

Form No.J(2)
COURT NO.2
D.DAS. P.A.

Calcutta High Court
In The Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Aniruddha Roy

WPA 443 OF 2025

With

I.A. No.CAN 1 of 2025

M/S. Greenzen Bio Private Limited & Anr.
Vs.
The State of West Bengal & Ors.

For writ petitioners	:	Ms. Reshmi Ghosh (VC) Mr. Deborshi Dhar Ms. Prana Mukherjee Ms. Taniya Bhowmik.
For Applicant/ Respondent No.9	:	Mr. Ajay Singhal Mr. Rohit Agarwal Ms. Heena Yasmin Shaikh Mr. Diwash Gupta Ms. Chiroshree Dey.
For respondent Nos.1-4/State	:	Mr. Momenur Rahman Mr. Kumar Shantanu. (VC)
For respondent Nos.6 to 8	:	Mr. Momenur Rahman Mr. Bikash Singha

Reserved on : 09.09.2025

Judgment on : 23.09.2025

Aniruddha Roy, J.

FACTS:

1. I.A. No. CAN 1 of 2025 is an interlocutory application taken out by the respondent No.9 in the writ petition, Unique Universal Bio-Waste LLP (for short **Unique Universal**), *inter alia*, praying for following relief :

“Under the premises as aforesaid Your Lordship would graciously be pleased to pass an order dismissing the instant Writ Petition as not maintainable and pass such further order and/or orders as Your Lordship may deem fit and proper so as to protect the right and interest of the respondent No.9;

And

Your petitioner prays for such Orders and/or further orders as Your Lordships may deem fit and proper.”

2. Pursuant to the direction made by the Coordinate Bench, the writ petitioners were directed to file affidavit-in-opposition to the said application and the respondent No.9/applicant (for short the **applicant**) was directed to file its affidavit-in-reply. Accordingly, the parties have filed and exchanged their respective affidavits. The Coordinate Bench also directed the respondents, which includes the applicant to file affidavit-in-opposition in the writ petition and the writ petitioners to file affidavit-in-reply thereto.

3. Since the applicant being the respondent No.9 in the writ petition has taken out the instant application, it has not filed affidavit-in-opposition to the writ petition, as yet. The applicant has also filed a written notes in this application.

4. The facts which are inescapable for adjudication of the instant application are only narrated.

5. This is the second round of writ litigation by the writ petitioners. The first writ petitioner herein (for short **Greenzen**) is engaged in the business of dealing with Bio-Medical Waste Disposals, which are principally waste management of primary Bio-Medical Wastes. Greenzen claims to be an operator of a Common Bio-Medical Waste Treatment Facility (**CBNWTF**). Greenzen claims to have owned and controlled the Common Bio-Medical Waste Treatment Facility for allocation, reception, storage, transport, treatment, disposal or any other form of handling Bio-Medical Waste. The working of Greenzen is governed and controlled under the provisions of **Bio-Medical Waste Management Rules 2016** (for short the said **2016 Rules**). According to Greenzen the said Rule also applies to **M/s SNG Environmentary Solution Private Limited** (for short **SNG**), Unique Universal Bio-Waste LLP (for short **Unique Universal**) and one M/s Medicare Environmental Management Private Limited (for short **Medicare**). Alleging violations of diverse Rules against the respondents State authorities, Greenzen prayed for withdrawal and setting aside of the recommendation granted in favour of SNG and Unique Universal for setting up a CBMWTF and filed the first writ petition **WPA 1374 of 2023** (for short **the first writ petition**). The first writ petition was disposed of by a judgment and order dated **November 20, 2023, Annexure R-5 at page 29** to the instant application. The respondent No.11 in the first writ petition being the

applicant herein/Unique was not represented, despite notice, in the first writ petition.

6. Alleging violation of several provisions under the said 2016 Rules, Greenzen filed the second instant writ petition **WPA 443 of 2025** (for short the **second writ petition**) praying for cancellation and setting aside of the **environmental clearance** dated **September 1, 2023** and **consent to operate** dated **September 13, 2023** granted in favour of Unique Universal.

SUBMISSIONS:

7. Mr. Ajay Singhal, learned Advocate appearing for the applicant submits that principally on three counts the instant application has been filed, which are :

- (a) The second writ petition is barred by the rule of ***res judicata***;
- (b) Greenzen while filing the second writ petition has **suppressed the materials facts** and thereby practiced fraud on court and has not approached this court with clean hands and
- (c) The second writ petition is not maintainable as an efficacious **alternative statutory appellate remedy** is available under the **National Green Tribunal Act 2010** (for short the **said 2010 Act**).

8. At the outset, on September 8, 2025, Mr. Ajay Singhal, learned Counsel appearing for the applicant submitted that he shall not press the point of *res judicata* on the basis of the said judgment dated November 20, 2023, by which the first writ petition has been disposed of. However, he made a caveat, that he shall rely upon the said judgment for the proposition of law, it has laid down.

9. On the point of suppression of materials facts, Mr, Singhal submits that the facts of institution of the said first writ petition and its disposal by the Coordinate Bench under the said judgment and order dated November 20, 2023, have been deliberately and willfully suppressed, which would affect and prejudice the valuable right accrued in favour of the applicant and as such, Greenzen has not approached this court while filing the second writ petition with clean hands. On this ground alone, this writ petition should be summarily dismissed. In support of his contention, learned Counsel for the petitioner has relied upon the following judgments :

- (i) A decision of the Hon'ble Supreme Court dated **March 17, 2025, In the matter of : The Auroville Foundation Vs. Natasha Storey** rendered in **Civil Appeal No.13651 of 2024** and
- (ii) **In the matter of : K. D. Sharma Vs. Steel Authority of India Limited & Others** reported at **(2008) 12 Supreme Court Cases 481.**
- (iii) The judgment of the Hon'ble Supreme Court dated **December 8, 2021, In the matter of: Shri. Jayaram & Ors. Vs. Bangalore Development Authorities and Ors** rendered in **Civil Appeal No./Nos.7550-7553 of 2021 (arising out of SLP (C) No.26374-26377 of 2013)**
- (iv) A decision of the Hon'ble Supreme Court dated **December 17, 2004, In the matter of: Vanu Kumar Jain Vs. Archary**

Kumar and Another rendered in ***Appeal (Civil) 8246 of 2004***
(arising out of SLP (C) No.6392 of 2003).

10. Learned Counsel Mr. Singhal referring to Section 16 read with Section 14 of the 2010 Act submits that a specific statutory appellate remedy which is otherwise efficacious is available under **sub-Section (h) to Section 16 of the 2010 Act**. Referring to the relevant claims in the said second writ petition, learned Counsel for the applicant submits that in the light of the averments made in the writ petition several fact finding enquires are required to be made, which is not permitted to be done under Article 226 of the Constitution of India and the tribunal in exercise of its appellate authority is permitted to do so. Therefore, this writ court should dismiss the instant second writ petition on the ground of available **alternative remedy**.

11. In addition to the above, referring to the said judgment dated November 20, 2023, under which the first writ petition has been disposed of, learned Counsel for the applicant submits that the said judgment has clearly laid down the law that the radial distance restriction of **75 k.m.** as provided under the said 2016 Rules would not apply for **SNG** and since the applicant herein is similarly placed and circumstanced, the same law shall also apply for the applicant. On this score, the reliefs claimed in the second writ petition are barred.

12. Ms. Reshmi Ghosh, learned counsel appearing for the writ petitioners submits that the allegation of mere suppression of material facts as alleged by the applicant would not suffice. The applicant has to specifically plead a case in its application citing the specific facts which are material and the

suppression thereof have or would have jeopardized or prejudiced the right of the applicant, if the instant writ petition is decided in absence of disclosure of such facts. The test is that, the applicant has to demonstrate specifically which are the material facts that would affect or prejudice the rights of the applicant, if any, in this writ petition.

13. Referring to **paragraph 4** from the application, learned counsel Ms. Ghosh submits that specific plea has been made therein *“that the petitioners of the instant writ petition had filed a more a less writ petition being WPA No.1374 of 2023 for issuance of writ of mandamus against one SNG ... who was the respondent No.10 therein and the present respondent No.9 was **respondent No.11** therein ...”*. On the basis of the said averment the applicant contends that Greenzen has suppressed the material facts in the instant second writ petition. No specific allegation with reference to specific facts, which are alleged as material suppression in the instant second writ petition is there in the said application.

14. Ms. Ghosh learned counsel for the writ petitioners then refers to the judgment dated November 20, 2023, under which the first writ petition was disposed of. She submits that the said judgment specifically records that the first writ petition was filed seeking mandamus upon the State Authorities to withdraw and/or cancel and set aside the recommendation granted to SNG. The judgment further records that the consent to operate granted in favour of SNG was illegal and in violation of **Bio-Medical Waste (Management and Handling) Rules 1998** (for short the said **1998 Rules**). With reference to the said judgment, she further submits that the entire writ petition was decided

as against SNG and not against the applicant. Learned counsel for the writ petitioners submits that no appeal was carried out from the said judgment dated November 20, 2023 by the applicant, though the applicant was a respondent in the said first writ petition.

15. Ms. Ghosh learned counsel for the writ petitioners further submits that the reliefs claimed in both these two writ petitions are totally different from each other. The instant writ petition has been filed praying for cancellation of environmental clearance dated September 01, 2023 and consent to establish dated September 13, 2023, granted in favour of the applicant. When the first writ petition was filed the consent to establish dated September 13, 2023 was not issued and accordingly, was not challenged but the consent to establish was issued during pendency of the first writ petition. Therefore, the issuance of the said consent to establish dated September 13, 2023, is under challenge in the instant second writ petition. The scopes of the two writ petitions are different from each other. Therefore, there has been no suppression of any material facts which could affect or jeopardize the right, if any, of the applicant.

16. On the objection raised by the applicant on the ground of available alternative appellate remedy under the said 2010 Act, learned counsel for the petitioners has referred to the documents **at pages 122 and 126** to the writ petition. She submits that the document dated February 21, 2024, at page 126 to the writ petition is an executive action. She also refers to the document at page 128 to the writ petition and submits that the same is also a document issued by the executive. Arising out of the said documents, the

environmental clearance was issued in favour of the applicant and the action of the executive in issuing the said documents cannot be challenged by way of a statutory appeal in terms of sub-Section (h) to Section 16 of the said 2010 Act. Referring to the provision for appeal under Section 16 of the said 2010 Act, she submits that an order made, on or after commencement of the said 2010 Act granting environmental clearance in the area in which any industry, operation, or process or class of industries, operation and process shall not be carried out or shall be carried out subject to certain safeguards under the **Environmental (Protection) Act, 1986**, (for short the **said 1986 Act**) is only appellable but the said documents at pages 126 and 128 to the writ petition not being appellable, the environmental clearance dated September 01, 2023 and consent to establish dated September 13, 2023, granted in favour of the applicant arising out of the said two documents are also not appellable and the only remedy lies under Article 226 of the Constitution of India.

17. On behalf of the writ petitioners, it is further submitted that the existence of an alternative remedy is not an absolute bar to adjudicate upon a writ petition and to entertain it. Since the executive notifications as referred to above, being the source of granting environmental clearance and the consent to establish are not challenged, this writ court is the only forum available to the writ petitioners. The impugned environmental clearance and the consent to establish being the effect of the said two executive orders should be adjudicated upon through the instant writ petition. According to her, the appellate remedy provided under sub-Section (h) to Section 16 of the

said 2010 Act is not the remedy which can afford complete justice to the writ petitioners. In support, she has relied upon the following decisions :

- (i) *Expnar SA and Another Vs. Eupharma Laboratories Ltd. And Another* reported at (2004) 3 SCC 688.**
- (ii) *Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others* reported at (2023) 109 GSTR 402 : 2023 SCC Online SC 95;**
- (iii) *Tamil Nadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council and Another* reported at (2025) 4 SCC 1.**

DECISION:

18. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it is stated that the point of *res judicata* though initially taken by the applicant but has not been pressed subsequently and the submissions in this regard made on behalf of the applicant is recorded in the order dated September 8, 2025.

19. This court, therefore, proceeds to deal with other two issues raised by the applicant.

Suppression of Material facts:

20. The judgments cited on behalf of the applicant, as referred to above have already decided the law that mere suppression of facts would not affect unless the facts are so material which are suppressed would have a direct bearing on the issue, while adjudicating the proceeding in which

suppression has been alleged. The law is well settled in this regard. This court, therefore, would not discuss these judgments any further save and except to take support from some of the relevant portions of those judgments, while deciding the issue.

21. The relevant prayers from the first writ petition are quoted below:

- i.** *“Issue a Writ of or in the nature of Mandamus commanding the respondent Nos. 1, 2, 3 & 4 and/or their men and/or agents and/or assigns to forthwith and/or immediately withdraw and/or cancel and/or set aside the recommendation granted to M/s. S.N.G. Enviroolutions Private Limited to set up a Common Bio-Medical Waste Treatment Facilities at Tehsil Rajganj, District Jaipalguri, West Bengal. and to act in accordance with law by acting in the manner stated hereinabove;*
- ii.** *Issue a Writ of or in the nature of Mandamus commanding the respondents and/or their men and/or agents and/or assigns to forthwith and/or immediately withdraw and/or cancel and/or set aside any recommendation granted to Unique Universal Bio-Waste LLP for setting up a CBMWTF at Village Kaluabari, P.O. Debithakurbari, P.S. Rajgunj, Mouza Chhatguriimari, Pargana Baikunthapur, District -Jalpaiguri, West Bengal and M/s Medicare Environmental Management Private Limited, Illuabari Industrial Estate, Matikunda-1 (G.P), Illuabari (Mouza), Islampur (P.S), Uttar Dinajpur (D) West Bengal, Pin-733202 to act in accordance with law by acting in the manner stated hereinabove;*
- iii.** *Issue a Writ of or in the nature of Mandamus directing an enquiry into the operation of the M/s. S.N.G. Enviroolutions Private Limited and to submit a detailed report with regard to its capacity and authorization and consent to operate and to act in accordance with law by acting in the manner stated hereinabove;*
- iv.** *Issue a Writ of or in the nature of Mandamus directing a CBI enquiry into involvement of the respondent No. 5 with the M/s. S.N.G. Enviroolutions Private Limited and to submit a detailed report and to act in accordance with law by acting in the manner stated hereinabove;*

- v. Issue a Writ in the nature of Certiorari directing respondents to transmit all records pertaining to the instant case before this Hon'ble Court so that conscionable justice may herein be rendered by setting aside the recommendation S.N.G. granted to M/s. Envirosolutions Private Limited and conducting an enquiry against the respondent No. 5 and 12 and to allow the petitioners to operate as the existing operator in Zone I;"*

22. The relevant prayers from the second writ petition are also quoted below:

- i. "Issue a writ of or in the nature of Mandamus commanding the respondents and/or their men and/or agents and/or assigns to forthwith and/or immediately withdraw and/or cancel and/or set aside the Environmental Clearance dated 1.9.2023 and Consent to Establish dated 13.9.2023 granted in favour of M/s Unique Universal Bio-Waste LLP for setting up a CBWTF at Village- Lauabari, P.O. Debithakurbari, P.S. Rajgunj, Mouza – Chhatgujriimari, Pargana baikunthapur, District –Jalpaiguri, West Bengal and to act in accordance with law by acting in the manner stated herein above;*
- ii. Issue a writ or in the nature of mandamus commanding the respondents and/or their men and/or agents and/or assigns to forthwith and/or immediately stay the Environmental Clearance recommendation made in favour of M/s Unique Universal Bio-Waste LLP for setting up a CBWTF at Village – Kaluabari, P.O Debithakurbari, P.S. Rajgunj, Mouza – Chhatgujriimari, Pargana Baikunthapur, District – Jalpaiguri, West Bengal and to act in accordance with law by acting in the manner stated hereinabove;*
- iii. Issue a writ in the nature of certiorari directing respondents to transmit all records pertaining to the instant case before this Hon'ble Court so that conscionable justice may herein be rendered by setting aside cancelling and/or setting aside the Environmental Clearance dated 1.9.2023 and Consent to Establish dated 13.9.2023 granted in favour of M/s. Unique Universal Bio-Waste LLP for setting up a CBWTF at Village - Kaluabari, P.O Debithakurbari, P.S. Rajgunj, Mouza – Chhatgujriimari, Pargana Baikunthapur, District – Jalpaiguri, West Bengal and the petitioners to operate as the existing CBWTF in Zone I;"*

23. On the reading of the prayers from the first writ petition, it is clear that save and except prayer (ii) no relief was claimed against the applicant and the reliefs were claimed against SNG.

24. Now, the relevant observations of the Coordinate Bench from the judgment dated November 20, 2023, are quoted below :

“None appears on behalf of the respondent No. 11. As the parties are ready and affidavits have been exchanged, the matter is taken up for final hearing. The documents relied upon by the respondent No. 10 are already annexed to the affidavit of the respondent Nos. 7 and 8.

The writ petition has been filed for a mandamus upon the respondent Nos. 1,2, 3 and 4 withdraw and/or cancel and set aside the recommendation granted to M/s. S.N.G. Envirosolutions Private Limited, that is, the respondent No. 10 who has been authorized to set up a Common Bio-Medical Waste Facility (CBWTF) at Tehsil Rajganj.

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Records have been placed, which show that the entire process of selection was held by a tendering process and the T1 was recommended to operate the plant. This Court, does not find any reason to pass any orders in this writ petition. If the petitioners' case is regularized and the petitioners obtain an authorization to operate after all the proceedings are over, the petitioners may approach the authorities for necessary orders. However, the challenges in the writ petition are baseless and unfounded.

Accordingly, the writ petition is disposed of without any orders.

In view of the disposal of the writ petition, the connected application has become infructuous and the same is disposed of accordingly. ”

25. From the observation made by the Coordinate Bench while disposing of the said first writ petition, it appears to this Court that, the issue raised by the petitioner in the first writ petition was restricted by the Coordinate Bench to the extent of claiming mandamus upon the State authority to withdraw and/or cancel and set aside the recommendation granted to **M/s. SNG**. Finally, the said

Judgment of the Coordinate Bench has observed that it did not find any reason to pass any order in the first writ petition and the challenges in the first writ petition were observed to be **baseless** and **unfounded**.

26. The reliefs in the second writ petition shows that the petitioner has prayed for setting aside of the **Environmental Clearance** dated September 1, 2023 and **Consent to Establish** dated September 13, 2023 granted in favour of M/s. Unique Universal along with other consequential reliefs. On a conjoint and simultaneous reading of the reliefs from both the writ petitions, this Court is of the firm view that the reliefs claimed in the second writ petition are not identical and different from those claimed in the first writ petition. In as much as, the Environmental Clearance dated September 1, 2023 and Consent to Establish dated September 13, 2023 granted in favour of the M/s. Unique Universal were **events subsequent** to the filing of the first writ petition. Therefore, non-disclosure of the Judgment dated November 20, 2023 by which the first writ petition was disposed of, would not be accepted, as a **suppression of material fact** in the second writ petition. Accordingly, the non-disclosure of the first writ petition and its fate would not be a suppression of material fact while adjudicating the second writ petition. Moreover, the challenges in the first writ petition have been held to be baseless and unfounded by the Coordinate Bench.

27. The decisions cited by the applicant on the point of suppression of material facts have laid down the law on the issue and there is no doubt that the law laid down through the said judgments are governing the field and are settled propositions of law. Therefore, this Court do not discuss those settled propositions of law.

28. In the matter of: AUROVILLE (Supra) the Hon'ble Supreme Court had observed as under:

“9. It is no more res integra that the Doctrine of “Clean hands and non-suppression of material facts” is applicable with full force to every proceedings before any judicial forum. The party invoking extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and disclose all correct and material facts in his Writ Petition. If it is brought to the notice of the Court that the petition has been guilty of suppression of material and relevant facts or has not come with clean hands, such conduct must be seriously viewed by the courts as the abuse of process of law and the petition must be dismissed on that ground alone without entering into the merits of the matter.”

29. In the matter of: K.D. SHARMA (Supra) the Hon'ble Supreme Court had observed as under:

“35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. in the following words: (KB p. 514)
“. . . it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the materials facts— it says facts, not law. He must not misstate the law if he can help it— the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

30. In view of the law already settled, as stated above, the only test whether there has been suppression of any **material fact** is to be decided by the Court. The material facts are those which would have a direct bearing on the adjudication of the issue/writ petition before the Court. Suppression of each and every fact may not be a material suppression.

31. The Court will have to examine where the suppression of facts as alleged are such that in absence of disclosure of such facts, proper adjudication of the proceeding is not possible.

32. In the facts of the instant case, as already discussed above, even if, the fact of institution of the first writ petition and the reliefs claimed thereunder along with the Judgment dated November 20, 2023 by which the first writ petition has been disposed of, have not been disclosed in the second writ petition, such non-disclosure would not amount to suppression of **material facts**, as the challenges and the scope of the two writ petitions are different. The said Judgment can be relied upon by the parties in the second writ petition to refer to the observation made by the Coordinate Bench while deciding the first writ petition but the issues in the second writ petition require an independent adjudication in accordance with law.

33. In view of the foregoing reasons and discussions, this Court is of the considered opinion that there has been no **suppression of material fact** on the part of the petitioner in filing the second writ petition.

34. Thus, the objection raised by the applicant on account of suppression of material fact stands **overruled** and **rejected**.

Alternative Remedy:

35. The next objection with regard to the maintainability of the writ petition raised by the applicant is on the ground of existence of alternative statutory appellate remedy. In this regard, the applicant has relied upon the provision laid down under **Sub-section (h) to Section 16 of the 2010 Act**. The provision is quoted below :-

“16. Tribunal to have appellate jurisdiction—

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(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

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*****	*****	*****	*****”

36. From the expression used in **Sub-section (h) to Section 16 of the 2010 Act**, it appears that, an order made, on or after commencement of the said 2010 Act granting environmental clearance in the area in which any industries, operations or processes or class industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the said 1986 Act is appealable before the jurisdictional Tribunal exercising the appellate jurisdiction.

37. On a reading of the averment made in the second writ petition, it appears to this Court that, the petitioners have challenged the issuance of **Environmental Clearance** dated September 1, 2023 and the **Consent to Establish** dated September 13, 2023 in favour of the M/s. Unique Universal in violation of **Sub-rule 3 to Rule 7 of the Bio-Medical Waste Management Rules, 2016 (for short, ‘the said 2016 Rules’)**. The said permissions were granted admittedly, after commencement of the said 2010 Act. Environmental Clearance dated September 1, 2023 was granted for the area in which Unique Universal operates and its operation shall be carried out with the consequential Consent to Establish dated September 13, 2023. The safeguards are provided

under the said 1986 Act and in exercise of the power thereunder the said 2016 Rule was framed.

38. In as much as, to decide the issue raised by the petitioner with regard to the alleged violation of ***Sub-rule 3 to Rule 7 of the 2016 Rules***, various fact finding enquiries are required to be carried out, for which the Tribunal with its appellate jurisdiction as provided under Section 16 of the said 2010 Act is the appropriate authority for adjudication.

39. It is true, the law is well settled that existence of an alternative remedy under the statute is not an absolute bar before a constitutional Court in exercising its writ jurisdiction under Article 226 of the Constitution of India. But it is a self-imposed restraint depending upon facts and circumstances of every case. There is no straightjacket formula for exercising the jurisdiction by a Writ Court. If a Constitutional Court exercising its power under Article 226 of the Constitution of India, is of the view that several fact finding enquiries are required to be gone into, it is not job of a Writ Court in its summary proceeding, considering the facts of the case, the Writ Court may not entertain the writ petition but direct the adjudication of the issue to be done under the available alternative remedy under the statute.

40. The decisions cited on behalf of the applicant with regard to the entertainability of a writ petition by a writ Court are the settled propositions of law. All these decisions have held existence of an alternative remedy is not an absolute bar. But a self-imposed restraint. The entertainability of a writ petition depends on facts of each case. Every case differs from the other on facts. Similarly, the decisions relied upon on behalf of the writ petitioners in support of

maintainability of the instant writ petition, have also laid down the law which are well settled.

41. The contention of the petitioner as submitted by Ms. Ghosh, learned counsel that documents at pages 126 to 128 are not amenable to challenge before the appellate forum and since they are the results of executive action, those can only be challenged under the writ jurisdiction, is not accepted by this Court. If the challenge, as claimed in the instant second writ petition, falls within the scope of the Tribunal exercising appellate jurisdiction, any executive decision or notification being the source of such alleged wrongful action or in addition to or in connection with such wrongful action are always amenable to adjudication before the appellate authority, which is otherwise the jurisdictional forum to entertain the challenge of the alleged wrongful action of the authority.

42. *In the matter of : Godrej Sara Lee Ltd (Supra)* the Hon'ble Supreme Court had observed as under :

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic

that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

43. In the matter of : Tamil Nadu Cements Corporation Limited

(Supra), it has been observed by the Hon’ble Supreme Court that the issue involves needs a consideration of the Court whether there would be an absolute and complete bar to invoke writ jurisdiction even in exceptional and rare cases where fairness, equity and justice may warrant the exercise of writ jurisdiction. The facts in the instant writ petition is not such. The facts in the instant writ petition read with the contentions raised by the applicant, gave rise to several fact finding issues, which is neither a rare case nor against fairness or equity. In the facts of the instant case there is neither any

violation of principle of natural justice nor fundamental rights ex facie. There has been no challenge to any vires of the acts in the instant case.

44. In the matter of : Tamil Nadu Cements Corporation Limited

(Supra) the Hon'ble Supreme Court had observed as under :

“58. Thus, it would be true to say that the existence of the statutory remedy does not affect the jurisdiction of the High Court to issue a writ. Nevertheless, the writ jurisdiction being discretionary by policy, the writ courts generally insist that the parties adhere to alternative statutory remedies, as this reinforces the rule of law. However, in exceptional cases, writ jurisdiction can still be exercised as a power to access the court for justice and relief.”

45. Ultimately, on the issue involved in the matter, it was referred before the Larger Bench.

46. In the matter of : Tamil Nadu Cements Corporation Limited

(Supra), in view of the above discussions, this Court is of the view that the judgment has no application in the facts of the instant case.

47. In the matter of : Expfar SA and Another (Supra) the point of demurrer was on territorial jurisdiction. This is not the point of demurrer in the facts of the instant case. Therefore, the ratio laid down **In the matter of: Expfar SA and Another (Supra)** does not apply in the facts of the instant case.

48. The law is now well settled. The Hon'ble Supreme Court **In the matter of : United Bank of India vs. Satyawati Tondon and Others reported at (2010) 8 SCC 110** had 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.”

49. In view of the foregoing reasons and discussions, since an alternative and efficacious appellate remedy available under the said 2010 Act, this Constitutional Court refrains itself from exercising its high prerogative writ jurisdiction in the facts and circumstances of the instant case.

50. Accordingly, the instant application **I.A. No.CAN 1 of 2025** stands **allowed partly** on the ground of **existence of alternative remedy only**.

51. It is once again clarified that the objection on the ground of suppression of material fact stands **rejected**.

52. Resultantly, this **Writ Petition No.433 of 2025** stands **dismissed** on the ground of existence of alternative remedy.

53. However, it is made clear that the writ petitioners shall be at liberty to file the statutory appeal before the jurisdictional appellate forum within a period of **six weeks** from date. In the event, such an appeal is filed, the jurisdictional appellate authority shall register the same forthwith and shall proceed with the same and come to its logical conclusion strictly in accordance with law, as expeditiously as possible.

54. It is made clear that this Court has not gone into the merits of the rival contentions of the parties to the writ petition and all points are kept open for the parties to urge before the jurisdictional appellate authority.

55. There shall be no order as to cost.

(Aniruddha Roy, J.)