

(2018) 05 CAL CK 0184
In the Calcutta High Court
Case No : Writ Petition 5877 (W) of 2018

Subhas Chandra Bhunia

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 05 CAL CK 0184

Hon'ble Judges : HARISH TANDON, J

Bench : Single Bench

Advocate : Ashoke Banerjee, R.A. Agarwala, Nibedita Pal, R. Dhara, Susovan Sengupta, Manas Kumar Sandhu

Final Decision : Disposed Of

Judgement

Mr. Banerjee, the learned Senior Counsel appearing for the petitioner, in his usual eloquence impinges the order of the first authority as well as the

first appellate authority on the ground that the same is per se illegal having passed on the teeth of an order of injunction passed by this court.

Furthermore, he submits that the order, which is palpably illegal, and apparently a nullity, can be challenged by the aggrieved person by filing a

writpetition under Article 226 of the Constitution of India.

It is no longer res integra that mere existence of an alternative remedy is not an absolute bar. However, the courts have made a self-restraint in

interfering with the administrative order if a further remedy is provided under the statute. It is not a rule of compulsion but of discretion.

In the present case, the original order passed by the administrative authority was challenged by the petitioner before the District Controller (Food &

Supply), Paschim Midnapore under paragraph 25 of the West Bengal Public

Distribution System (Maintenance & Control) Order, 2013. Obviously, the point, which is urged before this court, might have been taken by the petitioner before the regional authority and having dissatisfied the appeal is filed before the first appellate authority on such grounds as well.

Once the petitioner has rolled the ball and availed of the remedy under the aforesaid Order, it should not be permitted to canvass the said points

directly before the High Court under Article 226 of the Constitution of India without exhausting the further remedy provided under the said paragraph.

Paragraph 25 of the said Order provides that an aggrieved Fair Price Shop Licensee/Dealer may challenge the order of the District Controller (FNS)

to the DDP&S within 30 days from the date of receipt of the said order and if such further appeal is filed, it is obligatory on the part of the appellate

authority to dispose of the same within 60 days from the date of filing of such appeal after affording an opportunity of hearing to the appellant.

This court, therefore, feels that the points urged in the instant writ-petition can be conveniently taken as a ground for further appeal before the

appellate authority. The contention of Mr. Banerjee, the learned Senior Counsel, appearing for the petitioner, that he had already approached the last

appellate authority and, therefore, a direction may be passed upon it to decide the matter, does not appear to be tenable for the simple reason that once

the Order which has a statutory flavour, provides a hierarchy of an appellate authority, it is not permissible to jump the forum without approaching the

last authority.

This court, therefore, does not find that it is a fit case to interfere with the impugned order. Since the petitioner is still within the period of limitation,

liberty is granted to him to file an appeal before the DDP&S and if such appeal is filed, the said authority shall decide the same independently without

being swayed by the observations made hereinabove within the timeframe as indicated in paragraph 25 of the said Order, 2013. With these

observations, the writ-petition is disposed of. No order as to costs.