(1977) 11 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 15 of 1977

Jagraj Singh APPELLANT

Vs

State of Himachal Pradesh RESPONDENT

Date of Decision : 30-11-1977

Acts Referred:

Constitution of India, 1950 — Article 131A, 226, 226(1), 226A, 32
Income Tax Act, 1961 — Section 66(2)
Motor Vehicles Act, 1939 — Section 57, 57(3)
Sea Customs Act, 1878 — Section 87

Citation : (1977) 6 ILR HP 728

Hon'ble Judges : R.S. Pathak, C.J;T.U. Mehta, J

Bench : Division Bench

Advocate : Inder Singh, for the Appellant; A.G., for the Respondent

Judgement

T.U. Mehta, J.—The question which has arisen in these several writ petitions is with regard to the extent of the jurisdiction of this Court to issue high prerogative writs under Article 226 of the Constitution in view of Clause (3) thereof which says that no petition for redress of any injury referred to in Sub-clauses (b) and (c) of Clause, (1) of that Article shall be entertained if any other remedy for such redress is provided by or under any other law for the time being in force.

2. The contention which is raised on behalf of the State in this connection is three-fold, viz.

1. Remedy for redress of the injury referred to in Sub-clauses (b) and (c) of Clause (1) by invoking writ jurisdiction of the High Court is totally barred of once it is found that an alternative exists at law. remedy

2. This alternative remedy includes also the remedy which could be availed of under the common law of the land by filing a civil suit in court.

3. The alternative remedy contemplated by Clause (3) is "any" remedy and

hence even if this alternative remedy is found to be inefficacious, insufficient and futile, the High Court''s jurisdiction to issue a writ under Article 226 is barred.

As against this, the contentions raised by the learned Adovcates of the Petitioners are that (1) the writ jurisdiction of the High Court has been barred by Clause (3) only so long as an alternative remedy exists, and hence once it is found that all alternative remedies are exhausted, and the matter still falls under Sub-clauses (b) and (c) of Clause (1), the High Court can exercise its writ jurisdiction under this Article (2) Remedy which could be availed of by filing a suit is not covered by the bar contemplated by Clause (3). (3) Remedies which are inefficacious, insufficient and futile are no remedies at all and hence do not fall within the bar of Clause (3).

3. This controversy is obviously centered round the interpretation of Clause (3) of Article 226. In order to appreciate the changes which have been brought about by 42nd amendment to the Constitution of India in Article 226, it would first be necessary to know how this Article stood before the said amendment. The original Clause (1) of Article 226, which is relevant for our purpose, stood as under:

Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

Now this Clause (1) reads as under in the amended Article:

Notwithstanding anything in Article 32 but subject to the provision of Article 131-A and Article 226-A every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them:

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) where such illegality has resulted in substantial failure of justice.

We are not concerned with Clause (2) of this Article for the purpose of this decision, but Clause (3) thereof which is required to be interpreted is in the following terms:

(3) No petition for the redress of any injury referred to in Sub-clause (b) or Sub-clause (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

It is obvious from the above, that apart from the fact that the amendment brought in the Article makes it subject to the provisions of Articles 131-A and 226-A, it makes an important departure from the original article inasmuch as it drops the words "for any other purpose", thus restricting the exercise of the jurisdiction of the High Court under this Article only to three matters which are specified in Sub-clauses (a), (b) and (c) of Clause (1). The result, therefore, is that while previously the High Court could exercise its writ juridisction under Article 226 "for any other purpose", now it has to be restricted only for the purpose of (1) enforcement of fundamental rights, (2) the redress of injury caused by the contravention of any provision of law, and (3) the redress of any injury caused by any illegality committed in any proceeding. The jurisdiction of the High Court having been thus limited only to the above referred three classes of cases, it is now no more possible for the High Court to exercise its writ jurisdiction under Article 226 for any other purpose.

4. In the passing, it may be mentioned that previously the words "any other purpose" were sought to be construed by courts as having very wide connotation irrespective of the well established principles for issuing writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo-warranto. However, after a passage of time, ultimately the courts in our country limited these words as meaning "for any other purpose for which any of the writs would, according to well establihsed principles, issue". Nonetheless, the jurisdiction which the courts used to exercise under the powers derived through these words was very wide; but now, in view of the restriction of this jurisdiction only for the above referred three specified classes, the High Court''s jurisdiction to issue high prerogative writs stands greatly circumscribed. A bare perusal of the new Clause (1) of Article 226 shows that while the Court''s jurisdiction to enforce fundamental rights remains the same as before, its jurisdiction to redress the injuries of other nature is confined to only two categories of cases, viz., (1) contravention of statutes etc. and (2) illegalities in proceedings, with a further rider that in the cases covered by the first category, the injury should be of substantial nature, and in the cases covered by the second category, the illegality in question should have resulted in substantial failure of justice. The newly added Clause (3) of Article 226 puts a further limitation on the exercise of this jurisdiction inasmuch as it controls Sub-clauses (b) and (c) of Clause (1). Clause (3) in effect says that in cases of inujrics caused either by contravention of a provision of law or by the commission of illegality in any proceeding under any law, the High Court shall not exercise its writ jurisdiction under Article 226 if, for giving such a redress, any

other remedy is provided for by or under any other law. Clause (3) thus embodies in itself a rule of law debarring a person from availing of the writ jurisdiction of the High Court in case he has an alternative remedy under law.

5. The first contention, which was feebly raised on behalf of the State, was that if a literary meaning is given to Clause (3), it would necessarily follow that in cases where the redress in question is provided for by or under any other provision of law, the writ jurisdiction of the High Court is totally barred, and the only remedy for the aggrieved party is to rest satisfied with the decision obtained through that other remedy. In other words the contention was that in cases where remedy is provided by any other law for the time being in force for the injuries contemplated by Sub-clauses (b) and (c) of Clause (1) of Article 226, then writ jurisdiction of the High Court is totally barred even if as a result of the availment of that remedy the illegality in question persists.

6. The argument above referred to obviously takes an extreme position which is not, in the least, borne out either from the language of Clause (3) or from the intention of the Legislature in recasting Article 226. In our opinion, therefore, this argument is liable to be summarily rejected.

7. However, in the subsequent portion of this judgment we have elaborately referred to the historical background of the amendment of Article 226 of the Constitution as it could be culled out from the debate in the Lok Sabha on 42nd Amendment of the Constitution. This historical background unmistakably points out to the intention of the Legislature to retain the extraordinary jurisdiction of the High Court under Article 226 to give redress in cases of substantial injuries caused by contravention of a statutory provision, as well as the injuries caused by reason of any illegality in any proceedings. The above argument which is advanced on behalf of the State runs quite contrary to such an established intention of the Legislature.

8. However, apart from that, even in a pure literal reading of the language of Clause (3), we do not find there anything which would justify the contention of the State that in cases where redress for the injuries contemplated by Sub-clauses (b) and (c) of Clause (1) is avilable under any other law for the time being in force, writ jurisdiction is totally barred. In this connection it should not be forgotten that Clause (3) of Article 226 operates as a proviso to Sub-clauses (b) and (c) of Clause (1). Therefore, this Clause (3) which contemplates bar to the jurisdiction of the High Court in writ matters cannot be read divorced from Sub-clauses (b) and (c) of Article 226(1). If, therefore, Clause (3) of this Article is read in conjunction with Sub-clauses (b) and (c) it necessarily follows that Clause (3) operates only so long as other remedy for redressing the injuries contemplated by Sub-clauses (b) and (c) are available. If such remedies are once exhausted, and if the injuries contemplated by Sub-clauses (b) and (c) still persist, then the main provisions of Sub-clauses (b) and (c) come into operation and the High Court gets jurisdiction to exercise its powers under Article 226 of the Constitution, because, in that case, Sub-clauses (b) and (c) operates without

any proviso attached to them.

9. Under these circumstances, we see no force in the first point raised on behalf of the State.

10. It was then contended on behalf of the learned Advocates of the Petitioners, with regard to the interpretation of Clause (3), that the words "any other law for the time being in force", which are found at the end of Clause (3), have reference to statutory law, and not common law, the remedy under which can be exercised through civil courts. According to the Petitioners, therefore, the alternative remedy which debars the jurisdiction of the High Court under Clause (3) is not the remedy of filing a suit in a civil court to get the redress for the injury done. As against this, the contention raised on behalf of the State was that the words "any other law for the time being in force" are wide enough to include even the common law under which a civil Court can be approached, and therefore, in a case where an alternative remedy of filing a civil suit is found available, the bar contemplated by Clause (3) would operate and the High Court would have no jurisdiction to entertain the writ.

11. On this point also we find ourselves unable to accept the contention raised by the State. The question to be considered is whether the alternative remedies contemplated by Clause (3) of Article 226 include within themselves even the remedy which could be available by filing a civil suit in ordinary courts of the land. While considering this question we may again repeat that Clause (3) of Article 226 must be read along with Sub-clause (b) and (c) of Clause (1), because, it operates as a proviso to these two sub-clauses. If this is done, it would at once follow that this proviso in form of Clause (3) has reference to only the specific statutes which are mentioned in Sub-clauses (b) and (c). A pure analysis of Sub-clauses (b) and (c) shows that while Sub-clause (b) contemplates the injury caused by reasons of the contravention of any provisions of the Constitution or any provisions of enactment, ordinance, order, rule, regulation, bye-law or an instrument made thereunder, Sub-clause (c) contemplates injuries caused by any illegality in any proceedings by an authority under any of the provisions of Constitution, enactment, ordinance, order, rule, regulation, bye-law or other instrument made thereunder. This analysis, therefore, points out that the contravention of legal provisions or illegality in the proceedings under these legal provisions have reference to specific provisions of law and not to what is generally understood as common law. Now, effect of Clause (3) is that if these special provisions of law contain any remedy which is alternative to the remedy by invoking writ jurisdiction, then that remedy should be exhausted first. It is for this reason that even Clause (3) makes a specific reference to the injuries contemplated by Sub-clauses (b) and (c) of a clause (3).

12. It should further be noted that Clause (3) contains some inherent evidence to show that the bar contemplated by it does not cover collateral remedy of redressing a grievance by filing a civil suit. This evidence is supplied by the use of the expression "provided for". This experssion is clearly suggestive of a

situation wherein there is a specific provision for the availnient of remedy in the statute concerned. Remedy by way of a civil suit would be available even in cases where a legal right of a party is not governed by any special enactment and yet the same is infringed or curtailed. Clause (3) does not speak of such general remedies because it specifically speaks of the remedies which have been "provided for" by or under any other law.

13. We further find that the interpretation canvassed by the State would practically obliterate the jurisdiction of the High Court even in the matters in which the acts of the authorities concerned are loudly obtrusive, illegal and infirm, because, in all such matters remedy by way of civil suit would be available. But as already noted above, the intention of the Legislature in re-enacting Article 226 was not to obliterate the jurisdiction of the High Court to issue high prerogative writs in case of injuries of a substantial nature caused by illegalities.

14. In conclusion, it should be stated that Clause (3) of Article 226 does not cover within its ambit common law remedies which could be obtained by filing a civil suit and, therefore, the fact that such a remedy exists in a given case would not debar the High Court from exercising its writ jurisdiction if the matter falls within Sub-clauses (b) and (c) of Clause (1) of Article 226 of the Constitution.

15. Of course, this does not mean that the existence of the remedy which could be availed of by filing a civil suit is always irrelevant while considering whether writ jurisdiction under Article 226 should be exercised or not. Even under the old Article 226, as it was before its amendment, the courts had evolved a rule of self-restraint whereby they refrained from exercising their extraordinary powers to issue high prerogative writs in cases wherein remedy through civil courts was found to be a proper remedy. That rule of self-restraint does remain even after the amendment of Article 226 by virtue of its 42nd Amendment. But as already noted above, this is a rule of self-restraint and not rule having any statutory force.

16. In our opinion it is the third question which assumes greater importance, and it is as regards the true construction and meaning which could be put to the expression "any other remedy for such redress". Here the contention of the Petitioners is that the word "remedy" which appears in the above expression is the remedy which should be as efficacious and speedy as the remedy which the High Court can provide by exercising its writ jurisdiction under Article 226. As against this the contention of the learned Advocate General is that since the legislature has used a bland, wide and unqualified expression "any", it is not necessary to qualify the word "remedy" by the adjectives such as "efficacious" and "speedy" nor is it necessary to conclude that the alternative remedy which is contemplated by this expression should be of the same character as the High Court can provide in the exercise of its writ jurisdiction under Article 226. In the opinion of the learned Advocate General, if once it is found that, for the redress complained of, the Petitioner can avail of any other remedy, either under special

statute concerned, or under common law, by filing a regular suit, the High Court should stay its hands and should refuse to entertain the petition under Article 226. In other words, according to the learned Advocate General, even if the alternative remedy contemplated by the above expression is found to be inadequate and Insufficient, the High Court is debarred from exercising its jurisdiction of issuing high prerogative writs contemplated by Article 226.

17. The above contention raises the question as to what is the correct interpretation of the expression "any other remedy for such redress" found in Clause (3) of Article 226. Before venturing to interpret this expression it would be better to state the position of law as it obtained with regard to the courts'' jurisdiction under Article 226 before 42nd Amendment to the Constitution was brought on the statute book. This would be necessary because it was contended on behalf of the State that if the view canvassed by the Petitioners on the interpretation of this expression is accepted the very purpose of introducing Clause (3) in Article 226 would be lost because the position which would remain after the amendment would be the same as it was previous to the said amendment so far as the question of courts'' jurisdiction under Article 226 is concerned. In our opinion, this contention of the State is not acceptable because, as will be presently seen, it is not correct to say that after the amendment in form of Clause (3) the jurisdiction of the court under Article 226 remains the same as it was before the amendment. This will be clear by reference to some of the decisions of the Supreme Court to which we shall presently refer.

18. It will be apparent from Clause (1) of Article 226, as it stood before the amendment, that it vested very wide jurisdiction in the High Courts on the question of issue of high prerogative writs. On the literal construction of the old Article 226, the important limitation was only the limitation as regards the territorial jurisdiction, and on a literal construction of the words of that Article, it could be said that there was practically no fetter on the exercise of courts'' jurisdiction under it with regard to a person or a purpose. However, as a matter of self-restraint the courts in India evolved some rules of limitation in exercise of this extraordinary jurisdiction. According to these rules of limitation the courts did not ordinarily issue a writ in favour of a person who had:

1. an adequate alternative remedy, or

2. who was guilty of an unexplained delay, or

3. who was guilty of a conduct which disentitled him to the relief, or

4. where interest of justice did not require that relief should be granted to him, or

5. where the Petitioner raised highly controvertial and disputed questions of facts which could not be summarily investigated, or

6. where grant of a writ would be futile.

In spite of these limitations, which were self-imposed, the courts in India, including the Supreme Court, held in a number of cases that these limitations had no statutory force, and since they were born out of judicial policy adopted by courts, they were discretionary and, therefore, in spite of the fact that an adequate alternative remedy was available to the Petitioner it was open to the High Court to exercise its writ jurisdiction under this Article. The case law on the subject shows that, relying upon the English decisions, the courts in India have freely granted the writs of certiorari, prohibition and quo-warranto, and even mandamus, even if adequate alternative remedies were available to the aggrieved party. Thus some English decisions took the view that, with certain exceptions, the order of certiorari is discretionary, nevertheless it would be granted ex debito justitiae to an aggrieved party, if his conduct had not disentitled him to relief, even though certiorari had been taken away by the statute, and even if there was an alternative remedy. [vide R. v. Nat Bell Liquors Ltd. (1922) 2 A.C 128, Medical Appeal Tribunal Ex. P. Gilmore (1957) I.Q.B. 574 and per AvoryJ. in R. v. Post Master General (1928) I.K.B. 291]. Similarly, so far as the writ of prohibition is concerned, it was held in Channel Coalling Co. v. Ross (1907) I.K.B. 145 that in deciding whether to giant or not to grant an order of description, the court would not be fettered by the fact that an alternative remedy existed or that an appeal lay.

19. If we refer to Indian decisions we find a series of cases wherein in spite of the availability of an alternative remedy the courts have repeatedly granted relief under Article 226, as it stood then, on the footing that the rule of alternative remedy was merely a discretionary rule and, therefore, the court was not bound to act upon it. The Supreme Court repeatedly held in such cases that the fact that an alternative remedy existed should be taken into consideration but in a fit case the court was not debarred from exercising its juridiction on the footing that an alternative remedy existed. We shall presently refer to some of the important cases in this connection to make the matter clear. In early case of Rashid Ahmed Vs. The Municipal Board, Kairana, the Court held that the existence of adequate legal remedy was a thing to be taken into consideration in the matter of granting writs. In State of U.P. v. Mohammad Nooh AIR 1958 S.C. 86 the question of the court''s jurisdiction in case of the existence of an alternative remedy was elaborately discussed by S.R. Das, C.J. speaking for the court in the following terms:

In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsburry''s Laws of England, 3rd Ed., Vol. II, P. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by ,the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the King v. Postmaster Geueral Ex-parte Carmichael (1928) I.K.B. 291 a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction. The case of Rex. v. Wandsworth Justices Ex-parte Read (1942) I.K.B. 281 is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction.

(emphasis supplied).

20. On further perusal of case law we find that the same principle has been reiterated by the Supreme Court in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, In this case, the Court further observed that the doctrine of exhaustion of alternative remedy had no application to a case where the impugned order was made in violation of the principles of natural justice. The case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, is another instance where even though other remedy u/s 66(2) of the Income Tax Act was availble, it was held that that should not prevent the court from exercising its writ jurisdiction under Article 226. In A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, the Supreme Court emphasised the rule that the party invoking writ jurisdiction should exhaust other remedies open to him under the law before approaching the High Court is a rule of discretion only. Finally in State of West Bengal Vs. North Adjai Coal Co. Ltd., Shah J. speaking for the Bench of the Supreme Court is found to have observed that this rule is a rule of practice and not of jurisdiction.

21. In several matters even in cases of quo warranto writs, High Courts have exercised jurisdiction under Article 226 even if efficacious alternative remedies were open to the parties. Such instances are found in the following decisions:

1. Miss Avij Cama v. Banwarilal Agarwal AIR 1953 Nag. 81 at 85,

2. Nitya Nand Kul Bhushan Lal v. Khalil Ahmed Ali Ahmed AIR 1961 Pun 105,

3 Piara Singh Sardar Dasaundha Singh v. The State of Punjab AIR 1962 Punjab 498,

22. Thus it will be seen from the review of the above cases that though the Courts in India had accepted a broad principle that in case where an effective

alternative remedy was available to a party the High Court would not exercise its extraordinary jurisdiction under Article 226 so long as that alternative remedy was not exhausted, this rule was considered as a rule of policy, and therefore, the courts did not hesitate in numerous cases to exercise that jurisdiction under Article 226 in spite of the existence of an alternative remedy, which was sufficiently efficacious.

23. The above position is now changed, and the rule of discretion which was a self-imposed rule, has now been substituted by a rule of law which leaves no discretion with the Courts in cases where an effective and real alternative remedy is available. Now under the amended Article 226 even in cases where an injury of substantial nature is caused by contravention of legal provisions or by resort to an illegality in the procedure, the courts cannot say that they would exercise their jurisdiction to issue high prerogative writs, provided they find that an effective alternative remedy under any other provision of law is available to the aggrieved party. In our opinion, therefore, it would not be correct to say that the legal position as a result of the 42nd Amendment would remain the same as it was before, by interpreting the word "remedy" appearing in Clause (3) as the remedy which is real and effective.

24. In order to enable the Court to construe the provisions of Clause (3) properly, the learned Advocates of the Petitioners referred to the debates in the Lok Sabha on 42nd Amendment of the Constitution.

25. The general principle adopted by Courts, while construing the Acts of legislature, is that it is primarily the intention of the Legislature in passing a particular Act which should be taken into account. This intention is primarily to be ascertained from the plain words used by the Legislature in the statute concerned. If these words are plain and admit of only one meaning, seldom any difficulty in interpretation arises. Any such cases has to be taken as clearly expressing the intention of the legislature. Difficulty, however, arises when the words used are capable of two meanings, or are vague, or are not capable of conveying clearly the legislative intent. In such cases external aid such as debates in Parliament, Select Committee''s report etc., is permissible. But this is with a limited object of looking at the historical background of the legislation with a view to find out what was the evil which was sought to be remedied, and to what extent the mover of the legislation was prepared to act with a view to remedy the supposed evil.

26. It should, however, be remembered that the speeches made by Members of Parliament, including the mover of the legislation, during the course of the debate, can never be taken as the foundation of the legislative intent because the process of law making involves the collective wisdom and intent of the majority vote which has ultimately become determinative in Parliament. This intent of the majority vote might have been influenced by diverse considerations which might or might not have influenced the mover himself.

27. In The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, and subsequently in Commissioner of Income Tax, Gujarat Vs. Vadilal Lallubhai, etc. etc., the Supreme Court has observed that in order to find out the legislative intent we have to find out what was the mischief that the legislature wanted to remedy and hence it would not be inappropriate to find out the reasons which persuaded the Select Committee to recommend a particular provision.

28. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, the majority of the Judges referred to the legislative debates to know the historical background of the legislation.

29. In Anandji Haridas and Co. Pvt. Ltd. Vs. Engineering Mazdoor Sangh and Another, the Supreme Court observed that it was only when the statute was not exhaustive or where its language was ambiguous, uncertain, clouded, or susceptible of more than one meaning, that external evidence as to the evil, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute will be looked into for the purpose of ascertaining the object which the legislature had in mind in using the words in question.

30. Very recently in The The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, Beg J., as then he was, observed that, in that case the real meaning and purpose of the words used could not be understood at all satisfactorily without reference to the past history of legislation on the subject, and hence the speech of the mover of the amendment who was, undoubetdly, in the best position to explain what defect in law the amendment had sought to remove, could be referred to by the Court.

31. In view of this legal position we find that it would be permissible to refer to the debates, including the speeches of the Law Minister in the Lok Sabha for the limited purpose of knowing the background under which Clause (3) of Article 226 was introduced.

32. The Lok Sabha debates on 42nd Amendment Bill show that both the Prime Minister and the Law Minister had assured the House that it was not the intention of the Government in re-drafting Article 226 to do away with the judicial review of the High Courts in matters where provisions of law were contravened or where procedural illegalities were committed. The intention was only to limit this jurisdiction to the cases where substantial injury or injustice resulted. This will be clear from the following observations of the Law Minister made on 25-10-1976 when he moved the Bill in the Lok Sabha:

They will not emphasise this point, but I want to, that in regard to the High Courts, that part of Article 226 which allows enforcement of fundamental rights have not been disturbed. In fact, any citizen who goes to the court and says that some provision of the Constitution has been violated can do so, and that has not been disturbed. For that matter, all the writs which are mentioned in that article are not disturbed. while not touching some of these important things, certain matters, where experience has shown that the Judges or the judiciary have been dragged into controversies by being asked to determine issues which really do not belong to their field, have now been taken away. Even there, an illegal act or omission is capable of being challenged in a court of law. Even an illegal decision by a judicial or quasi-judicial tribunal is being capable of being questioned in a court of law, subject, of course, to this that there is a substantial failure of justice, because, after all, the courts are not there to enforce technicalities but to do substantial justice. That is the purpose, real function of any judicial institution. Can anyone who wants any such thing say that this is an encroachment on the powers of the High Court? I do not want to give instances here, I could give plenty when the time comes. But they have been dragged into matters which really do not belong to the judiciary. Therefore, we have confined the jurisdiction of the High Courts to areas on which really the judiciary should be called upon to adjudicate. The powers of the High Courts, I do not agree, have been in any fundamental way, jeopardised or minimised by the amendment of Article 226. (vide Lok Sabha Debates, 5th Scries Vol. LXV-1 ; 61-62)

(emphasis supplied).

33. Mr. Swaran Singh who headed the Committee for constitutional reforms has preferred to make it clear beyond any doubt that they never intended to put in more fetters on the exercise of judicial powers by the High Court in issuing writs then those which were already judicially recognised by some courts, though not by some other courts, the matter being purely discretionary, and not arising out of any specific legal provision. This will be clear from the following observations made by him during the course of the Lok Sabha debate on 26-10-1976:

It is very interesting. During the last several months, I had occasion to meet a cross-section of our people including Supreme Court Judges, High Court Judges, University Professors, lawyers etc. Some judges told me, "what you are now trying to define is precisely what, we have been doing before." I said, well and good, you should be happy that we are now trying to give you a formulation upon which you have been acting so far. I also said, unfortunately there are several other courts which are not doing the same and we are trying to bring them also in line with you, who have been acting in a proper manner.

34. Thus the obvious idea was to bring in line with the accepted judicial norms for the exercise of discretion, even those cases in which those norms were transgressed, by providing a statutory rule in place of a discretionary rule. This aspect of the matter is highlighted if we again recall, as shown in the foregoing discussion, that in various cases the courts, including the Supreme Court, permitted the exercise of writ jurisdiction under Article 226 even when an efficacious alternative remedy was available to a Petitioner. The speeches made by the Law Minister and Mr. Swaran Singh show that they wanted to stop this.

35. The question is how far this historical background of the legislation in form of Clause (3) of Article 226 is helpful in construing whether alternative remedy

which is contemplated by that clause includes also an illusive remedy, or stipulates only a real remedy which is efficacious and adequate. In our opinion, this background shows that it was never the intention of those who brought this Bill about the Constitutional amendment to negative the power of judicial review which was given to the High Courts under Sub-clauses (b) and (c) of Clause (1) by indirect means, that is by providing in Clause (3) that even if the alternative remedy is illusory, the High Court should refuse to entertain a petition for the redress of the wrong complained of. We find that even if the matter is approached purely from the stand point of legal interpretation of Clause (3) of Article 226, the same result follows. We shall presently discuss how this is so.

36. It need not be emphasised that the rule of law is the basic postulate of every democratic system of Government. In our system we find this rule of law having been preserved and safeguarded by various provisions of the Constitution which recognise certain fundamental rights and duties of a citizen and also sets forth a socio-economic goal in the chapter relating to Directive Principles of State. In order to preserve these fundamental rights and duties, and with a view to further the socio-economic objectives of the Nation, every citizen, big or small, rich or poor, is given a right to move the High Court and the Supreme Court in certain matters. It cannot be gainsaid that the writ jurisdiction which the High Courts have enjoyed after the Constitution came into force, has been utilised to their advantage even by poor and down-trodden sections of the society. Many a time a poor culitavtor, a petty shopkeeper or a toiling labourer has been able to preserve his statutory rights under various beneficial legislations by resorting to his remedy under Article 226. It is altogether another matter if a more prosperious section of the society has availed of this remedy to a greater extent; the fact, however, remains that it is this remedy which has been responsible in finally upholding the rule of law in our society. It was for this reason that the founding fathers of our Constitution originally envisaged the grant of such extraordinary powers to the institution of the High Court. In fact, it was a power which was expected to be utilised for furthering the goals set out by the Constitution in an inexpensive and expeditious manner. However, when Parliament found, after some experience, that the power was utilised more by vested interests, it undertook the task of limiting the scope of Article 226, but even while doing so, Parliament has not thought it fit to delete out Article 226 altogether from the statute book. The main difference which is brought about by the amendment of this Article is that, while previously, these high prerogative writs were available "for any other purpose" and was, therefore, abused by those who had great sinews to fight their case in a court of law, now, as a result of the amendments which have been brought into this Article, the ambit of this wide power is to be exercised within a defined formulation as found in Sub-clauses (b) and (c) of Clause (1). This clearly suggests that the power was kept intact within the scope of the said sub-clauses. Parliament could have totally deleted out this power at the time of the amendment. But it has advisedly not done so. Can it, therefore, be said that what it directly gave was intended to be taken away

indirectly by providing that if an alternative remedy, however, illusive and unreal it may be, is availale, the aggrieved party who has suffered substantial injury or injustice would not be able to approach the High Court under Article 226. In our opinion, to construe the word "remedy" which appears in clause (3) as including any remedy however illusive or unreal it may be, would be to negative what the Parliament has done by enacting Sub-clauses (b) and (c) of Clause (1) of Article 226. Any such consideration would obviously lead to an absurdity and contradiction which cannot be attributed to a legislature which has taken upon itself a serious task of enacting a statute which forms the very basis of all present and future enactments controlling the destiny of the nation.

37. To say that the alternative remedy which is contemplated by Clause (c) includes also a remedy which is illusory or unreal is to deny an aggrieved party any redress of the wrong which is done to him, and negatives the basic postulate of every civilised society that every wrong must have its remedy. In other words, this would result in a clear negation of a rule of law. We shall presently show from reported decisions how this is so. The cases which we shall presently refer are the cases wherein different situations have arisen under different special enactments going to show that the alternative remedies which were available to the concerned Petitioners were merely illusive and futile.

38. An earlier case on the subject is the Madras case of D. Rajiah v. Inspector of Municipal Councils reported in AIR 1955 Mad. 584. It was a case arising out of the Madras Village Panchayats Act (10 of 1950). There action taken by the Inspector of Municipal Council u/s 47 of the said Act was challenged before the High Court in writ under Article 226 of the Constitution. The High Court found that there was an alternative remedy to the Petitioner available u/s 47(4) of the said Act. But it was further found that the Inspector had taken the impugned action after prior consultation with the Government. In view of this circumstance, it was obvious that driving the Petitioner to take his alternative remedy u/s 47(4) was of no use because the Government had already taken the view in the matter. The Court, therefore, held that this alternative remedy was quite illusory.

39. Another case is the Calcutta case of Bhartia Electric Steel Co. Ltd. Vs. Commercial Tax Officer and Others, It was a matter under Sales Tax Act (6 of 1941). The Tax Officer concerned passed an order amending certificate of registration not of his own initiation but under the directives of the Government. There was an alternative remedy in form of revision to the Government. But the Court held that this remedy was totally ineffective as the impugned action of the Tax Officer was taken only on the directives of the Government.

40. The next is the Bombay case of Glaxo Laboratories (India) Private Ltd. Vs. A.V. Venkateswaran and Another, . It was a case under the Sea Customs Act. There, an appeal from the impugned order lay to the Collector of Customs but the said Collector had pre-judged the decision from assessment u/s 87 of the Sea Customs Act. The Court held that it would be futile to drive the Petitioner to take the alternative remedy because it would be an "appeal for Caesar to Caesar.

41. Next case is the Punjab case of Ram Chander Singh v. State of Punjab AIR 1968 Pun 178. It was a case under the Co-operative Societies Act. There, the Petitioner''s nomination paper for the office of the Chairman of the concerned society was rejected and other nomination paper of rival candidate who was an M.L.A. was accepted. The rejection of the nomination paper was challenged by way of a writ before the High Court. The Petitioner had alternative remedies available to him by way of appeal and revision under Sections 55/56 and 68/69 of the concerned Act. The appeal lay to the Registrar and revision lay to the Government. The Petitioner had alleged malafides both against the Registrar and the Minsiter concerned. Under these circumstances, the High Court held that the alternative remedies which were available to the Petitioner were quite illusory.

42. In the Allahabad case of Shashi Kant Rai Vs. Regional Transport Authority, Allahabad Region, Allahabad and Others, , it was a case u/s 57 of the Motor Vehicles Act of 1939. The Petitioner concerned applied for licence but his application was not published and instead, it was put before the Regional Transport Authority, as in the opinion of the concerned Secretary of the Government the said application was liable to be summarily rejected under Sub-section (3) of the said section. The Petitioner was made aware of this fact by the Secretary. Under these circumstances, the High Court of Allahabad held that the alternative remedy which was available to the Petitioner was futile.

43. Next is the Punjab case of Baldev Raj v. State AIR 1969 Pun 181. It was a case under the Sales Tax Act and the alternative remedies were by way of revision and reference to the High Court under the Act. The High Court, however, found that the point involved in the writ petition was already decided by the revisional authority and there was no decision of the High Court. Under the circumstances, the High Court held that it was futile to ask the Petitioner to avail of the alternative remedies as the revisional authority had already taken a view in the matter.

44. Next is the Calcutta case of Dalhousie Jute Co. Ltd. Vs. Union of India (UOI) and Others, It was a case under the Central Excises and Salt Act. There, the Petitioner had already gone in appeal to the Collector and in revision to the Central Government against one part of the purported order which was impugned before the High Court in the writ application. But the Petitioner had failed. Under these circumstances, the High Court held that it was futile to ask the Petitioner to resort to the alternative remedy which was available to him.

45. The last case which we would like to refer in this connection is the Allahabad decision given in Smt. Sushila Narendrajit Singh and Another Vs. State of Uttar Pradesh and Others, . It was a case under the U.P. Cinemas (Regulations) Act of 1955 and Cinematograph Rules. The Petitioner there had applied to the licensing authority not to renew licence in favour of Respondent No. 3 but the licensing authority did not pass any order on that application of the Petitioner, but on the basis of Government order, the said authority renewed the licence in favour of Respondent not 3. Alternative remedy in that case was in form of revision to the

Government. The High Court held that since the licensing authority had passed the impugned order on the basis of the Government order, it was futile to ask the Petitioner to resort to this alternative remedy.

43. All these decisions clearly show that the alternative remedy which was available to the different Petitioner was in fact no remedy because, the authorities, from whom these remedies could be availed of, had already pre-judged the matter in one form or the other. Now when situation such as this arises, it is difficult to comprehend what useful purpose would be served by driving the aggrieved party to an alternative remedy which is no remedy at all. To say in such cases that the aggrieved party has an alternative remedy is tantamount to deny the existence of rule of law and to perpetuate the substantial injury or illegality resulting in want of substantial justice. Such alternative remedies would be merely a pretence and would result in a negation of the spirit and the intention which the Parliament has envisaged in the amended Article 226. In our opinion, the interpretation which would lead the Court to such absordity cannot be accepted.

47. The decisions referred to above may provide good judicial experience which would be helpful in construing Clause (3) of Article 226 in a manner which would make it meaningful. It need not be emphasised that law is neither all reason nor all experience. It is an experience which becomes meaningful by application of reason, and it is a reason which gathers pragmatism and ceases to be purely academic being influenced by experience. The duty of the Judge, who is called upon to interpret an ambiguous and not too plain a legal situation, is to interpret such law so as to direct the reason into useful channels of experience.

48. As observed by Shelat and Grover JJ. in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the Constitution is "an organic document which must grow and must take stock of the vast socio-economic problems, particularly of imporving the lot of common man consistent with his dignity and the unity of nation"?and we would add,*? consistent also with the preservation of rule of law which curvs and modulates executive excesses and fiats. Again, to refer to the memorable words of Mathew J. in that very case, the Constitution which is a frame-work of great Governmental powers to be exercised for great public ends in the future, is not a pale intellectual concept, but a dynamic idea which must dominate in any consideration of the width of amending power (vide para 1565). "No existing Constitution", says the learned Judge, "has reached its final form and shape, and become, as it were, a fixed thing incapable of further growth. It must respond to the deep pulsation for change within.

49. In our opinion, Article 226 would be robbed of all its potency and capacity to achieve the socio-economic objectives of the nation if its dynamism is stultified by giving a purely literal and inflexible interpretation to the expression "any remedy" as including a remedy, however unreal, illusory and ineffective it may be. One principle of interpretation which is recognised by Courts is that if the language employed in a statute is reasonably capable of more meaning than one,

than the Court will have to call into aid various well settled rules of construction including the history of the legislation to find out what evil was sought to be remedied and the purpose of the legislation as well as the consequences that may possibly flow from accepting one or the other of the rival interpretations, because, no legislative body is presumed to confer a power which is rendered practically useless. As observed by Shelat and Grover JJ. in the above referred case of Keshwanand Bharti, the real consequences which flow out of a particular provision of law can be taken into account while judging the width of the power. The learned Juges have further observed that the Court cannot ignore the consequences to which a particular construction can lead while ascertaining the limits of the provisions granting the power (vide para 532).

50. In view of this, the expression "any other remedy" cannot be construed as including even the remedies which are illusory. And only that construction should be put to this expression which would make it lively and meaningful.

51. Apart from what is stated above, we find that there is inherent evidence of the view which we are taking above, in the language of Clause (3) of Article 226 itself. This clause, as already noted above, speaks of any other remedy "for such redress". The words "such redress" obviously refer to the redress which is contemplated by Sub-clauses (b) and (c) of Clause (1). It, therefore, follows that the redress for which the remedy is contemplated by Clause (3) is the same redress which is contemplated by Sub-clauses (b) and (c) of Clause (1). Now the redress contemplated by Clauses (b) and (c) is the redress which the High Court can provide to an aggrieved party under Article 226. If that be so, it necessarily follows that the alternative remedy which is contemplated by Clause (3) is the remedy of the type which can be provided by the High Court in exercise of its extraordinary jurisdiction under Article 226. If there is any other alternative remedy which substantially falls short of that, that would not be the alternative remedy which would debar the jurisdiction of the High Court to act under Article 226. In our view, therefore, the use of the words "such redress" in Clause (3) supplies internal evidence as to what was in the mind of the Parliament at the time of introducing Clause (3) in Article 226.

52. This is not to say that the alternative remedy contemplated by Clause (3) should be exactly of the same nature as the remedy which the High Court can provide in exercise of its jurisdiction under Article 226. It is obvious, that the proceedings under Article 226 are summary and speedy proceedings and an alternative remedy available to a party in a given case may not be as summary and speedy as the one which could be obtained from the High Court under Article 226. What is to be seen, therefore, is whether the alternative remedy is, looking to the peculiar facts of each case, substantially as effective as the one which can be provided in exercise of jurisdiction under Article 226. The idea of remedy being speedy can be utilised only for the purpose of seeing whether it is effective or illusory. Therefore, the ingredient of speediness of remedy need not be taken into consideration beyond the above said limited purpose. The only thing,

therefore, to be seen is whether the alternative remedy contemplated by Clause (3) is substantially effective or whether it is merely illusory, non-effective or futile.

53. To conclude, therefore, we are of the opinion that on a correct construction of Clause (3) of Article 226 the following points emerge:

1. Clause (3) does not debar the jurisdiction of the High Court to issue high prerogative writs under Article 226 if even after exhausting the alternative remedies provided by the statutes referred to in Sub-clauses (b) and (c) of Clause (1), illegality in question persists.

2. The bar contemplated by Clause (3) of Article 226 does not cover the alternative remedies by way of filing suits in ordinary courts of the land, because, Clause (3) covers only those alternative remedies which are specified by statute.

3. The rule of self-restraint evolved by courts for the exercise of their extraordinary jurisdiction under Article 226 of the Constitution in cases where efficacious and suitable remedies would be available to a party through civil courts, remains intact even after the amendment of Article 226.

4. The alternative, remedies contemplated by Clause (3) which are available under special statutes referred to in Sub-clauses (b) and (c) of Clause (1) would bar the jurisdiction of the High Court to issue high prerogative writs only if such remedies are found to be efficacious and real and not illusory.

54. We, therefore, order that all these writ petitions shall be decided on the basis of the above stated construction of Clause (3) of Article 226.

55. In view of the important questions of law involved in this hearing, there shall be no order as to its costs.

