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

+ W.P.(C) 13923/2018

M/S CHAUDHARY STORE

..... Petitioner

Through: Mr Pradeep Gupta, Mr Parinav Gupta,
Ms Mansi Gupta and Mr Moazzam
Ali, Advocates.

versus

GOVERNMENT OF NCT OF DELHI
AND ANR.

..... Respondents

Through: Mr Gautam Narayan, ASC for
GNCTD with Ms Shivani Vij,
Advocate for R-1.
Mr Binod Kumar, FSO, Food &
Supplies.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.12.2018

CM No. 54480/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13923/2018 and CM No. 54481/2018

3. The petitioner has filed the present petition impugning an order dated 01.12.2018 passed by the Assistant Commissioner (Food and Supply Department) whereby the petitioner's FPS License (FPS License No. 8552) has been cancelled. Undisputedly, the petitioner has an alternate remedy of an appeal before the Commissioner of Food and Supplies and Consumer Affairs, Delhi in terms of Rule 6 of the Delhi Specified Articles (Regulations of Distribution) Order, 1981.

4. The learned counsel appearing for the petitioner earnestly contends that the petitioner cannot be relegated to an alternate remedy as a precedent exists for such petitions to be entertained. He relied upon the orders passed by the Coordinate Bench of this Court in ***M/s Mam Raj v. State (NCT of Delhi) and Ors.: W.P.(C) 8719/2011*** and he drew drawn the attention of this Court to the following observations made by the Court in the said order:-

“I have heard the learned counsel for the parties and perused the record. In so far as the first aspect is concerned, I have decided to entertain the writ petition in view of the fact that there is already a judgment of this court on facts which are almost identical. Therefore, to now relegate the petitioner to the appeal remedy under Section 6(8) of the DSA would cause prejudice to him. In any case, relegating a party to an alternative remedy is a self-imposed limitation of the writ court. It does not preclude the court from entertaining a petition, if otherwise it has jurisdiction in the matter. ”

5. He submits that the facts in that case were also similar to the facts in the present case.

6. This Court is not persuaded to accept the aforesaid contention. The petitioner had availed of alternate remedies. He had preferred an appeal before the Additional Commissioner, who had sustained the order of cancellation. The petitioner had, thereafter, preferred a review (which the Court observed was in fact, an appeal) before the Additional Commissioner, which was also rejected. The petitioner had, thereafter, filed an appeal to the Lt. Governor (Administrator) which was incorrectly marked to the Financial Commissioner. The Financial Commissioner had rejected the appeal as not maintainable. The petition was filed impugning the decision of the Financial Commissioner. In the aforesaid context, the Court had considered it

appropriate to hear the petition instead of remanding the matter to the Administrator.

7. It is well settled that the existence of an alternate remedy does not preclude the jurisdiction of this Court under Article 226 of the Constitution of India, however, the converse is not correct. In other words, it is erroneous to contend that in all cases where alternate remedy exists, the Court would, nonetheless, be required to entertain the writ petition as its jurisdiction is not precluded. This Court has in several cases, where petitions have been preferred against the orders passed for cancellation of FPS License, relegated the parties to exhaust alternate remedies. It is also open for the petitioner to urge that the facts in this case are identical to the facts in cases which are already covered by earlier decisions of this Court, before the Appellate Authority.

8. The petition is, accordingly, dismissed with liberty to the petitioner to avail of the alternate remedies. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 21, 2018
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