

(2010) 06 UK CK 0146
In the Uttarakhand High Court

Rakesh Singh Negi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Citation : (2010) 06 UK CK 0146

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—The licence issued to the appellant was cancelled. So as to assail the order by which he was required to file a reply to the show cause notice, as also, the order by which the licence issued to him was cancelled, he approached this Court by filing Writ Petition (MS) No. 887 of 2010. A learned Single Judge of this Court declined to entertain the aforesaid Writ Petition by an order dated 10.06.2010 on the ground, that the petitioner ought to have availed of the remedy of a statutory Appeal, which was available to him under Clause (14) of the Government Order dated 15.10.2005 (Annexure-9 with the Writ Petition).

2. Before this Court, the solitary contention advanced by the learned Counsel for the appellant was, that the appellant assailed the impugned order of cancellation of his licence on account of non-observation of the rules of natural justice. In the circumstances under reference, it is the vehement contention of the learned Counsel for the appellant, that this Court ought not to have relegated the appellant to avail of his appellate remedy. So as to advance the instant contention, learned Counsel for the appellant has placed reliance on the judgement rendered by the Apex Court in Committee of Management and Anr. v. Vice Chancellor and Ors. (2009) 2 SCC 630. Relying on the observations recorded in paragraph-23 of the aforesaid judgment, it is the submission of the learned Counsel for the appellant, that the learned Single Judge ought to have adjudicated upon the controversy raised by the appellant on merits. We have

perused the judgment relied upon by the learned Counsel for the appellant. For adjudicating upon the present issue canvassed at the hands of the learned Counsel for the appellant, we consider it just and appropriate to extract herein paragraphs-22 & 23 of the judgment relied upon by the learned Counsel for the appellant. The same are accordingly reproduced below:

22. Apart from the fact that a statutory authority cannot consider the validity of a statute, as has been urged before us by Mr. Chaudhari, it is beyond any doubt or dispute that availability of an alternative remedy by itself may not be a ground for the High Court to refuse to exercise its jurisdiction. It may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one.

23. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior courts shall not refuse to exercise their jurisdiction although there exists an alternative remedy. In this context, it is appropriate to refer to the observations made by this Court in *Whrilpool Corporation v. Registrar of Trade Marks*: (SCC p.10, para 15)

15. ...But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

Having perused the conclusions drawn by the Apex Court, we are satisfied that overlooking of an alternative remedy was held to be justified, where availing of the same would not have been an efficacious remedy. The totality of the observations recorded by the Apex Court has to be assessed by examining the totality of the factual position in the case relied upon. In the case relied upon the vires of the statutory provisions was also subject matter of challenge, and the contention of the concerned parties was that the concerned statutory authority could not have effectively adjudicated upon the said issue.

3. In view of the above, we are satisfied, that there is no justification whatsoever for the appellant to have approached this Court by filing Writ Petition (MS) No. 887 of 2010 inasmuch as it has not been shown to us that the appellate remedy available to him would not have been efficacious in the facts and circumstances of the case.

4. For the reasons recorded above, we find no merit in the instant appeal and the same is accordingly dismissed.