

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B.RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

WRIT APPEAL Nos.456 AND 457 OF 2018

COMMON JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

These Writ Appeals are against the common order in two writ petitions, namely, W.P.Nos.42223 of 2017 and 43744 of 2017. Writ Appeal No.456 of 2018 is filed by the petitioner in W.P.No.42223 of 2017 and Writ Appeal No.457 of 2018 is filed by the petitioner in W.P.No.43744 of 2017.

2. The appellants moved the second respondent-Competition Commission of India, hereinafter referred to as 'the Commission', alleging that the third respondent has contravened Sections 3 and 4 of the Competition Act, 2002, hereinafter referred to as 'the Act'. The Commission issued its opinion that there exists no *prima facie* case and closed the matter. That decision of the Commission was impugned in the writ petitions before the learned single Judge. Noticing the rival contentions on different aspects of the matter, the learned single Judge held that the decision impugned in the writ petitions is one that could be challenged invoking the remedy available by way of Appeal under the Act and such appellate remedy available before the Appellate Tribunal under the Act is an efficacious alternative remedy. It was accordingly held that in view of such alternative remedy being available, the writ petitions are liable to be rejected. Though certain other issues appear to have gained the attention of the learned single Judge; having regard to the availability of the alternative appellate remedy, such findings are not to be treated as decisive, even by us.

3. Heard the appellant in W.A.No.456 of 2018 appearing party-in-person. No separate arguments have been advanced on behalf of the appellant in W.A.No.457 of 2018. Heard the learned counsel appearing for the second respondent-Commission and the learned Senior counsel for the third respondent. Heard the learned Assistant Solicitor General for the first respondent. An application for intervention is filed by another person, hereinafter referred to as 'the applicant for intervention'. His counsel has also been heard.

4. Impeaching the impugned order of the learned single Judge and the decision of the Commission that was challenged through the writ petitions, the appellants argued that despite availability of the alternative remedy by way of a statutory appeal, writ jurisdiction ought to have been exercised having regard to the violation of the principles of natural justice and because, according to the appellants, the decision of the Commission is rendered in gross violation of principles of fairness and fair play and that such decision directly affects the fundamental rights of the appellants. It is also the plea that the involvement of Mr.Vinod Dhall (applicant for intervention) in the affairs of the firm 'Advocates and Solicitors', which appeared for the third respondent before the Commission, is itself a ground which would show that the decision of the Commission was actuated and engineered through the intervention of that person, who had been at earlier point of time, the Chairperson of the Commission. The appellants referred to the different materials, which, according to him, would definitely show that Mr.Dhall's name, as part of the records and dockets of the records of the third respondent, had obliquely influenced the decision making process of the Commission.

5. Apart from the above, the appellants argued that the decision of the Commission is absolutely baseless having regard to the materials which were before it and that the Commission had embarked upon an unauthorized course of consideration of materials, which may or may not have been available in the public domain, and also those materials, which were classified as those, over which the third respondent had itself claimed privilege against disclosure; and that, such materials have been used adverse to the interest of the appellants even without notice to them. The observations of the Commission on the basis of its consideration that led to the order impugned before the learned single Judge are criticized as not available on the basis of the materials on record. Accordingly, it is contended that the conclusion of the Commission that no *prima facie* case of contravention of either of the provisions of Sections 3 or 4 of the Act is made out against the third respondent herein is unsustainable in law and on facts.

6. The learned Senior Counsel appearing for the third respondent and the learned counsel for the second respondent reiterated the submissions made by them before the learned single Judge on the availability of alternative remedy by way of statutory appeal and referred to the Judgments of the Supreme Court in **Titaghur Paper Mills Company Limited vs. State of Orissa**¹, as well as the Judgments referred to by the learned single Judge in the impugned order. The scope and the extent of appellate power of the Competition Appellate Tribunal in terms of Chapter 8-A of the Act were also dilated upon having particular regard to the Judgments of the apex Court in

¹ (1983) 2 SCC 433 = AIR 1983 SC 603

Competition Commission of India vs. Steel Authority of India Limited² and the High Court of Delhi in **Google Inc., vs. Competition Commission of India**³.

7. The learned single Judge held that the Appellate Tribunal would have within its authority all issues as are raised in the writ petitions and that the appellate remedy available in terms of the provisions of Chapter 8-A of the Act is comprehensive, effective and an efficacious alternative remedy. It was hence held that the writ petitions are liable to be rejected on the ground of availability of alternative remedy, the learned single Judge has given cogent reasons. In considering this Intra-Court Appeal under Letters Patent against the order through which the learned single Judge refused to go ahead with the judicial review of the decision that was challenged before him, we need to bear in mind, primarily, that the learned single Judge, through the impugned order, considered different aspects, content and sweep of the appellate power of the Appellate Tribunal under the Act and had also duly adverted to and considered the applicable judicial precedents, including that of the Hon'ble Supreme Court of India, which are binding in nature. These are not the cases, where the appellants are able to demonstrate the non-availability of an appellate remedy. Even according to him, the appellate remedy is available in terms of the Act; but in his submission, that is not of such nature, which could be treated as efficacious having regard to the contentions raised by him. The plea, he has, at least in his submissions before us, that the Commission was ill-constituted, is itself a matter which could be raised for consideration before the appellate Tribunal. We do not see that there

² (2010) 10 SCC 744

³ [2015] 127 CLA 367 (Delhi)

is any plea in relation to that issue, which goes to the root of the matter in such a way that it destroys the substratum of the decision making power. Similarly, the plea that Mr.Dhall (applicant for intervention) had a deep and persuasive influence on the proceedings of the Commission is also a matter, that may be available to be raised before the Appellate Tribunal, because the power of the Appellate Tribunal, to the extent orders are made appealable to the Tribunal, are comprehensive enough to consider all questions raised in relation to the sustainability of any such appealable orders. Added to this, we also see that the learned single Judge has observed in paragraph 51 of the impugned order that the Appellate Tribunal is headed by its Chairperson, who is a former Judge of the Hon'ble Supreme Court of India. The effectiveness of the alternative appellate mechanism has been dilated upon by the learned single Judge by making reference to various judicial precedents referred to in the impugned order, issued on the writ petitions. It is a discretionary order. That order discloses the reasons for making it. It is not one rendered without assimilating the basic issues relating to the questions raised in the writ petitions. Once a discretionary jurisdiction is exercised refusing to entertain a writ petition on the ground of availability of an efficacious alternative remedy, the intra-court writ appellate jurisdiction would loath interfere with it under the Letters Patent, since that would amount to substituting the discretion exercised by the learned single Judge on disclosed reasons, by yet another set of reasoning which may lead to exercise of discretion in a different manner. This would lead to institutional inconsistency in writ jurisdiction. Therefore, we are unable find any reason to interfere with the impugned decision of the learned single Judge.

8. The aforesaid position notwithstanding having regard to various submissions made by the appellants touching the merits of the matter, and to satisfy ourselves as to whether any critical factor has been ignored for the purpose of exercising the discretion to entertain the writ petitions or not, on the face of an admittedly available alternative remedy, we had required the learned counsel appearing for the Commission to place before us the entire records relating to the case. We have perused those records. We do not see that the discretion exercised by the learned single Judge by relegating the appellants to the statutory appellate jurisdiction is unfounded on fundamental principles of law. We, therefore, do not find any ground to interfere with the impugned order.

9. For the aforesaid reasons, the Writ Appeals fail. We clarify that even if the appellants were move to the Appellate Tribunal established under the Competition Act, the said authority would not be bound by any of the observations made by the learned single Judge in the impugned order or by us through this Judgment, in acting upon the statutory appeal, in accordance with law.

In the result, the Writ Appeals are dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

31.12.2018
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