

(1998) 09 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24566 of 1998

P.V. Surender Babu

APPELLANT

Vs

Prohibition and Excise Superintendent, Chittoor

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 31(1), 63, 63(1), 63(2)
Constitution of India, 1950 — Article 226, 32

Citation : (1998) 5 ALD 549 : (1998) 5 ALT 640 : (1998) 3 APLJ 191

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. P. Balamukunda Rao, for the Appellant; Government Pleader, for Prohibition and Excise, for the Respondent

Judgement

1. At times it becomes necessary for the Court to remind itself about the self-imposed restraints and limitations in exercise of the power granted to the Court by the Constitution under Article 226. The Court can take judicial notice of the fact that large number of writ petitions are filed in this Court by persons without exhausting statutory alternative remedies or other remedies available to them. Article 226 empowers High Courts to issue directions, orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them. Such directions, orders or writs may be issued for the enforcement of fundamental rights or for any other purpose. It is well established that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant such a relief in certain circumstances even/though a legal right might have been infringed. Availability of an alternative remedy is one of such considerations which the High Court may take into account to refuse to exercise its jurisdiction, but this principle does not apply to the enforcement of Fundamental Rights either under Article 32 or under 226 of the Constitution. The Supreme Court in Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, , and the cases to follow mat case held that an alternative remedy is not a bar to move a writ

petition in the High Court to enforce a fundamental right. This is the only exception. In all other cases where no fundamental right is involved, it has been ruled that the High Court would not exercise its jurisdiction under Article 226 when an alternative, adequate and efficacious legal remedy is available and the petitioner has not availed of the same before coming to the High Court. Of course, Article 226 is silent on this point; it does not say in so many words anything about this matter, but the Courts have themselves evolved this rule as a kind of self-imposed restriction on their jurisdiction under Article 226. The rule of exhaustion of a remedy before invoking jurisdiction under Article 226 has been characterized as a rule of policy, convenience and discretion rather than a rule of law, per decision of the Supreme Court in *State of Uttar Pradesh v. Md. Nooh*, AIR 1958 SC 86 and *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, . The rule has been justified on the ground that persons should not be encouraged to circumvent the provisions made by a statute providing for a mechanism and procedure to challenge administrative or quasi-judicial actions taken thereunder.

2. In *Union of India (UOI) Vs. T.R. Varma*, , the Supreme Court observed:

"It is, well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ: but....."the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs...." And when such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."

3. In *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, , the Supreme Court was pleased to observe:

"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 to 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 by passed, and will leave the party applying to it to seek resort to the machinery so set up."

4. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , the Supreme Court in para 3 observed:

"Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged".

5. Further, what could be gathered from the decisions of the Supreme Court in U.P. Jal Nigam and Another Vs. Nareshwar Sahai Mathur and Another, , Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp. (2) SCC 312, is that where statutory remedies are available or a statutory tribunal has been set up, a petition under Article 226 should not be entertained, unless the statutory remedies are ill suited to meet the demands of any extraordinary situation, for example, where the very vires of the statute is in question; or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require that recourse may be had to Article 226; or where the alternative remedy is not effective or adequate; or where the alternative remedy is onerous or burdensome or inadequate; or where it involves inordinate delay or is illusory in nature; where the impugned action is palpably wrong or goes to the root of the jurisdiction or where there is total lack of jurisdiction in the authority.

6. There are certain sound reasons behind this rule. Remedies by way of Judicial review under Article 226 are fundamentally different from the other remedies. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the High Court on review under Article 226 is concerned only with the question whether the Act or order under attack should be allowed to stand or not. It is quite often stressed by the Courts that judicial review is not against a decision under attack but against the decision-making process. In H.B. Gandhi v. Gopi Nath and Sons, (supra) in para 8, the Supreme Court observed:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the law, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

7. H.W.R. Wade in his treatise on Administrative Law (6th Edition) at page 36 observes:

"The system of judicial review is radically different from the system of appeals. When hearing an appeal the Court is concerned with the merits of the decision under appeal. When subjecting some administrative Act or order to judicial review, the Court is concerned with its legality. On an appeal the question is "right or wrong?" On review the question is "lawful or unlawful?"

8. The other underlying object of the rule is that the High Courts are the Apex Judicial institutions in the States, and it is but natural that if an alternative suitable equally efficacious remedy is available to the party, the party may refuse to exercise the extraordinary jurisdiction under Article 226 and direct the aggrieved party to first avail of the said alternative remedy before approaching the High Court. The extraordinary jurisdiction of the High Court under Article 226 cannot be reduced to an ordinary jurisdiction of the High Court. Similarly, to my mind, another object beyond the rule is to save Judge-time of the High Courts. The High Courts are charged with onerous duties of deciding the Constitutional questions, vires of the statutes and the delegated legislations and deciding the appeals, revisions, reviews and references made to the High Courts under various statutes, and if the High Courts were to entertain the writ applications filed without exhausting the alternative statutory or common law remedies, the High Courts would not find necessary time to adjudicate upon the essential and unavoidable disputes brought before them for adjudication.

9. In the premise of the above well settled principles, let me now advert to the instant case. The petitioner is the licensee of F.L. Shop bearing No.338/98-99 dated 4-4-1998 situated in Chittoor town. In this writ petition, he has assailed the correctness and the legality of the proceedings of the Prohibition and Excise Superintendent, Chittoor district dated 24-8-1998 suspending the licence of the petitioner for a period of 30 days pending enquiry by virtue of the power granted to him u/s 31(1)(b) of Andhra Pradesh Excise Act, 1968, for short "the Act". Admittedly, against the impugned order an appeal lies to the jurisdictional Deputy Commissioner of Prohibition and Excise under sub-section (1) of Section 63 of the Act, Further, against the order of the Deputy Commissioner of Prohibition and Excise, a further appeal is provided to the Commissioner of Prohibition and

Excise under sub-section (2) of Section 63 of the said Act. As per the Prohibition and Excise Superintendent, the petitioner was found to sell liquor in loose for consumption in the shop. The question whether the petitioner is guilty of selling liquor in loose for consumption in the shop, as alleged by the Prohibition and Excise Superintendent, is a pure question of fact. The jurisdiction of the Prohibition and Excise Superintendent to suspend the licence pending enquiry is not and cannot be assailed. Therefore in such facts-situation, the question which falls for consideration is whether the petitioner has made out any extraordinary ground for him to rush to this Court invoking the power of judicial review vested in this Court under Article 226 of the Constitution of India. After hearing the learned Counsel for the petitioner, I do not find any circumstance or ground which could persuade the Court to permit the petitioner to bypass two statutory appeal remedies u/s 63 of the Act and rush to this Court. However, the learned Counsel for the petitioner would contend that large number of writ petitions are entertained by this Court where the licensees without exhausting the alternative remedies u/s 63 of the Act filed the writ petitions, and therefore no exception can be made in the petitioner's case. This submission of the learned Counsel is not acceptable to the Court. Merely because this Court has entertained certain writ petitions filed without exhausting the remedies u/s 63 of the Act, that fact itself is not a binding precedent for the Court to entertain similar writ petitions. I have already referred to the binding precedents of the Supreme Court above. Since I do not find any extraordinary circumstance or situation justifying the departure from the rule of non-exhaustion of alternative remedies, I could not persuade myself to entertain the instant writ petition. Accordingly the writ petition is dismissed with no order as to costs, reserving liberty to the petitioner to avail the appellate remedies provided u/s 63 of the Act.