

(2006) 09 MP CK 0077
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12768 of 2006

Manti Bai

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 37(2)
Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 — Rule 3

Citation : (2007) 1 MPJR 129 : (2007) 1 MPLJ 332

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : A.D. Mishra, for the Appellant; Rahul Jain, Dy. Government Advocate for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

Shri A.D. Mishra, counsel for Petitioner.

Shri Rahul Jain, Dy. G.A., for Respondents Nos. 1 to 4, on advance notice.

This petition is directed against the order dated 22-8-2006 by the Collector, Dindori by which the appeal filed by Petitioner under Rule 3 of M.P. Panchayat (Appeal and Revision) Rules, 1995 has been dismissed.

The facts of the case are that Petitioner was Sarpanch of Gram Panchayat Quitee, Janpad Panchayat, Samnapur, Tahsil and District Dindori. A complaint was made against the Petitioner in respect of alleged misconduct by the Petitioner. The concerned Sub Divisional Officer called a report from Deputy Auditor Dindori. On the basis of report it was found that the Petitioner had not paid wages to the labourers and had also paid excess amount of Rs. 2,400/- to the contractor. On this report show cause notice was issued to the Petitioner by the Sub Divisional Officer, in which the Petitioner objected that this act relates to the previous term of Petitioner for which proceedings u/s 40 of the Act cannot be initiated against

the Petitioner.

The aforesaid contention was turned down by the Sub Divisional Officer and Petitioner was removed from the office of Sarpanch. Against it Petitioner preferred an appeal which has been dismissed by the Collector, Dindori by the impugned order. Learned Counsel for Petitioner has assailed the aforesaid order on merits.

From the perusal of Rule 5 of Rules a revision is provided against an appellate order passed by the Collector to the Commissioner concerned and the Petitioner is having remedy against order Annexure P-7 by filing a revision before the Commissioner concerned.

Learned Counsel for Petitioner submitted that revision is not an efficacious remedy and submitted that this writ petition may be entertained in spite of availability of revision against the aforesaid order.

To appreciate the contention of Petitioner, Rule 5 of the Rules may be seen, which reads thus:

Revision - (1)(a) The State Government, the Commissioner, the Director Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in Sub-rule (1), -

(i) Where proceedings in respect of any case have been commenced by the State Government under Sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in Sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.

The aforesaid provision provides a remedy of revision against the appellate order and the impugned order is undoubtedly revisable before the Commissioner

concerned. The Apex Court in *Nirma Ltd. Vs. Lurgi Lentjes Energietechnik GMBH and Another*, considering the remedy of revision held that it is an efficacious alternative remedy available to the Petitioner. The Apex Court held thus:

This is a petition under Article 136 of the Constitution of India, seeking leave to file civil appeal against an appellate order of the XIth City Civil Court, Ahmedabad, passed under Sub-section (2) of Section 37 of the Arbitration and Conciliation Act, 1996. We are not inclined to entertain this SLP inasmuch as, in our opinion, an efficacious alternate remedy is available to the Petitioner by way of filing a revision in the High Court u/s 115 of the Code of Civil Procedure. Merely because a second appeal against an appellate order is barred by the provisions of Sub-section (3) of Section 37, the remedy of revision does not cease to be available to the Petitioner, for the City Civil Court deciding an appeal under Sub-section (2) of Section 37 remains a Court subordinate to the High Court within the meaning of Section 115, Code of Civil Procedure. In taking this view, we find support from a decision of this Court in *Shyam Sunder Agarwal and Company v. Union of India*.

The Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, considering the law held:

The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149(2) of the Act [see *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, . This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure.

(emphasis supplied)

Similar view has been reiterated in *Surya Dev Rai Vs. Ram Chander Rai and Others*, wherein the the Apex Court held thus:

In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the Courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy

formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior Court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior Court or tribunal would be incapable of being remedied once the proceedings have concluded.

In *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*, the Apex Court considering the availability of alternative remedy held that High Court should ensure that the Petitioner should avail alternative remedy, otherwise he has to make out a strong case for invoking extra ordinary jurisdiction. The Apex Court held thus:

Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. 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. 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.

If, as was noted in *Ram and Shyam Company v. State of Haryana* the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ Petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ

petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in *First ITO v. Short Bros. (P) Ltd.* and *State of U.P. v. Indian Hume Pipe Company Ltd.* That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

In all the aforesaid cases the Apex Court held that where the remedy by way of appeal or revision is available to the person aggrieved, the High Court may refuse its extra ordinary jurisdiction to be invoked in the matter. The Apex Court held that the remedy of appeal or revision is an alternative efficacious remedy available to the aggrieved persons.

In view of aforesaid settled position, the Petitioner is having efficacious alternative remedy by filing revision against the order. Apart from this after decision of revision if Petitioner feels aggrieved, the Petitioner may approach to this Court by invoking writ jurisdiction of this Court. The revisional Court is also having jurisdiction to look into the legality, propriety and error of the order passed by the authority subordinate to it. The revisional authority is also vested with aforesaid jurisdiction and to examine the order passed by the subordinate authority. In view of aforesaid when an efficacious alternative remedy by filing revision is provided, then until and unless a case is made out for invoking jurisdiction of this Court under Article 226/227 of the Constitution of India on the ground that the impugned order is without jurisdiction or is against the settled principles of this Petitioner cannot be entertained. Prima facie I am satisfied that no case is made out for invoking extraordinary jurisdiction of this Court at this juncture and Petitioner may invoke the jurisdiction of revisional authority under Rule 5 of Rules.

With the aforesaid liberty this petition is finally disposed of Office to return certified copy of Annexure P-7, if Petitioner appears in the office along with photocopy of order which shall be retained on records

No order as to costs.

C.C. as per rules.