

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.13823 of 2007

ORDER:

This writ petition is filed for a mandamus, declaring the order of the 2nd respondent, dated 21.06.2007, terminating the retail outlet dealership agreement with the petitioner without considering the detailed explanation/reply, dated 07.03.2007, as illegal and arbitrary.

Heard both sides and perused the material available on record.

During course of hearing, it is submitted and also brought to the notice of this court that there is a statutory appeal provided against the orders suspending the dealership, under Chapter-6, Note No.(iv) of the Marketing Discipline Guidelines, 2005. The petitioner has not availed such remedy and instead filed the present writ petition as long back as 2007.

This Court while admitting the writ petition suspended the impugned order, whereby the petitioner is continuing in the retail outlet.

There is no doubt, as has been held by a Division Bench of the Allahabad High Court in *Maa Durge Kisan Sewa Kendra v Union of India*¹ that merely because there exist an alternative remedy, there is no bar for entertaining the writ petition, and on such ground, the writ petition cannot be dismissed. The Division Bench of the Allahabad High Court held as under:

“There cannot be any dispute with the proposition that existence of an alternative remedy does not operate as a complete bar on the power of the court to entertain the proceedings. It is well settled that when there is an adequate alternative remedy, normally the Court should not interfere under Article 226 on account of the self imposed restriction as a Rule of discretion and expediency and not one of jurisdiction or

¹ 2014 SCC Online All 5800

limitation on the power of the Court. The reason being that remedy by way of a Writ is an extraordinary remedy. It is a well settled principle that high prerogative writs should ordinarily not be issued where an alternative remedy, equally efficient and adequate exist. Normally, when an adequate alternative remedy under the Statute is available, the High Courts do not enter into the disputed questions of fact, the resolution whereof requires going into the evidence, of which sufficient material may not be available on the record of the writ petition.

In the case in hand, disputed questions requiring to go into the evidence in respect of the dispute, is required and the petitioner has an efficacious alternative remedy under the provisions of MDG and, thus, this writ petition is not liable to be entertained on this ground.”

In the instant case, the appeal against the impugned order lies to the Executive Director of the 1st respondent Corporation, as per Note No.(iv) of the Marketing Discipline Guidelines, 2005 under Chapter-6, which reads as under:

“iv) The decision taken on action against the dealer based on the reply received from him for the show cause notice has to be communicated to the dealer in writing and this should be a speaking order. In the event of termination, the dealer, within 30 days of the Order, will have the right to appeal before the appropriate authority who will be empowered to decide in the matter. The appeal must be disposed of within 90 days from the date of the appeal. The appropriate authority to hear the appeals shall be by an officer not below the rank of Executive Director.”

It is no doubt true that the appeal has to be filed within 30 days. Since the petitioner availed the alternative remedy, the appeal can be entertained even though it is filed beyond the period of limitation.

In that view of the matter, the Writ Petition is disposed of, directing the petitioner to prefer an appeal, as stated above, within a period of 30 days from today, and on filing such appeal, the appropriate authority shall entertain and dispose of the same, in accordance with law, within a period

of 90 days therefrom. It is needless to say that pending disposal of such appeal, the impugned order shall stand suspended. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 06.09.2017

Dsr

