an amount of Rs.21,77,836/- (Rupees Twenty One Lacs Seventy Seven Thousand Eight Hundred Thirty Six only), which has been already recovered by the Respondent KVIC on 26.8.2009 (Rs.6,78,922/-) and on 17.11.2009 (Rs.14,99,914/-) against the statutory provisions as a recovery from the MDA grant already released to the Petitioner Society by the Respondent KVIC.

iv. direct the Respondent KVIC not to recover any amount which had been released by the Respondents against the MDA claims of the Petitioner Society during its participation in the Pilot Scheme No.3; Liberalized MDA Scheme for the period 1.7.2006 to 31.3.2008; and

v. pass any other order(s) or direction(s), which this Hon’ble Court may deem fit and proper in the circumstances of the case and in the interest of justice and equity.”

3. Essentially therefore the writ petition seeks setting aside of the report of One Man Tribunal dated 1.9.2010. I may note that the One Man Tribunal was appointed because of the order dated 16.3.2010 passed by the learned Single Judge of this Court in W.P.(C) No.13332/2009 titled as *C.M.(M) No.1319/2010*

Adarsh Gramodhyog Samiti Vs. State Director KVIC and Ors. i.e a writ petition between the parties with respect to the same disputes. This order in W.P.(C) No.13332/2009 dated 16.3.2010 reads as under:-

“1. One of the issues in the present case concerns the Marketing Development Assistance (‘MDA’) granted to the Petitioner by the Khadi Village Industries Commission (‘KVIC’) for the retail sales made by it for the years 2006-2007 and 2007-2008.

2. In an audit conducted by the KVIC, it was detected that the Petitioner had claimed MDA and had been paid MDA for the aforementioned period in relation to approved tenders (AT) Sales made by it to the Khadi Bhavans to the tune of around Rs.1.36 crores. The KVIC now seeks to recover from the Petitioner the alleged excess sum of Rs.27,30,989.67/- for the year ending 2006-2007 and Rs.26.38 lacs for 2007-2008.

3. This Court, while directing issuance of notice in the writ petition, restrained the Respondents from taking coercive steps to recover the aforementioned amounts from the Petitioner.

4. Learned counsel appearing for the Union of India points out that in terms of the Section 19B (1) of the Khadi and Village Industries Commission Act, 1956 (KVIC Act) where any sum is payable to the KVIC under any agreement, express or implied, or otherwise it can be recovered “in the same manner as an arrear of land revenue”. However, where there is a dispute raised whether such sum is payable to the KVIC then in terms of the Section 19B (2) of the said Act, the dispute should be referred to a Tribunal to be constituted by the Central Government, which Tribunal shall then give its decision thereon. It is pointed out by the learned counsel for the Union of India that the present dispute raised by the Petitioner is covered under Section

19B (2) and a Tribunal can be constituted by the Central Government, if so directed.

5. Section 19B of the Act reads as under:-

“Section 19B- Recovery of monies due to the Commission as arrears of land-revenue:- (1) Any sum payable to the Commission under any agreement, express or implied, or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is payable to the Commission within the meaning of sub-section (1), it shall be referred to a Tribunal constituted by the Central Government for the purposes which shall, after making such inquiry as it may deem fit and after giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Tribunal shall be final and shall not be called in question by any court or other authority.

(3) The Tribunal shall consist of one person who is not connected with the Commission or with the person by whom the sum is alleged to be payable.

(4) The expenses of the Tribunal shall be borne by the Commission.”

6. It is rightly pointed out by the learned counsel for the Union of India that the dispute raised by the Petitioner as regards the demand made by the KVIC against it for refund of the aforementioned sum of MDA for the years 2006-2007 and 2007-2008 is covered under Section 19B (2) of the Act.

7. It is accordingly directed that, in terms of Section 19B (2), the Central Government will treat the dispute raised by the Petitioner as a dispute within the meaning of Section 19B of the Act and constitute a Tribunal within a period of four weeks from today in terms of the said provision. The expenses of the Tribunal will, in terms of the Section 19B (4), borne by the KVIC. The parties will appear before the Tribunal on the date to be notified by it and make their respective submissions including the filing of documents and pleadings.

After hearing the parties, the Tribunal shall give a decision on the dispute within a period of three months from the date of its constitution.

8. Till such time the Tribunal gives its decision in the matter, the Respondents will not take any coercive steps against the Petitioner. After the decision of the Tribunal, it will be open to the Petitioner or the KVIC as the case may be to seek such other appropriate remedies as are available to them in accordance with law.

9. It is made clear that this Court has not expressed any opinion whatsoever on the merits of the contentions of the parties since that is to be decided by the Tribunal in the first instance.

10. The writ petition is disposed of in the above terms.

11. Order Dasti.”

4. After the report was given by the One Man Tribunal, and which is the report dated 1.9.2010, petitioner herein filed W.P.(C) No.6538/2010 titled as ***Adarsh Gramodhyog Samiti Vs. Khadi and Village Industries Commission and Ors.*** challenging the report dated 1.9.2010, and which writ petition was dismissed by a learned Single Judge of this Court observing in the dismissal order that there are disputed questions of fact which cannot be decided in a writ petition under Article 226 of the Constitution of India and therefore petitioner must seek such other appropriate remedies as are

available to the petitioner. This order dated 27.9.2010 of the learned Single Judge dismissing W.P.(C) no.6538/2010 reads as under:-

“CM APPL No. 12937/2010 (for exemption)

Exemption allowed subject to all just exceptions.

The application is disposed of.

WP (Civil) 6538/2010 and CM APPL No. 12936/2010

1. Learned counsel for the parties have been heard and the documents on record have been perused. This Court is of the view that the contentions raised in the petition, and the contents of the impugned report dated 1st September 2009 of the Tribunal constituted by the Ministry of Micro, Small and Medium Enterprises give rise to disputed questions of fact which are not amenable to adjudication in a writ petition under Article 226 of the Constitution. Reserving to the Petitioner the right to seek other appropriate remedies as are available to the Petitioner in law, the petition and the pending application are dismissed.”

5. In this earlier writ petition being W.P.(C) no.6538/2010 the prayers which were made were as under:-

“On the facts mentioned and premise set forth hereinabove, it is most respectfully prayed that this Hon’ble Court may be pleased to:

1. Requisition the complete record of the Respondents KVIC pertaining to the Khadi Institutions, which took part in the implementation of the aforesaid Pilot Scheme-3; Liberalized MDA Scheme including all records pertaining to the release of Market

Development Assistant to different Khadi Institutions including Khadi Gramodhyog Bhawans; and

2. Issue a writ order or directions in the nature of writ of Certiorari setting aside the impugned report dated 1.9.2009 of the Ld. One Man Tribunal constituted by the Ministry of Micro Small and Medium Enterprises vide Notification No.S.O. 1399 (E) dated 9th June 2010; and

3. Issue a writ order or direction in the nature of writ of mandamus directing the Respondents KVIC not to recover any amount which had been released by the Respondents against the MDA claims of the Petitioner Society during its participation in the Pilot Scheme No.3; Liberalized MDA Scheme for the period 1.7.2006 to 31.3.2008; and

4. Pass any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice and equity.”

6. A reading of the reliefs prayed for in the earlier W.P.(C) No.6538/2010, as stated above, shows that essentially the reliefs prayed were more or less the same viz the challenge to the report of the One Man Tribunal dated 1.9.2010 and other consequential reliefs thereupon. The reliefs in the present writ petition are also almost and nearly identical and which have been reproduced in para 2 hereinabove.

7. I have put it to the learned senior counsel for the petitioner that how can a writ petition be filed again, though titled as under Article 227 of the Constitution of India instead of Article 226 of the Constitution of India, once an earlier writ petition under Article 226 of the Constitution of India is

dismissed on the ground that disputed questions of fact arise which cannot be decided in a writ petition. Observations as to the disputed questions of fact being not amenable to writ jurisdiction were made by a learned Single Judge of this Court in his order dated 27.9.2010 in W.P.(C) no.6538/2010 effectively stating that disputed questions of fact will require trial i.e evidence will have to be led and since evidence is ordinarily not led in a writ petition a writ petition is not the correct remedy. Once evidence cannot be led in a writ petition under Article 226 of the Constitution of India, a writ petition under Article 227 of the Constitution of India and the present writ petition, therefore also cannot be filed as even in the Article 227 of the Constitution of India proceedings evidence is not led to decide the disputed questions of fact. In my opinion, the present petition is nothing but old wine in a new bottle, new bottle being the petition under Article 227 of the Constitution of India instead of a petition under Article 226 of the Constitution of India.

8. Learned senior counsel for the petitioner argued by placing reliance upon an order passed by a learned Single Judge of this Court in this very petition on 15.9.2011 and argued that the issue that this petition under Article 227 of the Constitution of India is maintainable in spite of the order dated 27.9.2010 dismissing W.P.(C) No.6538/2010 has been decided by the *C.M.(M) No.1319/2010*

order dated 15.9.2011 and the issue of availability of remedy under Article 227 of the Constitution of India therefore cannot be reopened by this Court. In order to understand the argument urged on behalf of the petitioner, let me at this stage, reproduce the order of the learned Single Judge of this Court dated 15.9.2011 and which reads as under:-

“Counsel for the petitioner has placed reliance upon a judgment of the Supreme Court reported in 1986 (Supp) SCC 401 Umaji Keshao Meshram and Ors. Vs. Radhikabai and Anr. to draw out the distinction between the powers of the High Court under Article 226 of the Constitution and Article 227 of the Constitution. The power of the High Court to issue a writ under Article 226 of the Constitution is an original power whereas the power of superintendence conferred upon the High Court under Article 227 of the Constitution is a supervisory jurisdiction intended to ensure that the subordinate Courts and Tribunal act within the limits of their authority; under Article 227 of the Constitution Court also has the power to summon the record of the subordinate authority.

Learned counsel for the respondent has argued on the maintainability of the petition; submission is that vide order of a coordinate Bench of this Court dated 27.9.2010 passed in WP(C) No.6538/2010, the writ petition, filed under Article 226/227 of the Constitution assailing the same order i.e. the impugned order dated 01.9.2009 had been dismissed on the ground that disputed questions of facts are not amenable to writ jurisdiction under Article 226 of the Constitution. The relevant extract of the said order reads under:

“1. Learned counsel for the parties have been heard and the documents on record have been perused. This Court is of the view that the contentions raised in the ??petition, and the contents of the impugned report dated 1st September 2009 of ??the Tribunal

constituted by the Ministry of Micro, Small and Medium Enterprises give rise to disputed questions of fact which are not amenable to adjudication in a writ petition under Article 226 of the Constitution. Reserving to the Petitioner the right to seek other appropriate remedies as are available to the Petitioner in law, the petition and the pending application are dismissed.”

Learned counsel for the respondent has also placed reliance upon a judgment of the Apex Court report in 172(2010) DLT 377(SC) Jai Singh Vs. MCD to support his submission that when a coordinate bench has already dealt with a particular issue, when the same issue arises before another Bench judicial discipline should be followed and the writ petition under Article 227 of the Constitution in such circumstance should not be entertained.

Submissions have been heard.

There is no doubt that an earlier WP(C) No.6538/2010 was also filed under Article 226/227 of the Constitution; it was disposed of as noted supra vide order dated 27.9.2010 by the Court holding that disputed questions of fact are not amenable to the writ jurisdiction under Article 226 of the Constitution; this order was an order under Article 226 of the Constitution of India. Distinction between the powers of the High Court under Article 226 and Article 227 of the Constitution have been detailed in the judgment of the Apex Court reported in Umaji Keshao (supra). Under Article 227 of the Constitution the High Court has power of superintendence over all the subordinate courts which also enables the Court to call for the record of such a court meaning thereby that the jurisdictional error if any committed by the subordinate court can be examined by the Court i.e. in its superintending powers under Article 227 of the Constitution. This petition under Article 227 is maintainable. The judgment relied upon by the learned counsel for the respondent reported in Jai Singh (supra) is distinct on its fact.

Notice. Learned counsel for the respondent accepts notice. Reply be filed in four weeks with advance copy to the petitioner may file rejoinder.

Renotify for 12.01.2012.”

9. In my opinion, the order dated 15.9.2011 does not help the petitioner because that order no doubt holds that the petition under Article 227 of the Constitution of India is maintainable, however, that order cannot set aside the order of the co-ordinate bench of this Court being the order dated 27.9.2010 passed in W.P.(C) no.6538/2010 and which had held that the issue as urged by the petitioner invokes disputed questions of fact which require trial hence the same cannot be decided in a writ petition. Even if this present petition is titled as under Article 227 of the Constitution of India, and as per the designation of the Registry it is called as a C.M.(M) petition, the same is not in the nature of a suit filed in the original side of this Court wherein evidence will be led i.e trial conducted before deciding disputed questions of fact. A petition under Article 227 of the Constitution of India, like a petition under Article 226 of the Constitution of India, is also decided on the basis of pleadings, affidavits and a petition under Article 227 of the Constitution of India is not a petition where disputed questions of fact are decided after leading evidence/trial. In sum and substance, even in a petition under Article 227 of the Constitution of India disputed questions of fact which require trial cannot be decided, and the same are decided only in a suit. Also, I must note that the *C.M.(M) No.1319/2010*

order dated 15.9.2011, though the wording of its seems to suggest finality, really that was the order which while deciding the issue of maintainability of the petition under Article 227 of the Constitution of India was for issuing of notice in this petition under Article 227 of the Constitution of India to the respondents i.e the order dated 15.9.2011 is the first effective order in the writ petition issuing notice to the respondents.

10. In view of the above, since in this petition under Article 227 of the Constitution of India, no trial can take place on disputed questions of fact and which aspects/issues are decided in proceedings in the nature of a suit, this petition will not be maintainable in view of the order of the learned Single Judge of this Court dated 27.9.2010. When the learned Single Judge of this Court on 27.9.2010 passed an order in W.P.(C) No.6538/2010 stating that the present petitioner has a right to seek 'other appropriate remedies', the expression 'other appropriate remedies' was to refer to proceedings in the nature of a suit which would decide disputed questions of fact after leading evidence/trial and not a writ petition under Article 227 of the Constitution of India.

11. At this stage, I must note the submission made by the learned senior counsel for the petitioner that there are no disputed questions of fact which exist and therefore this Court must decide the present petition under

Article 227 of the Constitution of India but I fail to understand how such an argument can be raised inasmuch as this writ petition under Article 227 of the Constitution of India is essentially and more or less identical to the W.P.(C) no.6538/2010 which was dismissed by the order dated 27.9.2010 holding that there are indeed disputed questions of fact requiring trial and which order dated 27.9.2010 is finally binding on the parties that disputed questions of fact requiring trial exist.

12. In view of the above, and in view of the finality of the order dated 27.9.2010 in W.P.(C) no.6538/2010 dismissing a writ petition in this Court under Article 226 of the Constitution of India, this petition under Article 227 of the Constitution of India is not maintainable because in these petitions disputed questions of fact are not decided after leading evidence/trial.

13. Dismissed.

DECEMBER 11, 2014
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VALMIKI J. MEHTA, J.