(2018) 07 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 11240, 10735, 10794, 10805, 11229, 11231 of 2016

M/S. Jain Bulk @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 02-07-2018

Acts Referred:
Rajasthan Excise Act, 1950 — Section 9A, 58(c)
Constitution of India, 1950 — Article 226

Citation : (2018) 07 RAJ CK 0004

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Rajesh Joshi, Harshit Bhurani, Shridhar Mehta, Sachin Acharya

Final Decision : Dismissed

Judgement

The instant bunch of writ petitions involve common questions of facts and law, thus, they are being decided by this common order.

The petitioners herein are owners of transport vehicles (tankers), which were used for transportation of spirit from one place to another under a

permit issued by the concerned Excise Officer.Â It is alleged that when the tankers were filled at the manufactureâ??s location, each of them was

loaded with 20,000 liters of spirit. Â

When the tankers arrived at the consumer/consignee, i.e. United Spirits Ltd., Udaisagar, Udaipur, a sudden inspection was carried out, upon which,

shortfalls ranging from 240 liters to 840 liters was notified in each of the tankers. Thus, the tankers as well as the spirit were seized and a case was

registered under Section 58(c) of the Rajasthan Excise Act, 1950 against M/s. Agri Biotech (Exporter Unit) and the transporters (present

petitioners).Â Thereafter the consignee M/s. United Spirits Ltd. filed a common application before the District Excise Officer, Udaipur for releasing the spirit contained the six seized tankers. The District Excise Officer passed the order Annex.6 dated 21.06.2016 directing release of the spirit in

favour of M/s. United Spirits Ltd.Â M/s. Agri Biotech (Export Unit/consignee) moved separate applications for compounding the offence before the

District Excise Officer, Udaipur, which were forwarded to the Excise Commissioner, Rajasthan, who accepted such applications subject to the

condition that the applicant shall deposit the compounding amount as well as the amount towards loss of revenue caused by the shortfall of spirit. The

said order was never challenged and has attained finality.Â Thereafter, the representative of the present petitioners moved separate applications

before the Excise Commissioner, Rajasthan, Udaipur for releasing the seized tankers. While such applications were being considered, petitionersâ??

advocate conceded before the Excise Commissioner that the tankers may be released subject to deposition of a reasonable proportion of compounding

amount. The Excise Commissioner passed separate orders dated 31.08.2016 (Annex.8) in each application directing release of the tankers subject to

deposition of quantified penalty amounts, failing which the tankers in question were ordered to be confiscated and auctioned.Â It is against the said

orders of the Commissioner dated 31.08.2016 (Annex.8 in each of the writ petition), that the petitioners hence being the owners of the deposited

tankers have have approached this court by way of the instant bunch of writ petitions.

The respondents in their reply have taken a pertinent objection regarding maintainability of the writ petitions asserting that the remedy of statutory

appeal under Section 9-A of the Rajasthan Excise Act, 1950 is available to the petitioners and thus, this court should not feel persuaded to exercise its

extraordinary writ jurisdiction so as to interfere in these matters.Â

Mr. Rajesh Joshi, learned Senior Advocate, assisted by Mr. Harshit Bhurani, relied upon the judgments in (1) M/s Samrat Bottlers Pvt. Ltd. Vs. State

of Rajasthan & Ors. [RLR 1988 (2) 577], (2) R.N. Products Vs. State of Rajasthan & Ors. [1990 (1) WLN 318] and (3) Banwari Lal Vs. State of

Rajasthan & Ors. [2016 (1) WLN 158 (Raj.)] and urged that the availability of alternative remedy cannot create hurdle against maintainability of these

writ petitions because as per Mr. Joshi, the impugned orders passed by the Excise Commissioner are absolutely arbitrary and perverse.Â He contended that the seizure in question was made for absolutely trivial shortfall in the bulk of spirit being transported.Â That apart, the liability has been

fastened only on the drivers of the vehicles and not on the transporters themselves.Â He, thus, urges that emburdening the transporters with huge

penalty amounts in lieu of releasing the tankers is highly arbitrary and unjust.Â He contended that the ratio of the judgments referred to supra clearly

mandates that writ jurisdiction should be exercised by this court so as to interfere in the highly arbitrary and perverse orders passed by the Excise

Commissioner.Â However, upon a pertinent query being put, Mr. Joshi was not in position to point out as to what prevented the petitioners from

availing the remedy of appeal under Section 9-A of the Excise Act.Â He also could not dispute that the statutory remedy of appeal is an efficacious

one.Â

Be that as it may, Mr. Shridhar Mehta, associate to Dr. Sachin Acharya, learned standing counsel for the Excise Department vehemently opposed the

submissions advanced by Mr. Joshi.Â He relied upon the Supreme Court decision in the case Titaghur Paper Mills Co. Ltd. & Anr. Vs. State of

Orissa & Anr. [AIR 1983 SC 603] and urged that the remedy of appeal under Section 9-A of the Excise Act is indisputably available against the

impugned orders.Â He contended that the petitionersâ?? counsel has not been able to point out any arbitrariness or perversity in the impugned

orders so as to justify interference therein.Â He further contended that the duty to ensure that the booked bulk of spirit being transported under the

Excise permit reaches the consignee is the responsibility of the transporter. Failure to ensure the safe passage of the spirit irrespective of the quantity

to the consignee entails the consequence of seizure and confiscation as per the Excise Act. He further urged that when the applications for release of

the tankers filed on behalf of the petitioners were being considered by the Excise Commissioner, their counsel conceded that the vehicles be released

by imposing appropriate penalty. On these grounds, Mr. Mehta implored the court to dismiss the writ petitions as being not maintainable.Â

I have given my thoughtful consideration to the arguments advanced at bar and gone through the impugned orders as well as the other material placed

on record.Â

The argument advanced by Mr. Joshi that there was no deviation in the process of transportation of spirit so as to hold the transporter responsible is

absolutely frivolous and untenable.Â The application filed by the consignee (United Spirits Ltd., Udaisagar, Udaipur) to compound the offence and

subsequent deposition of composition fees is a clear indication of the fact that the deviation under Section 58(c) of the Excise Act is virtually an

admitted position as emanating from record.Â So far as the availability of alternative remedy is concerned, Mr. Joshi during the course of arguments

was unable to point out any reason as to why the petitioners have not taken recourse of the statutory remedy of appeal available under Section 9A of

the Act.Â Manifestly, the argument regarding the impugned order being arbitrary and perverse and thereby making the remedy of appeal illusory is

unworthy of credence for the reason that no such arbitrariness or discrimination has been pointed out in the impugned orders. Thus, without a doubt,

the statutory remedy of appeal was available to the petitioners, if they at all intended to challenge the Excise Commissionerâ??s orders on merits.Â

The Honâ??ble Apex Court in the case of Titaghur Paper Mills (supra) has laid down that where efficacious remedy of appeal is available, the High

Court would be totally unjustified to entertain a writ petition exercising its extraordinary writ jurisdiction so as to interfere in the quasi judicial orders

passed by the competent authority under the statute.Â Similar view has been taken in the case of Authorized Officer, State Bank of Travancore and

Ors. Vs. Mathew K.C. [(2018) 3 SCC 85], wherein the Honâ??ble Apex Court has observed as below :-

â??The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance

with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are

available, except in cases falling within the well defined exceptions as observed in Commissioner of Income Tax and Others vs. Chhabil Dass

Agarwal, 2014 (1) SCC 603, as follows:

â??15. Thus, while it can be said that this Court has recognised 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, Titaghur 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.â??

In view of the above discussion, this court is of the firm opinion that situation presented in bunch of cases at hand is not such, wherein this court can

be persuaded to exercise its extraordinary writ jurisdiction so as to interfere in the orders, which are appealable under Section 9-A of the Rajasthan

Excise Act, 1950.Â Â Furthermore, in view of the fact that the petitionerâ??s counsel conceded before the Excise Commissioner that the tankers

may be released by imposing penalty, manifestly, the petitioners are precluded from challenging the impugned orders on merits. Thus, the writ petitions

are dismissed as being devoid of merit.

The stay applications are also dismissed.

No order as to cost.