"Rule of alternate remedy"

Article 226 of the Constitution of India refers to power of High Court's to issue certain writs throughout the territory in relation to which it exercises jurisdiction.

Article 226 of the Constitution sub clause 1 and 2 are as below:

1. Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government within those territories directions, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, or any of them, for the enforcement of any of the rights conferred by part – III and for any other purpose.
2. The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or any person also be exercised by any High Court exercising jurisdiction in relating to the territories within which the cause of action, wholly or in part, arises for the exercise of the such power, notwithstanding that the seat of the such government or authority or the residence of such person is not within those territories.

Few Cases to understand – Writ where alternate remedy is available

- **Whirlpool Corporation v Registrar of Trademarks, Mumbai, (1998) 8 SCC 1**

  "Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. *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."***

- **Harbanslal Sahnia v Indian Oil Corpn. Ltd, (2003) 2 SCC 107**

  "In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

- **(2005) 8 SCC 264., U.P. State Spinning Company Ltd. Vs. R.S. Pandey and Another**.

  Facts:

  A workmen filed a writ petition challenging the termination order. The writ petition was allowed on the ground that services were terminated in violation of the principles of natural justice. Before the Apex Court the Company submitted that the High Court ought not to have entertained the writ petition when there being alternate remedy available.

Following was laid down in paragraphs 16,17, and 20 of the said judgement:

16. "If, as was noted in Ram and Shyam Co. v. State of Haryana [(1985) 3 SCC 267: AIR 1985 SC 1147] 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. [(1966) 3 SCR 84: AIR 1967 SC 81] and State of U.P. v. Indian Hume Pipe Co. Ltd. [(1977) 2 SCC 724: 1977 SCC (Tax) 335].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-recognized 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.

17. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. ITO [(1970) 2 SCC 355: AIR 1971 SC 33] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies, **unless the High Court finds that factual disputes are involved and it would not desirable to deal with them in a writ petition**.

20. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out."

- **In Harnek Singh Vs. Charanjit Singh and Others, (2005) 8 SCC 383.**

Facts:

In the election for the post of Chairman, Panchayat Samiti the Returning Officer adjourned the poll and thereafter a date was fixed and election was completed. The High Court entertained the writ petition under Article 226 of the Constitution of India and set-aside the election.

Relevant paragraphs are 15, 16 and 18.

15. "Prayers (b) and (c) aforementioned, evidently, could not have been granted in favoaur of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view the fact that an efficacious alternative remedy is available therefore. (See Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. (2005) 8 SCC 242: (2005) 7 Scale 290)

16. Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.

18. Yet again in Jaspal Singh Arora [(1998) 9 SCC 594] this Court opined:

> "3. These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court.

- **AIR 1983 SC, 603, Titagurh Paper Mills Co., Ltd., and Another Vs. State of Orissa and Another.**

Facts:

The appellant had challenged two assessment orders of Assistant Sales Tax Officer in writ petition under Article 226 of the Constitution of India. The High Court dismissed the writ petition. Against which a S.L.P. was filed.

Relevant paragraphs are 4, 6 and 11

4. "The only contention raised before the High Court was that the impugned orders of assessment being a nullity, the petitioners were entitled to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution, but the High Court was not satisfied that this was a case of inherent lack of jurisdiction. The High Court while dismissing the writ petitions observed:

> "Having heard the learned counsel for both the parties and having gone through the records, we are not inclined to interfere with the impugned order(s) in exercise with our extraordinary jurisdiction since there is a right of appeal against the same. It is contended on behalf of the petitioner that the impugned order being a nullity is entitled to invoke our extraordinary jurisdiction. We are not satisfied that this is a case of inherent lack of jurisdiction. There is no violation of principles of natural justice."

6. We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the prescribed authority under sub-s. (1) of Section 23 of the Act, them a second appeal to the Tribunal under sub-s. (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. In Raleigh Investment Co. Ltd. v. Governor General in Council; (1947) 74 Ind. App. 50: (AIR 1947 PC 78) Lord Uthwatt, J. in delivering the judgment of the Board observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively raise in the courts the question of the validity of an assessment denied an alternative jurisdiction to the High Court to interfere. It is true that the decision of the Privy Council in Raleigh Investment Company's case, (supra) was in relation to a suit brought for a declaration that an assessment made by the Income-tax Officer was a nullity, and it was held by the Privy Council that an assessment made under the machinery provided by the Act, even if based on a provision subsequently held to be ultra vires, was not a nullity like an order of a court lacking jurisdiction and that S. 67 of the Income-tax, 1922 operated as a bar to the maintainability of such a suit. In dealing with the question whether S. 67 operated as a bar to a suit to set aside or modify an assessment made under a provision of the Act which is ultra vires, the Privy Council observed:

> "In construing the section it is pertinent in their Lordships opinion to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income-tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter."

11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-s. (1) of S. 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-s. (3) of S. 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S. 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Water Works Co. v. Hawkesford; (1859) 6 CBNS 336 at p. 356 in the following passage:

> "There are three classes of cases in which a liability may be established founded upon statute * * * * * * * * * * * * * * * * But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it * * * * * * * * * * * * * * * * * the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to"

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd.; 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co.; 1935 AC 532 and Secretary of State v. Mask & Co.; AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine

- **AIR 1985 SC 330., Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd and Others.**

Facts:

> Central Excise Department filed a S.L.P. challenging an interim order granted by the Calcutta High Court challenging the proceedings under Central Excise.

The Apex Court in the said judgement also deprecated the practice of granting interim order by the Calcutta High Court on an oral application. The Apex Court further held that in such matters whether the High Court

ought not to have entertained the writ petition under Article 226 of the Constitution of India.

Relevant paragraphs 3 and 4:

3. "In Titaghur Paper Mills Co. Ltd. v. State of Orissa (AIR 1983 SC 603) A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ, held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Curt, it was not for the High Court to exercise its extraordinary jurisdiction under Art. 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Art. 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 Art. 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 Art. 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.

4. In Union of India v. Oswal Woollen Mills Ltd. (AIR 1984 SC 1264), we had occasion to consider an interim order passed by the Calcutta High Court in regard to a matter no part of the cause of action relating to which appeared to arise within the jurisdiction of the Calcutta High Court. In that case the interim order practically granted the very prayers in the writ petition. We were forced to observe:

> "It is obvious that the interim order is of a drastic character with a great potential for mischief. The principal prayer in the writ petition is the challenge to the order made or proposed to be made under Cl. 8-B of the Import Control Orders. The interim order in terms of prayers (j) and (k) has the effect of practically allowing the writ petition as the stage of admission without hearing the opposite parties. While we do not wish to say that a drastic interim order may never be passed without hearing the opposite parties even if the circumstances justify it, we are very firmly of the opinion that a statutory order such as the one made in the present case under Cl. 8-B of the Import Control Order ought not to have been stayed without at least hearing those that made the order. Such a stay may lead to devastating consequences leaving no way of undoing the mischief.

Where a plentitude of power is given under a statute, designed to meet a dire situation, it is no answer to say that the very nature of the power and the consequences which may ensure is itself a sufficient justification for the grant of a stay of that order, unless, of course, there are sufficient circumstances to justify a strong prima facie inference that the order was made in abuse of the power conferred by the statute. A statutory order such as the one under Cl. 8-B purports to be made in the public interest and unless there are even stronger grounds of public interest an ex parte interim order will not be justified. The only appropriate order to make in such cases is to issue notice to the respondents and make it returnable within a short period. This should particularly be so where the offices of the principal respondents and relevant records lie outside the ordinary jurisdiction of the court. To grant interim relief straightway and leave it to the respondents to move the court to vacate the interim order may jeopardize the public interest. It is notorious how if an interim order is once made by a court, parties employ every device and tactic to ward off the final hearing of the application. It is, therefore, necessary for the courts to be circumspect in the matter of granting interim relief, more particularly so where the interim relief is directed against orders or actions of public officials acting in discharge of their public duty and in exercise of statutory powers. On the facts and circumstances of the present case, we are satisfied that no interim relief should have been granted by the High Court in the terms in which it was done."

- **(1981) 4 SCC., 247, V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another.**

Facts:

In this case the Apex Court held that even though there is a power of review under a statutory enactment that cannot be a ground for not entertaining the writ petition under Article 226 of the Constitution of India.

Now, before closing the discussion on this topic, it will be useful to recollect again the exceptions to the principles of not entertaining the writ petition when alternate remedy is available.

The Apex Court in (1998) (8) SCC 1., Whirlpoorl Corporation Vs. Registrar of Trade Marks, Mumbai, considered the said aspect and reiterated the principles and also noticed the exception to the rule.

Relevant paragraphs are 15, 16, 17, 18, 19, 20 and 21:

15. "Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a

writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. 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. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed v. Municipal Board, Kairana [AIR 1950 SC 163: 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207: (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "*unless there are good grounds therefore"*, which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances

17. A specific and clear rule was laid down in State of U.P. v. Mohd. Nooh [AIR 1958 SC 86: 1958 SCR 595] as under:

> "But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

18. This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani [AIR 1961 SC 1506: (1962) 1 SCR 753] and was affirmed and followed in the following words:

> "The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of

the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

19. Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. [AIR 1961 SC 372: (1961) 41 ITR 191] laid down:

> Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".

- **Nivedita Sharma v. Cellular Operators Association of India- 2011 14(SCC) 337** In this case, the Supreme Court held that Petitioner must exhaust its alternative remedy before the State Commission and should not directly come to High Court for challenging judgment of District forum.

- **Commissioner of Income Tax v. Chhabil Dass Agrawa** [(2014) 1 SCC 603 **–** In this case, the Supreme Court held that when the statutory forum is created by law for redressal of grievances, the writ petition should not be entertained ignoring statutory dispensation subject to certain exceptions.

The Apex Court further opined that non-entertainment of petitions under the writ jurisdiction by the High Courts where efficacious or alternative remedy is available, is a rule of self- imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. The Apex Court has also opined that undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India despite existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or if there is sufficient grounds to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India

- **Supreme Court in the case of "*Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C.", MANU/SC/0054/2018*,** whereby, the Appellant / Bank assailed an interim order dated 24.04.2015 passed in a writ petition Under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the 'SARFAESI Act'), held

that the Hon'ble high Court ought not to entertain a writ petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person.

- **Principles summarised by the Court:- Radha Krishna Industries v. State of Himachal Pradesh,** 2021 SCC OnLine SC 334**, decided on 20.04.2021]**

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, **but for any other purpose as well;**

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) **When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution**. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.