



CWP-34871-2019

-1-

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

215

CWP-34871-2019

Date of Decision: 05.11.2024.

SKN Haryana City Gas Distribution Ltd. & ors.

.. Petitioners

Versus

Haryana Renewable Energy Development Agency and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Mehndi Singhal, Advocate for
Mr. Abhinav Sood, Advocate,
for the petitioners.

Mr. Vivek Chauhan, Advcoate
for respondent No.1.

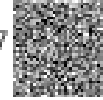
Mr. Deepak Balyan, Advocate
Mr. Sushant Sharma, Advocate
for respondent No.2.

Mr. Pankaj Mulwani, DAG, Haryana
for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the instant petition is to the letter dated 08.08.2019 (Annexure P-22) issued by respondent-HAREDA, whereby the proposal for setting up Biogas based Power Projects of 2MW submitted by the petitioner and to which an in principal approval had been granted by the respondents vide memo No.HAREDA/BG/2018/3416-18, dated 17.10.2018 stands cancelled on account of non-compliance to the terms and conditions of the request for proposal and in principal approval granted by the office.

Learned counsel for the petitioners has been confronted with the provisions of Section 86(1)(f) of the Electricity Act, 2003, which



CWP-34871-2019

-2-

contains that in the event of any dispute between the power generator analysis/licensee, the matter shall be amenable to the jurisdiction of an appropriate Commission.

The Hon'ble Supreme Court has held in the matter of **Jaipur Vidyut Vitran Nigam Ltd. vs Mb Power (Madhya Pradesh) Limited, reported as (2024) 8 SCC 513** that under the Electricity Act, 2003, a statutory remedy for redressal of grievance in the form of proceedings before the appropriate Commission and proceedings before the appropriate Tribunal for Electricity has already been prescribed therein. High Courts should ordinarily not entertain issues which are within the domain and jurisdiction of the appropriate Commission and the statutory remedies prescribed under the Electricity Act 2003. As being a field of experts, the said statutory authorities are best to deal with the said issues. The relevant extract of the same is as under:-

“128. We find that the High Court was not justified in entertaining the petition. The Constitution Bench of this Court in PTC [PTC India Ltd. v. CERC, (2010) 4 SCC 603 : 2010 INSC 146] has held that the Electricity Act is an exhaustive code on all matters concerning electricity. Under the Electricity Act, all issues dealing with electricity have to be considered by the authorities constituted under the said Act. As held by the Constitution Bench of this Court, the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. Not only that, these Tribunals are tribunals consisting of experts having vast experience in the field of electricity. As such, we find that the High Court erred in directly



entertaining the writ petition when Respondent 1 i.e. the writ petitioner before the High Court had an adequate alternate remedy of approaching the State Electricity Commission.

129. This Court in Reliance Infrastructure Ltd. v. State of Maharashtra [Reliance Infrastructure Ltd. v. State of Maharashtra, (2019) 3 SCC 352 : 2019 INSC 63] has held that while exercising its power of judicial review, the Court can step in where a case of manifest unreasonableness or arbitrariness is made out.

130. In the present case, there is not even an allegation with regard to that effect. In such circumstances, recourse to a petition under Article 226 of the Constitution of India in the availability of efficacious alternate remedy under a statute, which is a complete code in itself, in our view, was not justified.

131. No doubt that availability of an alternate remedy is not a complete bar in the exercise of the power of judicial review by the High Courts. But, recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. A reference in this respect could be made to the judgments of this Court in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : 2021 INSC 266] and South Indian Bank Ltd. v. Naveen Mathew Philip [South Indian Bank Ltd. v. Naveen Mathew Philip, 2023 SCC OnLine SC 435 : 2023 INSC 379] .

132. We may gainfully refer to the observation of this Court in Radha Krishan Industries [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : 2021 INSC 266] , wherein this Court has laid down certain

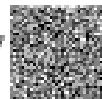


principles after referring to the earlier judgments : (SCC pp. 793-95, paras 24-28)

“24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in CCT v. Glaxo Smith Kline Consumer Health Care Ltd. [CCT v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681] , the High Court noted [Radha Krishan Industries v. State of H.P., 2021 SCC OnLine HP 4566] that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this “rule of alternate remedy” include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the “rule of alternate remedy” and its judicial exposition. In Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)

‘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.’

26. Following the dictum of this Court in Whirlpool [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1] , in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , this Court noted that : (Harbanslal Sahnia case [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , SCC p. 110, para 7)



'7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1]). The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.'

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.”

(emphasis in original)

133. This Court has clearly held that 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 of India.”

Learned counsel for the petitioners is not in a position to controvert about the availability of the said remedy of approaching the appropriate Commission.

In view of the above, the present writ petition is disposed of without commenting anything on the merits of the case with liberty to the petitioners to take recourse to alternative remedy available as per law. Needless to mention that in the event of any such petition being preferred, the period spent in pursuing the present petition shall be taken into consideration while computing limitation.

05.11.2024.	(VINOD S. BHARDWAJ)
monika	JUDGE
<i>Whether speaking/reasoned</i>	<i>: Yes/No</i>
<i>Whether reportable</i>	<i>: Yes/No</i>