In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

And

The Hon'ble Justice Om Narayan Rai

FMA 98 of 2026
in
WPA 1963 of 2026

Sudhir Chandra Paul
Vs.
The State of West Bengal and others

For the petitioner	:	Mr. Saptarshi Banik, Mr. Satyajit Paul, Advs.
For the State	:	Mr. Jagriti Mishra, AAAG, Ms. Mrinmayee Das, Adv.
Hearing concluded on	:	23.11.2026
Judgment on	:	23.11.2026

Sabyasachi Bhattacharyya, J:-

1. The present appeal has been preferred against an order passed by the learned Single Judge whereby the writ petition of the appellant was dismissed on the ground of availability of equally efficacious alternative remedy in the form of a further appeal before the Appellate Tribunal under Section 112 of the WBGST/CGST Act, 2017.

2. Learned counsel for the appellant argues that the appellant is 79 years of age and would be required to deposit further statutory amount for filing an appeal before the Tribunal.

3. However, there was no fault on the part of the appellant in the error committed by the appellate authority in the present case.

4. Learned counsel points out that although the date of personal hearing was fixed on July 7, 2026, the statutory appeal filed by the appellant was taken up on July 2, 2026 by the said Appellate authority and was decided on merits, thereby patently violating the dotrine of *audi alteram partem*.

5. In view of such gross miscarriage of justice, it is submitted that the learned Single Judge ought to have set aside the order and relegated the matter to the First Appellate Authority.

6. Learned AAAG, appearing for the State, submits that the said Act is a complete code in itself and provides appropriate forums for preferring appeals upon deposit of the statutory amounts therefor.

7. Thus, bypassing such route would be contrary to the scheme of the statute.

8. We find from the circumstances of the present case that there was a gross abuse of the process of court on the part of the First Appellate Authority in taking up the statutory appeal filed by the appellant on July 2, 2026, five days prior to the date fixed for personal hearing, which transpires to be July 7, 2026 even from the notice of adjournment dated June 19, 2026 annexed to the writ petition.

9. Even if we proceed on the premise that it is doubtful whether the appellant would be required to deposit statutory amount afresh before the Tribunal, fact remains that the appellant is on the verge of turning 80 and at such ripe age would be compelled to litigate before the

Tribunal which is situated far away from his residence, due to absolutely no fault of his own, for a patent procedural error committed by the First Appellate Authority which hits at the root of the matter.

10. It is absurd that the date of personal hearing was fixed on July 7, 2026 but the appeal itself was taken up for hearing by the Appellate Authority five days prior thereto without notice to the appellant.

11. It is well-settled that mere availability of an alternative remedy is not an absolute bar and the writ court's hands are not tied to interfere under Article 226 of the Constitution of India in judicial review where there has been a gross miscarriage of justice as in the present case.

12. In such view of the matter, FMA 98 of 2026 is allowed on contest, thereby setting aside the impugned order dated September 3, 2026 passed in WPA 1963 of 2026 as well as setting aside the judgment dated July 2, 2026 passed in ARN no. AD1903260171391.

13. The matter is remanded to the First Appellate Authority, for the said authority to take up the aforesaid appeal for hearing afresh and to decide the same upon giving adequate opportunity of hearing to both parties, upon advance notice to all interested persons, including the appellant.

14. It is expected that such fresh adjudication shall be completed as expeditiously as possible, preferably within three months from the date of communication of this order to the Appellate Authority.

15. There will be no order as to costs.

16. Urgent certified server copies of this judgment, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree

(Om Narayan Rai, J.)

(Crt no. 7)
Item no. 18
SSS