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W.P. No. 19023 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 19023 of 2020

K-1005-Tirupur Milk Producers Co-operative
Societies Association Limited,
Represented by its Chairman,
Kuppandampalayam,
Palladam Road,
Tirupur – 638 605.

... Petitioner

-VS-

1. Aavin,
Represented by its Managing Director,
Tirupur District Co-operative Milk Producers Union Limited,
Tirupur – 641 604.
2. The Commissioner,
Milk Production Management and Dairy Development Department,
Aavin Illam,
Pasumpon Muthuramalinganar Salai,
Nandanam,
Chennai – 600 035.
3. The General Manager,
Aavin,
District Collector's Office,
Palladam Road,
Tirupur – 5.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to quash the Proceedings in Na. Ka. No. 001/ESTT/TPR/2019 dated 05.10.2020 on the file



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of the Third Respondent and further direct the Respondent to disburse the transportation charges incurred in the course of distribution of milk i.e. Rs. 13,51,785/- approximately from 03.01.2019 to till date, to disburse the arrears of commission Rs. 15,09,285.50 from 03.01.2019 to 11.07.2019 and permit the Petitioner 'sale of private milk' alongside with Aavin milk, and distribution of milk only through the society by restraining Respondent from employing independent agents in distribution of milk within the functional parameters allotted to the Petitioner's Association by virtue of the Special bye-laws on the file of the Deputy Registrar, Milk Production Management and Dairy Development Department.

For Petitioner : Mr. Avinash Wadhwani
for M/s. V.Srimathi

For Respondents : Mr. R.Balaramesh

ORDER

Heard Mr. Avinash Wadhwani, Learned Counsel appearing for the Petitioner and Mr. R.Balaramesh, Learned Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which is a co-operative society of milk consumers, is aggrieved by Order in Na. Ka. No. 001/ESTT/TPR/2019 dated 05.10.2020 passed by the Third Respondent, which is another co-operative society of milk producers that has denied payment of certain amounts due, which is challenged



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in this Writ Petition.

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3. The Petitioner is entitled to seek a reference under Section 90(1)(d) of the Tamil Nadu Co-operative Societies Act, 1983, to determine any dispute touching the business of a co-operative society arising between it and another co-operative society, as in this case, before the jurisdictional Registrar of Co-operative Societies, who has also been empowered to condone delay in filing the same after the prescribed period of limitation has expired, if sufficient cause is made out.

4. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and



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the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], adverting to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has emphasized that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-



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“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*



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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.”*

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

5. When the said legal position was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.



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In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made that clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petitions, viz., 09.12.2020, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. No costs.

12.02.2024

Index: Yes/No

NCC: Yes/No

Note: (i) Issue order copy by 25.03.2024.

(ii) Registry is directed to return the impugned order under written acknowledgment after retaining a copy of the same for record.

vjt

To

1. The Managing Director,
Aavin,
Tirupur District Co-operative Milk Producers Union Limited,
Tirupur – 641 604.
2. The Commissioner,
Milk Production Management and Dairy Development Department,
Aavin Illam, Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai – 600 035.
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P.D. AUDIKESAVALU, J.

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