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

+ CM(M) 1388/2018, CM APPL. 47427/2018 & CM APPL.
47428/2018

ENA FOOTWEAR PVT LTD Petitioner
versus

NATIONAL INSURANCE CO LTD & ORS Respondents

+ CM(M) 1389/2018, CM APPL. 47484/2018 & CM APPL.
47485/2018

ENA FOOTWEAR PVT LTD Petitioner
versus

NATIONAL INSURANCE COMPANY LTD & ORS

..... Respondents

Through: Mr. Mahesh K. Chaudhary and Ms.
Sushmita Chaundhary, Advocates for
petitioner.
Mr. Manu Shahalia, Advocate for R-
1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **27.11.2019**

These petitions purport to assail the Execution proceedings under which recovery of the awarded amounts is sought from the owner of the offending vehicle.

In effect, the petitioner seeks to challenge the MACT award itself. It cannot be modified or looked into, under Article 227 of the Constitution of India, when there is an equally efficacious alternate remedy available.

It was for the petitioner to have taken appropriate steps in terms of the dicta of the Supreme Court in *Roger Mathew vs South Indian Bank Ltd.*,

2019 SCC OnLine 1456, which has held, *inter alia*, as under:

“.....

230. *It is hence clear post L Chandrakumar (supra) that writ jurisdiction under Article 226 does not limit the powers of High Courts expressly or by implication against military or armed forces disputes. The limited ouster made by Article 227(4) only operates qua administrative supervision by the High Court and not judicial review. Article 136(2) prohibits direct appeals before the Supreme Court from an order of armed forces tribunals, but would not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226.*

231. *However, it is essential that High Courts use such powers of judicial review restrictively and on limited grounds, similar to the concept of ‘regulatory deference’ which has evolved in the United States. Such a need was also noted by a nine-judge bench in Mafatlal Industries Ltd. v. Union of India which held that:*

“... While the jurisdiction of the High Courts under Article 226—and of this Court under Article 32—cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.”

232. *The jurisdiction under Article 226, being part of the basic structure, can neither be tampered with nor diluted. Instead, it has to be zealously-protected and cannot be circumscribed by the provisions of any enactment, even if it be formulated for expeditious disposal and early finality of disputes. Further, High Courts are conscious enough to understand that such power must be exercised*

sparingly by them to ensure that they do not become alternate forums of appeal. A five-judge bench in Sangram Singh v. Election Tribunal whilst reiterating that jurisdiction under Article 226 could not be ousted, laid down certain guidelines for exercise of such power:

“13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.”

.....

401. Since the entire gamut of facts, submissions and laws have been dealt with in the judgment of Chief Justice, for the sake of brevity, it would not be necessary to set out all the facts and contentions in detail.

....

447. The litigants cannot wait for judicial impact assessment and action by the Government which may or may not take place. Experience has shown that the judgments right from L. Chandra Kumar (supra) to Madras Bar Association, 2010 (supra) have not been complied with by the Union in letter and spirit. Citizens

of this country cannot be denied justice which is the first promise made in the Preamble. Therefore, I am of the view that in whichever State/Union Territory the bench of a particular tribunal is not established or functioning, the litigants of that State will have a right to invoke the extraordinary writ jurisdiction of the jurisdictional High Court under Article 226 of the Constitution for redressal of their grievances. They cannot be expected to go to far off distant places and spend huge amounts of money, much beyond their means to ventilate their grievances. The alternative remedy of approaching a tribunal is an illusory remedy and not an efficacious alternative remedy. The self-imposed bar or restraint of an alternative efficacious remedy would not apply. Such litigants are entitled to file petitions under Article 226 of the Constitution of India before the jurisdictional High Court. In L. Chandra Kumar (supra) it was clearly held that the right of judicial review is a part of the basic structure of the Constitution and this right must be interpreted in a manner that it is truly available to the litigants and should not be an illusory right.”

When the MACT award itself remains unassailed till date and there being no ostensible impediment in its implementation and execution, the present petitions are not maintainable under Article 227 of the Constitution of India.

In view of the above, the learned counsel for the appellant seeks to withdraw the petitions with liberty to pursue his remedies as may be available in law.

Accordingly, the petitions are dismissed as withdrawn.

Liberty granted.

Interim order stands vacated.

NAJMI WAZIRI, J

NOVEMBER 27, 2019

AB