**SUPREME COURT OF INDIA**

Baburam Prakash Chandra Maheshwari

Vs.

Antarim Zila Parishad now Zila Parishad, Muzaffarnagar

C.A.No.605 of 1966

(J. C. Shah, V. Ramaswami and A. N. Grover, JJ.)

02.08.1968

**JUDGEMENT**

**RAMASWAMI, J.:-**

1. The appellant is a partnership firm consisting of two brothers Lala Baburam and Shri Prakash Chandra, carrying on the business of manufacturing Khandsari sugar in the district of Muzaffarnagar. The partnership firm carries on its business through its two units (1) one located in the village Basora and run under the name and style of M/s. Baburam Ashok Kumar and (2) the other located in village Morna and run under the name and style of M/s. Baburam Prakash Chandra, both in the district of Muzaffarnagar. The case of the appellant was that the business of manufacturing Khandsari was seasonal and was carried on at both the places for less than 5 months in a year, i.e., from the month of November to the beginning of April. Under the U.P. District Boards Act No. X of 1922, the District Board of Muzaffarnagar was empowered to levy tax under Sections 108 and 114 in the rural area. Section 114 was to the following effect:

"The power of a board to impose a tax on circumstances and property shall be subject to the

following conditions and restrictions namely-

(a) The tax may be imposed on any person residing or carrying on business in the rural area provided that such person has so resided or carried on business for a total period of at least six months in the year under assessment.

(b) The total amount of tax imposed on any person shall not exceed such maximum (if any) as may be prescribed by rule.

.... .... .... .... .... .... .... ...."

Under S. 123 of that Act the matters relating to the assessment and collection of taxes were to be governed by rules framed under Section 172 of that Act. On March 1, 1928, the Government of U.P. issued Notification No. 315/IX-413 notifying the rules for the assessment and collection of a tax on circumstances and property in the rural area of the Muzaffarnagar district. The rules provided, among other matters, that all the activities of an assessee within the district, whether carried on under the same or different name, shall be considered in calculating the total amount to be assessed; and the tax shall be assessed by an Assessing Officer appointed by the District Board, and the list of assessment of the preceding year ending December 31, shall be completed on or before January 20, and shall be submitted to the Board which will return it by February 15 to the Assessing Officer for being revised and thereafter the Assessing Officer shall give notice of a date not less than one month when he will proceed to consider the objection. The assessee may file objections before the date fixed and thereafter the Assessing Officer shall allow the assessee an opportunity to be heard. Rule 16 read with Rule 2 fixed the maximum limit of the total amount of tax assessed on any person not to exceed Rs. 2,000/- in any year, having regard to all the activities of an assessee within the district whether carried on under the same or a different name. In the year 1950 the Constitution of India was promulgated and under cl. 2 of Article 276 the total amount payable in respect of any one person to the district Board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum. On August 22, 1958, the U. P. Antarim Zila Parishad Act of 1958 (U. P. Act No. XXII of 1958) passed by the U. P. Legislature received the assent of the Governor and was published in the U. P. Gazette dated August 23, 1958. Clause (3) of Section 1 of the U.P. Antarim Zila Parishad Act, 1958 runs as follows:

"It shall be deemed to have come into force on the 29th day of April, 1958, and shall expire on the 31st day of December, 1959."

But the Amending Act (U. P. Act No. 1 of 1960) received the assent of the Govenor on January 5, 1960 whereby the figure 1960 was substituted in place of 1959 in clause (3) of Section 1 of U. P. Act XXII of 1958. The case of the appellant is that the original Act No. XXII of 1958 had expired on December 31, 1959 and as such could not be revived on January 5, 1960 when the Amending Act No. 1 of 1960 received the assent of the Governor and that fresh legislation was necessary. On

March 20, 1960, a copy of the Assessment Order assessing the appellant to the maximum amount of Rs. 2,000/- as circumstances and property tax for the assessment year 1959-60 was issued by the Antarim Zila Parishad Muzaffarnagar. The assessment order was issued by Shri O. P. Varma purporting to act as a Taxing Officer of the Antarim Zila Parishad. Aggrieved by the assessment order, the appellant filed a Civil Miscellaneous Writ Petition No. 1780 of 1960 in the Allahabad High Court challenging the authority of the respondent Antarim Zila Parishad to impose the tax and praying for the grant of a writ to quash the said assessment order. The writ petition was summarily dismissed on July 21, 1960 by Jagdish Sahai, J., on a preliminary point that the appellant had a right to appeal to the prescribed authority under Section 128, of U. P. Act No. X of 1922. The appellant thereafter preferred a Special Appeal No. 452 of 1960 in the Allahabad High Court against the order of Jagdish Sahai, J. which was also dismissed on the ground that the appellant had an alternative remedy of appeal. During the pendency of the Special Appeal No. 452 of 1960, another new Act, namely the U. P. Kshatra Samitis and Zila Parishads Adhiniyam of 1961 (i.e., the U. P. Act No. XXXII of 1961) was passed by the U. P. Legislature and on November 29, 1961 received the assent of the President of India. The case of the appellant is that on January 15, 1962, without giving any notice or inviting any objections, the Taxing Officer Shri O. P. Varma passed the assessment order for 1961-62 in respect of the circumstances and property tax regarding the Basera Unit. Being aggrieved by the two separate assessment orders of Rs. 2,000 /- each in respect of the two units of Morana and Basera for the years 1961-62, the appellant filed again in the Allahabad High Court a writ petition No. 2371 of 1962 under Article 226 of the Constitution. The writ petition was summarily dismissed by S. N. Dwivedi, J., on February 13, 1964. The appellant took the matter in appeal in Special Appeal No. 322 of 1964 but the Special Appeal was dismissed by the Division Bench on March 27, 1964 on the ground that the appellant had not availed himself of the alternative remedy by way of appeal. The present appeal is brought to this Court by special leave from the judgment of the Division Bench of the Allahabad Court dated March 27, 1964 in Special Appeal No. 322 of 1964.

2. The sole argument presented on behalf of the appellant is that the High court was in error in holding that an appeal under the U. P. District Boards Act No. X of 1922 was an adequate and efficacious remedy and that the appellant should have exhausted the statutory remedy before applying for a writ under Article 226 of the Constitution.

3. It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana, 1950 SCR 566 = (AIR 1950 SC 163), "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs" and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted. In State of Uttar Pradesh v. Mohammad Nooh, 1958 SCR 595 605 = (AIR 1958 SC 86, 93), S. R. Das, C. J., speaking for the Court, observed:

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Ed., Vol. II, p, 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the Superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. 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. In the King v. Postmaster-General Ex parte Carmichael, (1928 (1) KB 291) a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior Court will readily issue a certiorari in a case where there has been a denial of natural justice before a Court of summary jurisdiction. The case of Rex v. Wandsworth Justices Ex parte Read, 1942 (1) KB 281 is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction."

There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well-settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course. - (See the decisions of this court in Carl Still G. m. b. H. v. State of Bihar, AIR 1961 SC 1615 and Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 = (AIR 1955 SC 661). In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice. (See 1958 SCR 595, 605 = (AIR 1958 SC 86, 93)).

4. It is manifest in the present case that the appellant had alleged in the writ petition that the Taxing Officer had no authority to impose the tax and there was no validly constituted Antarim Zila Parishad after December 31, 1959. It was further alleged that Sections 114 and 124 of the U. P. District Boards Act No. X of 1922 violated Article 14 of Constitution as arbitrary power was granted to District Boards as well as the State Government to exempt any person or class of persons or any property or class of properties from the scope of the Act. There is also an allegation that the imposition of the tax violated the provisions of Article 276 of the Constitution and that the Antarim Zila Parishad could not impose the tax beyond the maximum limit of Rs. 250/- per annum prescribed in that Article. It was further contended on behalf of the appellant that the procedure for assessment of the tax was not followed and there was violation of the principles of natural justice. In view of the allegations of the appellant that the taxing provisions are ultra vires and that there was violation of the principles of natural justice, we think that the High Court was in error in summarily dismissing writ petition on the ground that the appellant had an alternative remedy of statutory appeal. It was contended Mr. Chagla on behalf of the respondent that in dismissing the writ petition

the High Court was acting in its discretion. But it is manifest in the present case that the discretion of the High Court has not been exercised in accordance with law and the judgments of the Division Bench dated March 27, 1964 and of the learned single Judge dated February 13, 1964 summarily dismissing the writ petition are defective in law.

5. For the reasons expressed we hold that this appeal must be allowed, the judgments of the Division Bench in special Appeal No. 322 of 1964 dated March 27, 1964 and of the learned Single judge dated February 13, 1964 should be set aside and Civil Miscellaneous Writ No. 2371 of 1962 should be restored to file and dealt with in accordance with law. There will be no order with regard to the costs of this appeal in this Court.

Appeal allowed.