

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11176 of 2021

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Dharam Dew Choudhary S/O - Late Braham Dev Choudhary resident of
village - Kadir Bigha, P.S. - Deepnagar, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate - cum - Collector, Nalanda.
3. The Sub Divisional Magistrate, Bihar Sharif, Nalanda.
4. The Block Supply Officer, Bihar Sharif, Nalanda.
5. The District Supply Officer, Bihar Sharif, Nalanda.
6. The Assistant District Supply Officer, Bihar Sharif, Nalanda.

... .. Respondents

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Appearance :

For the Petitioner : Ms. Vagisha Pragya Vacaknavi, Advocate
For the Respondents : Mr. S. Raza Ahmad, AAG-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 31-03-2022

The petitioner held a license to run a P.D.S. shop under Bihar Targetted Public Distribution System (Control) Order, 2016 ('Control Order, 2016' for short) for the Gram Panchayat Tungi in the district of Nalanda, which came to be cancelled by an order of the Licensing Authority dated 28.05.2019 on the allegation of certain irregularities committed by him. The petitioner preferred an appeal against the said order of the Licensing Authority before the Appellate Authority, i.e., the District Magistrate, Nalanda, giving



rise to Supply Case No. 19 of 2019, which has been dismissed by an order dated 04.02.2021.

2. The petitioner has assailed in the present writ application filed under Article 226 of the Constitution of India, the said order of the Licensing Authority dated 28.05.2019 and the Appellate Authority dated 04.02.2021.

3. The Control Order, 2016, has been issued in exercise of powers conferred under Section 3 and Section 5 of the Essential Commodities Act and it is not disputed that it is statutory in nature. Rule 32(vii) of the Control Order, 2016, which confers revisional jurisdiction upon the Principal Secretary/Secretary of the Department. Rule 32(vii) reads thus: -

“(vii) The Principal Secretary/Secretary of the department may call for the records related to the order passed under the provisions of this Order by the Divisional Commissioner or the District Officer or the licensing authority or the Sub Divisional Officer suo motu or upon a representation by someone, and if he is satisfied that the Divisional Commissioner or the District Officer or the licensing authority or the Sub Divisional Officer

(a) has exercised such powers which are not entrusted to him,



(b) has exercised his powers illegally without considering the facts of the case,

(c) has failed in use of his powers, he may pass an order which he thinks fit.”

4. The petitioner has not availed the aforesaid statutory remedy of revision before approaching this Court invoking writ jurisdiction under Article 226 of the Constitution of India to assail the impugned orders. In response to a query made by this Court as to why the petitioner did not avail the statutory remedy of revision under the Control Order, 2016, before approaching this Court, Ms. Vagisha Pragya Vacaknavi, learned counsel appearing on behalf of the petitioner, has argued that since the challenge to the impugned order is on the grounds of violation of principles of natural justice, the petitioner is not required to invoke the revisional authority against the impugned orders. She has vehemently argued that if there is violation of principles of natural justice by an authority exercising *quasi-judicial* functions, the affected person is not required to invoke the statutory provision of appeal or revision. She has contended that since there has been violation of principles of natural justice, this Court instead of requiring the petitioner to avail the remedy of revision should interfere with the impugned order.



5. We will discuss the factual background in which the aforesaid submission of violation of principles of natural justice has been made after briefly discussing the facts of the case.

6. The petitioner was put to a show-cause notice through a letter dated 23.08.2018 based on an enquiry conducted by the Block Supply Officer, Biharsharif, on 16.06.2018. The said communication referred to five irregularities of the following nature: -

(i) Price display board was not as per the fixed measurement.

(ii) Records relating to the distribution of articles were not maintained.

(iii) Cash memos were not produced and

(iv) The weight and measurement equipment was not verified up to date

(v) The beneficiaries had complained about the non-delivery of the food grains.

7. A copy of the said report was said to be enclosed with the said notice dated 23.08.2019. The petitioner was asked to submit his explanation by 04.09.2018 stating as to why the license be not cancelled. The petitioner submitted his reply on 04.09.2018



denying the first allegation with a plea that the size of the price display board was as per the fixed standard and without taking the measurement, the Block Supply Officer had made a vague allegation regarding non-compliance. In respect of the second allegation, the petitioner took a defence that the distribution records are maintained which bear the thumb impressions of the respective beneficiaries. In relation to the non-production of cash memos, he took a plea that the beneficiaries received the food grain, etc. after putting their thumb impressions and they would not take the cash memos. In relation to the fourth allegation in respect of absence of the certification of the weight and measurement device, he took a plea that he had deposited the said device in the office of the Weights and Measurements Department for the said purpose. He, thus, admitted that on the date of inspection, the weight and measurement device was not duly certified. In respect of the general allegation of the consumers about non-delivery of the food-grains, he took a plea that in the notice their respective names were not disclosed and that such allegation was baseless.

8. Another enquiry of the petitioner's shop was conducted on 15.09.2018 when the shop was found closed. The petitioner was contacted on the telephone when he is said to have



disclosed that he had gone to consult a Doctor. The petitioner was again asked to submit his explanation as to why license be not cancelled with the issuance of a show-cause notice dated 17.09.2018. In his reply, the petitioner took a plea that suddenly in the morning of 15.09.2018, he had fallen sick and had proceeded for his treatment. He relied on a medical prescription in support of his case that he was suffering from diarrhoea. Taking into account the aforesaid two explanations in respect to the two separate notices, the Sub Divisional Officer, Bihar Sharif, issued a second show-cause notice dated 06.10.2018 asking the petitioner to explain as to why the petitioner's license be not cancelled. The petitioner submitted his reply to the second show-cause notice on 12.10.2018, whereafter the impugned order dated 28.05.2019 came to be passed by the Licensing Authority. As has been noted above at the outset, the main ground which has been taken to assail the impugned order is that the report of the Block Supply Officer, which was the basis for issuance of show-cause notice to the petitioner, was not supplied to him at the time of issuance of the show-cause notice.

9. Be that as it may, the fact remains that the petitioner has not availed the statutory remedy of revision under the Control Order, 2016. In the said background and in the background of



nature of the allegation against the petitioner, as noted above, a question arises as to whether the petitioner should be permitted to maintain this writ application without having exhausted the alternative statutory remedy under the Control Order, 2016, on the sole plea of non-supply of enquiry report.

10. There cannot be any hassel over the legal principle that the existence of an alternative remedy is no bar for a High Court to entertain a writ petition under Article 226 of the Constitution of India. It is also, at the same time, the settled principle that save in exceptional cases, this Court, exercising discretionary power of judicial review under Article 226 of the Constitution of India will not interfere until all normal remedies available to a petitioner have been exhausted. It is to be borne in mind that grant or refusal of a writ is at the discretion of the Court and the Court, exercising such discretion, needs to take into consideration various circumstances including the availability of equally efficacious alternative statutory remedy. In the case of ***U.P. State Spg. Co. Ltd. v. R.S. Pandey***, reported in **(2005) 8 SCC 264**, the Supreme Court has laid down in no uncertain terms that the principle dealing with the issue relating to entertaining a writ petition when an alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience



and discretion and never a rule of law. The Supreme Court held that despite the existence of an alternative remedy, it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution of India. The Court, however, held that normally the High Court should not interfere if there is an adequate efficacious alternative remedy. Relevant portion of paragraph 11 of the decision in the case of **R.S. Pandey** (supra) is reproduced hereinbelow: -

“11.At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.”

11. The Supreme Court further held in case of **R.S. Pandey** (supra) in paragraph 12, relevant portion whereof reads as under -

“.... However, the remedy of writ is an absolutely discretionary remedy and



the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.”

12. It is true that when an action is found to be *ex-facie* illegal, beyond the jurisdiction, or in violation of principles of natural justice, in appropriate cases a writ petition under Article 226 of the Constitution of India can be maintained. However, normally such writ jurisdiction is to be exercised in such cases only if exceptional circumstances are made out. It will be useful in this regard to notice the law laid down in the case of ***U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh***, reported in (2004) 4 SCC 268, by the Supreme Court that when the dispute relates to enforcement of a right or an obligation under the statute and the specific remedy is provided therefor under the statute, the High Court should not deviate from general view and interfere, except when a very strong case is made out for making a departure. In the case of ***Roshina T. v. Abdul Azeez K.T.***, reported in (2019) 2 SCC 329, the Supreme Court referring to the decisions in the case of ***Mohan Pandey v. Usha Rani Rajgaria***



(*Smt.*), reported in (1992) 4 SCC 61 and *Dwarka Prasad Agarwal v. B.D. Agarwal*, reported in (2003) 6 SCC 230, has held that the jurisdiction under Article 226 of the Constitution of India being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. It has been held in the said case that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes for which remedies under general law, civil or criminal are available. Though the High Court has jurisdiction to grant relief under Article 226 of the Constitution of India, it would not ordinarily entertain a writ petition where an alternative remedy is open to the aggrieved party [See : *Thansingh Nathmal v. Supdt. of Taxes*, (AIR 1964 SC 1419)]. In the case of *Thansingh Nathmal* (supra), the Supreme Court laid down in paragraph 7 as under: -

“7.The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed



limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”



13. The issue of maintainability of a writ petition under Article 226 of the Constitution, when the aggrieved person has an effective alternative remedy available in law, had fallen for consideration before the Supreme Court in case of ***Radha Krishan Industries vs. State of Himachal Pradesh and Others*** reported in (2021) 6 SCC 771. Upon considering various judicial pronouncements on the said legal issue, the Supreme Court has laid down the law in case of Radha Krishan Industries (supra), paragraphs 24 to 27 of which read as under :-

“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 : 2020 SCC OnLine SC 440] , the High Court noted 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 of Trade Marks [Whirlpool Corpn. v. Registrar of 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 of 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 of Trade Marks [Whirlpool Corpn. v. Registrar of 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.”

14. In the present case, the petitioner has a statutory remedy of revision under the provisions of the Control Order, 2016, which he has not invoked. A plea has been taken of violation of principles of natural justice to invoke writ jurisdiction of this Court bypassing the statutory remedy of revision. We decline to comment on the sustainability of the said plea as we are not



inclined to entertain the present writ application on the ground of the existence of an alternative statutory remedy and in the opinion of this Court, any observation made by this Court may prejudice the competent authority in deciding the issue objectively. We reiterate, however, that the existence of an alternative statutory remedy is not a bar for the High Court to entertain a writ petition under Article 226 of the Constitution of India. In exceptional circumstances, this Court may interfere exercising the writ jurisdiction despite the availability of alternative statutory remedy. The complete lack of jurisdiction or violation of principles of natural justice is some of the illustrative circumstances in which this Court may consider interfering in writ jurisdiction if the situation so warrants. However, if the Court is satisfied that the issue, which is being raised before the writ Court is capable of being raised before an alternative statutory forum, this Court may decline to interfere.

15. Learned counsel for the petitioner has not argued that the forum of revision is less expeditious and efficacious than this Court's writ jurisdiction.

16. We hasten to add here that ordinarily a High Court under writ jurisdiction tests the correctness of the decision making process, exercising power of judicial review of administrative or



quasi judicial decision and not the decision itself. Further, the High Court exercising such power is not required to reappreciate the evidence. Furthermore, while exercising the power of judicial review, the High Court ordinarily does not substitute its own decision in place of the decision of an administrative or *quasi* judicial authority. Whereas these limitations, though self imposed, apply in a proceeding under Article 226 of the Constitution, the statutory authorities having power of appeal or revision have statutory obligation to decide all such issues as raised also upon, *inter alia*, reappreciating the evidence and can substitute its decision in appropriate cases.

In such circumstances, this Court fails to appreciate why the petitioner should be permitted to invoke discretionary extraordinary writ jurisdiction of this Court instead of invoking ordinary statutory remedy available to him.

17. In the given facts and circumstances of this case, we are of the view that there exists no exceptional circumstance for this Court to entertain this writ application despite availability of alternative statutory remedy to the petitioner to assail the impugned orders.

18. Learned counsel for the petitioner has placed reliance on the decisions of this Court in the cases of ***Brahmdeo***



Rai v. State of Bihar, reported in 2013(2) PLJR 706 (S.B.), *Md. Najibul Haque Ansari v. State of Bihar*, reported in 2013(2) PLJR 637 (S.B.) and *Krishna Kumar Srivastava v. State of Bihar*, reported in 2013(3) PLJR 249 (S.B.), to make out a case that in the event there is a violation of principles of natural justice a writ petition can be maintained despite the availability of alternative remedy. Reliance has also been placed on an unreported judgment of this Court in the case of *Depan Ram Vs. The State of Bihar and Others* rendered on 03.08.2017 in C.W.J.C. No. 19406 of 2014 in support of the contention that non-supply of enquiry report amounts to a violation of principles of natural justice, in which case writ petition under Article 226 of the Constitution of India can be maintained.

19. As has been held above, there cannot be two opinions over the legal principle that a writ petition under Article 226 of the Constitution of India cannot be said to be not maintainable on the ground of availability of alternative remedy. Normally, however, a writ petition should not be entertained when a statutory alternative remedy is available. It is the Court's discretion to entertain a writ petition even if an alternative remedy exists, in appropriate cases and exceptional circumstances.



20. The principle that the High Court may entertain a writ petition notwithstanding the availability of an alternative remedy, where there is a violation of principles of natural justice, cannot be stretched to such extent as to contend that in all such cases where there is violation of principles of natural justice, this Court is under obligation to entertain a writ petition despite there being a statutory remedy against the impugned action.

21. On the basis of what has been discussed hereinabove, we arrive at the following conclusions, on the issue relating to the exercise of discretionary power under extraordinary writ jurisdiction when an equally efficacious alternative statutory remedy exists: -

(i) Availability of an alternative statutory remedy puts no bar on the exercise of the High Court's jurisdiction under Article 226 of the Constitution of India.

(ii) Normally, when an alternative statutory remedy is available, the Court would refuse to entertain a writ petition under Article 226 of the Constitution of India, which is a discretionary and extraordinary jurisdiction.

(iii) This rule is a rule of self-imposed limitation. It is essentially a rule of policy, convenience, and discretion and never a rule of law.



(iv) In the event, a person aggrieved approaches the High Court without availing an alternative statutory remedy the High Court would first ensure that there exists a good ground to invoke extraordinary jurisdiction in an extraordinary circumstance. Unless exceptional circumstances are made out, a writ petition under Article 226 of the Constitution of India should normally not be entertained when a statutory remedy is available.

(v) The complete lack of jurisdiction of an authority passing an order, violation of principles of natural justice, etc. can be a circumstance for this Court to exercise discretion and entertain a writ petition under Article 226 of the Constitution of India despite the availability of alternative remedy only if an exceptional circumstance is made out. This would, however, not mean that the High Court is under obligation to entertain a writ petition in each and every case on the plea of violation of principles of natural justice when an alternative statutory remedy before an appropriate forum is available and such plea can be raised before such authority.

22. The conclusions, recorded above, are illustrative in nature and not exhaustive.

23. Coming back to the present case, after having gone through the pleadings on record and the impugned orders, we are



of the considered view that no exceptional/extraordinary circumstance is made out for this Court to entertain the writ petition at the instance of the petitioner, who has the alternative statutory remedy of revision under the provisions of Control order, 2016. We are, therefore, not inclined to entertain this application, which is accordingly dismissed.

24. The petitioner is, however, granted liberty to avail the remedy of revision by making an application before the Revisional Authority. If such application is made within six weeks from today, the Revisional Authority shall not decline to entertain the revision application, on the ground of delay, keeping in mind the fact that the petitioner was pursuing his remedy before this Court by filing the present writ application, in the event the revision application is filed with an application seeking condonation of delay.

25. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

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