

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on 24.2.2020****Judgment Delivered on 23/03/2020****WA No. 153 of 2020**

(Arising out of the order dated 5.12.2019 passed by learned Single Judge in WPC No.4443/2019)

- Sanjay Singh S/o Shri Matabaksh Singh, aged about 47 years by occupation Bus Operator, R/o Sunrise Tower-III, Flat No. 304, Talapara Bilaspur, District Bilaspur (CG)

---- Appellant**Versus**

1. The State of Chhattisgarh, Through the Principal Secretary, Government of Chhattisgarh, Transport Department, Mantralaya, Raipur (CG)
2. The Regional Transport Authority, Bilaspur (CG)
3. Ishteyaq Ahmed, S/o Shri Rafiq Ahmed, by occupation Bus Operator, R/o Ward No.10, Rajeev Gandhi Chowk, Talapara Road, Bilaspur (CG)
4. Jai Bajrang Bus Service, through its Proprietor Dinesh Kumar Agrawal, Main Road Lakhanpur Sarguja (CG).
5. A.K. Shukla, by occupation Bus Operator, Navagarh Barra, Champa, Janjgir, District Janjgir (CG)

---- Respondents

For Appellant : Mr. Shailendra Bajpai, Advocate
 For Respondent No.1 & 2 : Mr. V. Sharma, Dy. Govt. Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Correctness and sustainability of the order dated 05.12.2019 passed by the learned Single Judge in WPC No.4443/2019 declining to entertain writ petition filed by petitioner/appellant on the ground of existence of alternate efficacious remedy under

the law, is put to challenge in this appeal.

2. Facts of the case, in nutshell, are that appellant is engaged in the business of providing passengers transport facilities in the State of Chhattisgarh under the permits issued by the Transport Authorities functioning under the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988'). Appellant had applied before the Regional Transport Authority, Bilaspur for grant of a regular stage carriage permit for plying bus on the route Gidhori to Chirmiri via Shivnaraini, Amora, Janjgir, Champa, Korba, Katghora for single trip daily on rotation basis. Vide order dated 28.8.2019 the Regional Transport Authority rejected the said application for the reasons recorded therein. Feeling aggrieved by rejection of application for grant of permit, the appellant approached the High Court by filing petition bearing WPC No.4443/2019, which came to be dismissed vide order impugned of the learned Single Judge holding that there is efficacious alternate remedy available to petitioner/appellant of filing an appeal before the State Transport Appellate Tribunal, Raipur under Section 89 of the Act of 1988 and that the jurisdiction under Article 226 of the Constitution of India should not be exercised in a routine manner. However, while dismissing writ petition, the learned Single Judge granted liberty to petitioner/appellant to file appeal within prescribed period and further directed the Appellate Authority that if such an appeal is filed, the same shall be considered and decided in accordance with law within a further period of 60 days.

3. Mr. Bajpai, learned counsel for appellant submits that the order rejecting application of appellant for grant of a permit ought to have been interfered on a very specific ground of violation of principles of natural justice. He submits that second proviso to Section 80 (2) of the Act of 1988 envisages that if an application for grant of permit is refused, reasons have to be given and further, an opportunity of hearing should be given. In the present case, the stage carriage permit has been refused by respondent No.2 without affording opportunity of hearing to appellant as no notice of hearing was given to appellant for refusal of permit. In these circumstances, the learned Single Judge ought not to have relegated the appellant to exhaust the alternative remedy available to him under the provisions of the Act of 1988 and should have interfered under Article 226 of the Constitution of India.
4. Per contra, Mr. Sharma, learned State Counsel submits that Section 89 (1) (a) of the Act of 1988 provides for an appeal against the refusal to grant a permit by any prescribed authority. However, the petitioner/appellant instead of availing such alternative and effective remedy had chosen to file writ petition challenging the order of respondent No.2 and no exceptional case is made out to by-pass the alternative and effective remedy available to appellant under the Act of 1988. He further submits that the order of refusal was passed by respondent No.2 after hearing appellant and other objectors as well. The ground urged by appellant that the impugned order

suffers from the vice of violation of the principles of natural justice as no opportunity of hearing was given to appellant, is factually incorrect. The learned Single Judge was justified in dismissing writ petition on the ground of availability of efficacious alternative remedy.

5. We have heard learned counsel for the parties and perused the record.
6. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. Where it is alleged that the order has been passed by an authority not having jurisdiction or in violation of the principles of natural justice, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution of India on the ground of existence of an alternative remedy.
7. Looking to the argument advanced by the learned counsel for appellant, it would be beneficial to have a glance on Section 80 of the Act of 1988, relevant portion of which is extracted below;-

“80. Procedure in applying for and granting permits.-- (1) An application for a permit of any kind may be made at any time.

(2) A [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act :

Provided that the [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of Section 66] may summarily refuse the application if the grant of any permit in accordance with the

application would have the effect of increasing the number of stage carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of section 71 or of contract carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of section 74:

Provided further that where a [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] refuse an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.”

8. A bare perusal of Section 80 of the Act of 1988 reveals that an application for permit of any kind can be moved at any time and a Regional Transport Authority, State Transport Authority or any prescribed authority under the Act of 1988, shall not ordinarily refuse to grant an application for permit of any kind made at any time. As per second proviso to sub-section (2) of Section 80 of the Act of 1988, before refusing an application for grant of permit of any kind under the Act of 1988, the Regional Transport Authority has to give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.
9. In the present case, on 25.6.2019 the petitioner/appellant had applied before the Regional / State Transport Authority, Bilaspur for grant of stage carriage permit on the route mentioned therein. Perusal of Annexure A-5, which is the order of refusal passed by respondent No.2, reveals that at the top of the order at left hand side, the 'date of hearing' is mentioned as '14.08.2019' and in the body of this order it is mentioned that

applicant and other Operators of the route were present on 14.8.2019 and they were heard. Thereafter, the order refusing to grant permit was passed on 28.8.2019.

10. If we test the order dated 28.8.2019 (Annexure A-5) in the light of the provisions of Section 80 (2) of the Act of 1988, it is evident that appellant was represented before the respondent No.2 by his counsel and before passing the order of refusal to grant a permit, the appellant and all other interested parties were heard by respondent No.2. While rejecting the application of appellant for grant of a stage carriage permit, respondent No.2 has taken note of the submissions made by the learned counsel representing appellant before it and the Objectors. A bare reading of the order passed by respondent No.2 clearly indicates that the application of appellant for grant of a permit has been rejected by assigning reasons. Thus, this Court is of the considered view that there is compliance of the relevant provisions of the Act of 1988, in particular second proviso to sub-section (2) of Section 80 of the Act of 1988, which provides for an opportunity of hearing to the applicant before refusing an application for grant of a permit and to give reasons for refusal in writing.

11. Coming to the submission of the learned counsel for appellant that after arriving at a conclusion that application for grant of permit is to be refused, the authority concerned is required to issue notice to applicant assigning reasons for refusal. This

submission of learned counsel for appellant is contrary to the scheme of the Act of 1988. Provision of sub-section (2) of Section 80 of the Act of 1988 is amply clear and it only provides that applicant should be heard prior to refusal and the reasons for refusal should be given to applicant in writing. In case at hand, as already stated above, before passing the order of refusal respondent No.2 has satisfied both the pre-requisites as enumerated in second proviso to sub-section (2) of Section 80 of the Act of 1988. This being the position, we find no substance in the submission that there was violation of principles of natural justice in the matter and the same is hereby repelled.

12. In the matter of **Commissioner of Income Tax & ors Vs. Chhabil Das Agarwal** reported in **(2014) 1 SCC 603**, Hon'ble Supreme Court while dealing with the bar of alternative remedy for entertaining writ petition under Article 226 of the Constitution of India has held thus;-

“12.The Constitution Benches of this Court in K.S. Rashi & Sons Vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh Vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India Vs. T.R. Varma, AIR 1957 SC 882; State of U.P. Vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman & Co. (P) Ltd. Vs. State of Madra, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High

Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: [N.T. Veluswami Thevar vs. G. Raja Nainar](#), AIR 1959 SC 422; [Municipal Council, Khurai vs. Kamal Kumar](#), (1965) 2 SCR 653; [Siliguri Municipality vs. Amalendu Das](#), (1984) 2 SCC 436; [S.T. Muthusami vs. K. Natarajan](#), (1988) 1 SCC 572; [Rajasthan SRTC vs. Krishna Kant](#), (1995) 5 SCC 75; [Kerala SEB vs. Kurien E. Kalathil](#), (2000) 6 SCC 293; [A. Venkatasubbiah Naidu vs. S. Chellappan](#), (2000) 7 SCC 695; [L.L. Sudhakar Reddy vs. State of A.P.](#), (2001) 6 SCC 634; [Shri Sant Sadguru Janardan Swami \(Moingiri Maharaj\) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra](#), (2001) 8 SCC 509; [Pratap Singh vs. State of Haryana](#), (2002) 7 SCC 484 and [GKN Driveshafts \(India\) Ltd. vs. ITO](#), (2003) 1 SCC 72).

15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, (AIR 1964 SC 1419), Titagarh Paper Mills case (1983) 2 SCC 433 and other similar judgements that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a

mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

13. In view of above discussions, we do not find that there was violation of principle of natural justice or the RTA has not followed the procedure prescribed. The order passed by the RTA under Section 80 (2) is an appealable order under the Act of 1988.
14. For the above reasons and in the light of above ruling of Hon'ble Supreme Court, we do not find any infirmity in the order impugned. The appeal being bereft of merit is liable to be dismissed and the same is hereby dismissed.
15. However, the appellant will be at liberty to approach the Appellate Authority within a period of two weeks from the date of this order. If such an appeal is filed, it shall be decided by the Appellate Authority, on its own merits, in accordance with law, within two months of the receipt of the same. It is made clear that we have not decided the appeal considering the merits of the case for refusal of application for grant of permit.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge