

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14351 OF 2024

Piyush Pradeepkumar Agarwal ...Petitioner

Versus

Union of India & Ors ...Respondents

Ms Rutuja Pawar, *with Sneha More, Hetal Laghave, for the Petitioner.*

Mr Shruti Vyas, Addl GP, *with Prashant More, AGP, for the Respondent-State.*

Mr Ram Ochani, *with Suman Kumar Das, for the Respondent Nos. 2 & 3.*

AMOL
PREMNATH
JADHAV

Digitally signed by
AMOL PREMNATH
JADHAV
Date: 2024.11.14
13:47:27 +0530

CORAM **M.S. Sonak &
Jitendra Jain, JJ.**
DATED: **13 November 2024**

PC:-

1. Heard learned Counsel for the parties.
2. The Petitioner challenges the Order-In-Original dated 29 August 2024 and the connected demand.
3. Admittedly, the Petitioner has the alternate and efficacious remedy of instituting an appeal against the order dated 29 August 2024. In paragraph 13, the Petitioner has chosen to make the following averment in the context of alternate and efficacious remedy:

“13 The Petitioner submits that there is no other efficacious alternate remedy available to the Petitioner against the impugned order and therefore, this Hon’ble Court may be pleased to exercise the discretion vested under Article 226 of the Constitution of India and quash the impugned Order-In-Original. The Petitioner submits that the reliefs as prayed for if granted will be complete redressal of the Petitioner’s grievances.”

4. The above averment is patently incorrect and misleading because the Petitioner does have an alternate remedy of instituting an appeal against the Order-In-Original dated 29 August 2024. Based on such a misleading averment, the Petition deserves to be dismissed. However, we do not propose to dismiss this Petition on this ground.

5. Ms Pawar, the learned Counsel for the Petitioner, however, submitted that this was a case of violation of natural justice and, therefore, the rule of exhaustion of alternate remedies should not be invoked against the Petitioner. She submitted that the Petitioner had applied for copies of seized files and the laptop, but such files and the computer were not given to the Petitioner. She submitted that this prejudiced the Petitioner, and this also amounts to a denial of a reasonable opportunity to the Petitioner. He submitted that since the impugned order violated principles of natural justice, this Petition may be entertained.

6. Mr Ochani, learned Counsel for Respondents 2 and 3, submitted that the impugned order is based on the relied documents which were duly furnished to the Petitioner. Mr Ochani also submitted that the State authorities seized the records and that the 4th Respondent (U.O.I) had made the impugned order. Therefore, he submitted that this was not a

case where the 4th Respondent withheld any documents or material from the Petitioner.

7. At least prima facie, this is not a case of no notice or opportunity. Whether the opportunity granted was reasonable or not and whether the documents sought by the Petitioner were indeed necessary for the Petitioner's defence are matters which could be effectively agitated before the appellate forum, should the Petitioner choose to institute an appeal.

8. Ms Pawar is justified in contending that the rule of exhaustion of alternate remedies is not rigorously insisted upon where there is a patent breach of the principles of natural justice and fair play. However, where the violation of natural justice is not patent and is required to be established, and such establishment involves investigation into factual aspects, there is no reason why the Petitioner should not be relegated to avail of the alternate remedy provided under the statute.

9. The alternate remedy provided by the statute cannot be bypassed based on the incorrect and misleading averment that the Petitioner has no alternative remedy available; such an alternative remedy is clearly available. A proper case must be pleaded and made out, justifying the departure from the self-imposed rule of exhaustion of alternate remedies.

10. In a similar matter, **Dezy Sagar Agarwal, Proprietor of M/s. Neelam Traders vs. Union of India, through Joint Secretary & Ors¹**, we noted that where the failure of natural justice was not apparent but only arguable, the Petitioner

¹ Writ Petition No. 1676 of 2024 decided on 22 October 2024

should be relegated to the alternate remedy instead of deviating from the usual rule of exhausting alternate remedies. In that case, however, we directed the Respondents to furnish the Petitioner with copies of seized documents, whether relied on or not. A similar course of action could be adopted in this case as well.

11. Besides, in **Oberoï Constructions Ltd. vs. The Union of India**², which we decided on 11 November 2024, we discussed the reasons why the rule of exhaustion of alternate remedies should not be routinely bypassed. The reasons in the decision apply to the facts of the present case as well, particularly where the allegation of breach of natural justice is not patent and would require investigation.

12. Accordingly, we direct the 4th Respondent to furnish the Petitioner copies of the files listed in Exhibit 'C' (page 48) within two weeks from today. Further, we direct the 4th Respondent to copy the Hard Disk in the Petitioner's laptop presently in the custody of the 4 Respondent and, after that, to release the laptop to the Petitioner. This shall also be done within two weeks from today. This means that the copies of the files and the laptop will be handed over to the Petitioner on or before 27 November 2024. The Petitioner should attend the 4th Respondent's office on 25 November 2024 at 11.00 a.m. and collect the copies/laptop.

13. Ms Pawar states that the Petitioner will appeal the Order-In-Original within four weeks of receiving the copy of the files and the laptop. If such an appeal is indeed instituted within four weeks, as stated after complying with all legal

² Writ Petition (L) No. 33260 of 2023 and connected matters.

requirements, the appellate authority must decide the appeal on merits without referring to the issue of limitation. This is because the Petition was instituted on 18 September 2024, and the Petitioner was pursuing it based on legal advice.

14. All the parties' contentions, including those regarding the failure of natural justice and others raised in this Petition, are explicitly kept open. Even the contentions of Respondents are kept open. The observations in this order are only prima facie and in the context of deciding the objection based on the rule of exhausting alternate remedies. Therefore, if an appeal is instituted, the appellate authority must not allow itself to be influenced by the observations.

15. This Petition is disposed of with the above directions and without any order for cost.

16. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)