

(2014) 07 DEL CK 0310
In the Delhi High Court
Case No : LPA No. 390/2014

Bela Rani Bhattacharyya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Competition Act, 2002 — Section 53T
Constitution Of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 17, 19
Income Tax Act, 1961 — Section 148
Telecom Regulatory Authority Of India Act, 1997 — Section 18

Citation : (2014) ComPLR 262 : (2014) 212 DLT 1

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Dipak Bhattacharya and Niloy Dasgupta, Advocate for the Appellant;
Vikram Aditya Narayan for Sachin Datta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. This intra-court appeal impugns the orders dated 07.11.2013 and 10.01.2014 of the learned Single Judge in W.P. (C) No. 5079/2013 preferred by the appellant and inter alia holding the writ petition preferred by the appellant impugning the order dated 20.10.2011 of the Competition Appellate Tribunal (COMPAT) to be not maintainable owing to the remedy of appeal u/s 53T of the Competition Act, 2002 being available thereagainst. The learned Single Judge having not gone into the merits of the writ petition, need is not felt to set out the same. The only question for consideration is of the maintainability of a writ petition under Article 226 of the Constitution of India against the order of the COMPAT and which order admittedly is appealable to the Supreme Court u/s 53T (supra). The counsel for the appellant merely stated that he has set out the judgments relied upon by him in support of the proposition of maintainability of the writ petition in the memorandum of appeal before us.

2. The appellant/writ petitioner, in the memorandum of appeal has referred to L. Chandra Kumar Vs. Union of India and others, , Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, , Competition Commission of India Vs. Steel Authority of India Ltd. and Another, , The State of Uttar Pradesh Vs. Mohammad Nooh, , Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others, , Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, , R.K. Jain Vs. Union of India and Others, , Dulal Chandra Hazarika Vs. The Assam Board of Revenue and Others , Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan, , B.E. Supply Co. Vs. The Workmen AIR 1972 SC 303, S. Parthasarathi Vs. State of Andhra Pradesh, , Syed Yakooob Vs. K.S. Radhakrishnan and Others, and Ouseph Mathai and Others Vs. M. Abdul Khadir, .

3. A Division Bench of this Court (of which one of us was a member) in judgment dated 23.02.2012 in W.P. (C) No. 1077/2012 titled Union of India Vs. Aircel Ltd. and other connected matters was similarly concerned with the maintainability of the writ petition against the order of Telecom Disputes Settlement & Appellate Tribunal (TDSAT), whereagainst also the remedy of appeal to the Supreme Court was available u/s 18 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act). While Section 53T supra with which we are concerned, provides for an appeal to the Supreme Court against "any decision or order of the Appellate Tribunal", Section 18 of the TRAI Act provided for an appeal against "any order, not being an interlocutory order". It would thus be seen that scope of appeal u/s 53T is much wider than the appeal u/s 18 of the TRAI Act. The Division Bench of this Court held the writ petitions to be not maintainable in view of the statutory remedy available before the Supreme Court.

4. Reliance was placed by the Division Bench inter alia on the judgment of the Supreme Court in Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, The Supreme Court in the said judgment was directly concerned with the question, whether this Court was justified in entertaining the writ petitions against the order passed by the State Consumer Disputes Redressal Commission, ignoring the statutory remedy of appeal to the National Consumer Disputes Redressal Commission available u/s 19 of the Consumer Protection Act, 1986. The Supreme Court in the said judgment inter alia held as under:

11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation- L. Chandra Kumar Vs. Union of India and others, However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the

Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, , it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognized some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Superintendent of Taxes (supra) and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still hold field.

25. What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various judgments of this Court and yet it has declared that the directions given by the State Commission are without jurisdiction and that too by overlooking the availability of statutory remedy of appeal to the Respondents.

5. The Division Bench, accordingly, in Aircel Ltd. supra, held the writ petitions to be not maintainable in view of the remedy of appeal to the Supreme Court.

6. The appellant by the writ petition from which this appeal arises, is not enforcing any fundamental right. Though the appellant sought to justify the maintainability of the writ petition on the ground that the order impugned therein of the COMPAT of dismissal in limine of the appeal preferred by the appellant was in deprivation of the principles of natural justice and amounted to refusal by the COMPAT to exercise jurisdiction vested in it but we are unable to find the case to be still falling in the Baburam Prakash Chandra Maheshwari (supra) category. The fact remains that the dispute is purely factual. If writ petitions on such grounds were to be entertained, the same would negate the provision of the statutory appeal.

7. What the appellant is urging before us, is open to be urged in the statutory appeal also. The Supreme Court recently in Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , in the context of Income Tax Act also has held as under:

15. Thus, while it can be said that this Court has recognized some exceptions to

the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the Assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Company Vs. State of Haryana and Others*, this Court has noticed that if an appeal is from "Caesar to Caesar"s wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ Petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued u/s 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

8. We may mention that the same view has been taken by a Single Judge of this Court in *G.K. Granites etc. and etc. Vs. Tata Hitachi Construction Machinery Company Limited and Others etc. and ect.*, in respect of Section 53T supra though we find that LPA No. 369/2014 preferred thereagainst is pending consideration. Mention may however be made of *Shree Cement Limited and Another Vs. Competition Commission of India and Another*, where another learned Single Judge of this Court concerned with a writ petition against an interlocutory order of COMPAT not granting an unconditional order of stay, relying on *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, held the availability of alternative remedy of appeal u/s 53T supra to be not an absolute bar to maintainability of writ petition in three contingencies namely where the writ petition has been filed for the enforcement of any

Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged and a writ petition to be maintainable on these limited grounds. However, the judgments supra referred to by us were not noticed and save for relying on Whirlpool Corporation supra, after which there has been much development, no elaborate discussion was made on the subject. Reference may also be made to a detailed judgment of the Division Bench of the Allahabad High Court in Surendra Bahadur Singh Vs. Armed Forces Tribunal, Regional Bench, Lucknow and Others, holding writ petitions against the final orders of the Armed Forces Tribunal and against which appeal lies to the Supreme Court under the Armed Forces Tribunal Act, 2007 to be not maintainable.

9. We see no reason to take a different view from that taken by a Coordinate Bench in Aircel Ltd.

10. In the face of the aforesaid position, the judgments referred to in the memorandum of appeal are of no avail.

11. There is thus no merit in the appeal, which is dismissed.