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

% ***Date of decision: 24th August, 2023***

+ **W.P.(CRL) 2424/2023, CRL.M.As. 22766/2023 & 22767/2023**

DHIRAJ Petitioner

Through: **Mr. S. Mehta, Advocate.**

versus

STATE (NCT OF DELHI) AND ORS. Respondents

Through: **Ms. Nandita Rao, ASC for the
State with SI Rakesh Kumar,
P.S. Dabri.**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present petition is filed under Article 226 of the Constitution read with section 482 Cr.P.C. for issuance of writ/direction for quashing of the Externment Order dated 14.07.2023 passed by the respondent no. 2 under section 47 of the Delhi Police Act, 1978 in case bearing no. 2831-2855/Ext. Cell/DWD, New Delhi.

The petitioner prayed as under:

- i) **Allow the writ petition under Article 226 of the Constitution of India and quash the order of externment of respondent No.2, passed U/s 47 DP Act, 1978;
quash order No. 2831-2855, Ext. Cell/ DWD, New Delhi dated 14.7.2023, passed by respondent No.2.**
- ii) **Issue a Writ/Order /direction in the for quashing the externment order against the petitioner.**



iii) Pass such other or further writ/ order/direction, which this hon'ble court may deems fit and proper in the facts and circumstances of the case.

2. Issue notice.

3. Ms. Nandita Rao, Additional Standing Counsel assisted by SI Rakesh Kumar, P.S. Dabri accepts notice on behalf of the respondent no. 1/State.

4. The petitioner was ordered to be externed by the Court of Additional Deputy Commissioner of Police, Dwarka, New Delhi vide the impugned order dated 14.07.2023 on the basis of the facts as stated/mentioned in the Externment Order dated 14.07.2023. The relevant part of the Externment Order dated 14.07.2023 reads as under:-

Keeping in view the evidence brought on file i.e. notice, record of his criminal activities, statements of prosecution witnesses and other evidence adduced during the course of proceedings. Further, respondent did not desist him from criminal activities. It shows that he is desperate to crime. I have no hesitation in concluding that he is a criminal who is not likely to reform his way of life till stringent measures are taken, as his acts in the area of NCT of Delhi are calculated to cause harm, danger and alarm to the respectable citizens. His activities are adversely affecting the general well being and health of the law-abiding citizens in the area of NCT of Delhi, and they feel insecure. Moreover, unless he is weaned of his present company, he is not likely to reform himself and start a normal life. His continuous presence in the area leads to alarm and apprehension in the mind of law-abiding citizens of the area who have a right to peaceful life. I am of the view that this case is well within the scope of section 47 of The Delhi Police Act and he is a fit person to be Externed from the limits of N.C.T of Delhi.



Now, therefore, in exercise of the powers vested upon me under section 47/50 D.P. Act 1978 and conferred on me by the order of Commissioner of Police, Delhi under section 8 (ii) of the said act, I, Surendra Choudhary, Addl. Dy. Commissioner of Police, Dwarka, District, New Delhi do hereby order that *Dhiraj s/o Gopi Chand r/o E-2/100, Chankya Place, Part-I, Uttam Nagar, New Delhi*, shall remove himself beyond the limits of N.C.T of Delhi, shall remove himself beyond the limits of N.C.T of Delhi for a period of 01 year within seven days from the date of this order. The respondent is further directed not to enter or return to the area of N.C.T of Delhi within the said period without written permission of the competent authority. He is however, permitted to attend the Courts at Delhi/New Delhi on all dates of hearing and shall immediately thereafter remove himself outside the limits of N.C.T of Delhi and shall not visit any place except the Court premises. This relaxation is only for the date of hearing for coming to the Court and going out of the limits of NCT of Delhi. The contents of the order have been explained to him in vernacular in the open Court and a copy of the order has been delivered to him against his proper receipt. Order announced in the open Court in the presence of respondent. Respondent is informed of his right to appeal against this order. File be consigned to record.

5. The Additional Standing Counsel appearing on behalf of the respondent no. 1/State stated that the appropriate remedy which is available to the petitioner is to file an appeal under section 51 of the Delhi Police Act, 1978 which reads as under:

51. Appeal against orders under section 46, 47 or 48.—

(1) Any person aggrieved by an order made under section 46, section 47 or section 48 may appeal to the Administrator within thirty days from the date of the service of such order on him.

(2) An appeal under this section shall be preferred in



duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.

(3) On receipt of such appeal, the Administrator may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as he may deem necessary, confirm, vary or set aside the order appealed against: Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the Administrator otherwise directs.

(4) The Administrator shall make every endeavour to dispose of an appeal under this section within a period of three months from the date of receipt of such appeal.

(5) In calculating the period of thirty days provided for an appeal under this section, the time taken for obtaining a certified copy of the order appealed against shall be excluded.

6. The counsel appearing on behalf of the petitioner stated that the petitioner has not preferred an appeal as per section 51 of Delhi Police Act, 1978, but the wife of the petitioner filed an appeal under section 51 of Delhi Police Act, 1978 which was dismissed by the Office of the Lt. Governor without giving proper hearing. The counsel for the petitioner further stated that the petitioner apprehends that Office of the Lt. Governor shall not be listening the grievance of the petitioner as per law and under these circumstances, the counsel for the petitioner stated that the present petition is maintainable even without resorting to the alternate remedy available under section 51 of the Delhi Police Act, 1978.



7. The issue which needs consideration is that whether the petitioner can be permitted to invoke the writ jurisdiction of this Court under Article 226 to impugn the Externment Order dated 14.07.2023 without resorting to the alternate remedy as provided under section 51 of the Delhi Police Act, 1978. There is no categorical rule regarding the exhaustion of administrative remedies before judicial review by filing the writ can be invoked. The administrative action not in accordance with law can be challenged and there is no need to pursue any administrative procedure or appeal.

7.1. In R V Chief Constable of Marseyside Police exp. Calveley, (1986) QB 424, it was observed that, where there is some right of appeal, judicial review will not be granted ‘save in the most exceptional circumstances’ ; and that the normal rule is that the applicant ‘ should first exhaust whatever other rights he has by way of appeal’. In **R V Inland Revenue Commissioners exp. Preston,** (1985) AC 835, it was observed that ‘a proposition of great importance’ that ‘a remedy by way of judicial review is not to be made available where an alternative remedy exists’, and that ‘it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision’. The ‘judicial review’ should not be granted where an alternative remedy is available. In **R V Epping and Harlow General Commissioners exp. Goldstraw** (1983) 3 All ER 257, it was observed that ‘it is a cardinal principle that, save in the most exceptional circumstances, [the judicial review] jurisdiction will not be exercised where other remedies were available and have not been used’.



7.2. In India, ordinarily availability of an adequate and efficacious alternative legal remedy is a ground for the court to decline to exercise its writ jurisdiction, but said principle does not apply to the enforcement of Fundamental Rights under Article 32 or 226. In **K.K. Kochuni V State of Madras** AIR 1959 SC 725, the Supreme Court observed as under:

The mere existence of an adequate alternative legal remedy cannot be per se be a good and sufficient ground for throwing out a petition under Article 32 if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition.

7.2.1. The Supreme Court in **Kharak Singh V. State of UP** AIR 1963 SC 1295 observed as under :-

It is wholly erroneous to assume that before the jurisdiction of this court under Article 32 could be invoked the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as law affords and has yet not obtained proper redress.

7.2.2. The remedy provided for in Article 226 is a discretionary remedy and High Court has always the discretion to refuse to grant such a relief in certain circumstances even though a legal right sought have been infringed. The High Court should not exercise its jurisdiction under Article 226 when an alternate, adequate and efficacious legal remedy is available and the petitioner has not availed of the same before coming to High Court. In **Union of India V T.R. Verma** AIR 1957 SC 882, the Supreme Court observed as under:-

It is well settled that when an alternative and an equally efficacious remedy is open to litigant, he should be required



to pursue that remedy and not invoke the special jurisdiction of the High Court to issue prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court to issue a writ; but ... 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs....' And when such remedy exists it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.

7.2.3. The rule of exhaustion of alternative remedies is not absolute and some flexibility is practised by the courts in this matter depending upon the circumstances of the case in which the writ jurisdiction is invoked. It has been emphasised that existence of an alternative legal remedy does not affect their writ jurisdiction as such; it is only a factor to be taken into consideration by the High Courts in the exercise of their discretion. The rule of exhaustion of remedy before invoking jurisdiction under Article 226 has been characterised as a rule of policy, convenience and discretion rather than a rule of law. The existence of an alternative remedy is not regarded per se a bar to issue a writ, and the court is not obligated, as a rigid norm, to always relegate the petitioner to the alternative remedy. This is more a matter of self-imposed restriction by the courts on themselves. The Supreme Court in **Ram and Shyam Co. V State of Haryana** AIR 1985 SC 1147 observed as under:-

Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience



and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of a person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits.

8. The Supreme Court, in various decisions has laid down the principle under which the power under Article 226 of the Constitution can be exercised. In **Thansingh Nathmal V Superintendent of Taxes** AIR 1964 SC 1419, it was observed as under:-

7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court



will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

8.1. The Supreme Court in Whirlpool Corporation V Registrar of Trade Marks (1998) 8 SCC 1 observed as under:-

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at



least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmed v. Municipal Board, Kairana* [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, ***K.S. Rashid & Son v. Income Tax Investigation Commission* [AIR 1954 SC 207 : (1954) 25 ITR 167]** which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “*unless there are good grounds therefor*”, which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

8.2. The Supreme Court in *United Bank of India V Satyawati Tondon* (2010) 8 SCC 110 observed as under:-

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto



themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

8.3. The Supreme Court in **CIT V Chhabil Dass Agarwal (2014) 1 SCC 603** observed as under:-

15. Thus, while it can be said that this Court has recognised 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] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments 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.

8.4. The Supreme Court in *Radha Krishan Industries V State of H.P.* (2021) 6 SCC 110 was observed as under:-

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where :
(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;
(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory



remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* [*Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB v. Union of India* [*Rajasthan SEB v. Union of India*, (2008) 5 SCC 632] among other decisions.

9. The counsel for the petitioner argued that the petitioner is invoking jurisdiction of this Court under Article 226 of the Constitution merely on the ground that the appeal preferred by the wife of the petitioner against Externment Order was dismissed by the Competent Authority without affording suitable and adequate opportunity of being heard.

10. The arguments as advanced by the counsel appearing on behalf of the petitioner are misconceived. The petitioner cannot be allowed to bypass the statutory alternate remedy which is efficacious merely on the basis of apprehension and doubt and without any substantial ground. It is for the petitioner to exhaust first the alternate remedy available under section 51 of the Delhi Police Act, 1978.

11. Accordingly, the present petition is dismissed along with



pending applications, if any, with the liberty to the petitioner to exhaust the alternate statutory remedies provided under law.

(DR. SUDHIR KUMAR JAIN)
JUDGE

AUGUST 24, 2023
sk/am