

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.3572 OF 2015

Between:

Ajay Suman Shrivastava

... Petitioner

And

The Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes**
- 2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes**
- 3. Whether Their Lordships wish to see the fair copy of the Judgment? : Yes**

SUREPALLI NANDA, J

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P.No.3572 OF 2015****% 03.06.2024****Between:**

Ajay Suman Shrivastava

... **Petitioner**

And

\$ The Union of India & others

... **Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioner : Sri K.Rajendran

^ Counsel for Respondents : Assistant Solicitor General of
India for R1
Sri Y.Suryanarayana for R2
Sri B.Chandrasen Reddy for
R3

? Cases Referred:

- (i) (2021) 6 SCC 771
- (ii) 2021 SCC Online SC 801

HON'BLE MRS. JUSTICE SUREPALLI NANDA**WRIT PETITION No.3572 OF 2015****ORDER:**

Heard learned counsel Sri K. Rajendran appearing on behalf of the petitioner, learned Assistant Solicitor General of India, appearing on behalf of Respondent No.1, learned Senior Designate Counsel Sri B.Chandrasen Reddy, appearing on behalf of Respondent No.3, and learned Counsel Sri Y.Suryanarayana, appearing on behalf of Respondent No.2.

2. **Petitioner approached the Court seeking the prayer as under:**

"...to issue a writ of Mandamus by declaring the Decision/Order dated 20th November 2014 together with the decision dated 24th September 2014 in ICSI/DC:207/2013 passed by the Respondent No.2 as illegal, arbitrary, perverse, unjust, unreasonable without any authority of law without following the due process of law in gross violation of the prescribed Rules and Procedures, in gross violation of principles of natural justice gross abuse of power and unconstitutional being violative of Articles 14, 19(g) of the Constitution of India besides being opposed to all canons of equity justice and fair play..."

3. **PERUSED THE RECORD.**

A) **The interim orders of this Court dated 24.02.2015 in W.P.No.3572 of 2015 are extracted hereunder:**

In view of averments of the petitioner in paras 13 and 14 of the affidavit that the appellate remedy is not available to him, at present, issue notice to R2.

Learned counsel for the petitioner is permitted to take out personal notice on R2 and file proof of service.

Sri B.Chandrasen Reddy, learned counsel takes notice on behalf of R3 and he is stated to have filed counter affidavit.

List this writ petition on 09-03-2015 in 'ML'.

Pending further orders, status-quo existing as on today, with regard to impugned proceedings, shall be maintained".

B. **The said orders dated 24.02.2015 had been modified vide orders of the Court dated 27.03.2015 passed in WPMP No.7749 of 2015 in W.P.No.3572 of 2015 observing as under :**

The present application is filed seeking modification of the interim order dated 24.2.2015. The petitioner states that though this Court directed status quo to be maintained as on the date of the said order, the second respondent appears to have given effect to the impugned order from 25.2.2015, whereas the

learned counsel for the third respondent states that it has been given effect from 13.2.2015. Thus even if we take the date of effectiveness of the impugned order as 13.2.2015 as the date from which the punishment was enforced against the petitioner as per the impugned order, and by today the petitioner has already served 42 days of punishment.

In view of the fact that the writ petition questioning the impugned order is pending and it would be rendered infructuous if the impugned order is not stayed, therefore, I deem it appropriate to modify the order dated 24.2.2015 to the effect that the impugned order dated 12.1.2015 passed by the second respondent shall remain stayed so far as the balance period of 60 days is concerned. However, the said interim order shall be subject to result of the writ petition and in the event of the petitioner failing in the writ petition, he will have to serve the remainder of the punishment also. This application is accordingly ordered.

C. Order dated 29.02.2016 of the Appellate Authority constituted under ICSI Act, 1980 in Appeal No.01/ICSI/2015 is extracted hereunder :

“Two Members of the Appellate Authority are reported to be not available for today's hearing. One Member has already recused himself from hearing this Appeal.

The Appellant has sent a Petition for withdrawal of this Appeal on the ground that during the period, when this

Appellate Authority was not functioning, he had filed a Writ Petition in the High Court of Judicature at Hyderabad and he has already got an interim relief in that Writ Petition (being WP No. 3572 of 2015) is now pending for final hearing. He has stated that during the pendency of the Petition before Hon'ble High Court, it will not be appropriate for him to prosecute this Appeal and therefore, the same may be dismissed as withdrawn.

These facts have been stated by the Appellant in his affidavit accompanying the withdrawal Petition."

Since, the Appellant himself does not want to prosecute this Appeal for the reason that he has already approached to the Hon'ble High Court at Hyderabad this Appeal is dismissed as withdrawn."

DISCUSSION AND CONCLUSION:

4. The affidavit filed by the petitioner, in particular paragraph Nos. 13 to 16, read as under:

13) I state that aggrieved by the impugned decision/order dated 20-Nov-2014 communicated vide letter dated 13-Jan-2015 to the Petitioner (received on 16-Jan- 2015) together with the decision dated 24-Sep-2014 in ICSI/DC:207/2013; the Petitioner herein filed an appeal before the Appellate Authority constituted under Section 22E of the Company Secretaries Act, together with a Petition to suspend the operation of the impugned Order.

(A copy of the appeal and the proof of dispatch is filed herewith).

14) I state that I am now given to understand that the office of the Chairman of the Appellate Authority (appointed by Respondent-1) is vacant at this point of time and hence no Appellate Authority is constituted and is non-functional.

15) I state that in view of the circumstances explained above, the petition seeking suspension of the impugned order filed by the Petitioner would not be taken up for hearing and no relief is expected, however, in the meantime the impugned order removing the name of the Petitioner from the Register of Members would be operational from 30 days from the date of receipt of the order that is 16-Feb-2015 and if that happens it would not only affect the reputation of the Petitioner in professional circle, but he would also not be able to practice as a member of the Respondent-2 Institute and the consequences would be far reaching and irreparable which can't be compensated in terms of money.

16) In the circumstances, the Petitioner herein left with no other efficacious alternate remedy in respect of the impugned Decisions/Orders, begs to challenge them by Invoking the Special Extra-ordinary Original Equitable Sacrosanct Jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India to set-aside and declare the Decision/Order dated 20-Nov-2014 together with the

decision dated 24-Sep-2014 passed by the Respondent-2 in ICSI/DC:207/2013 as illegal, arbitrary, perverse, unjust, unreasonable, without any authority of law, without following the due process of law, in gross violation of the prescribed Rules and Procedure, in gross violation of principles of natural justice, gross abuse of power and unconstitutional being violative of Articles, 14, 19(g) of the Constitution of India besides being opposed to all canons of equity, justice and fair play.

5. A bare perusal of the averments made at para No. 13 of the affidavit filed by the Petitioner in support of the present writ petition clearly indicate that the Petitioner approached the Court seeking prayer as extracted in the first page of the present order, with a specific contention that against the orders of Respondent No.2 herein i.e., Disciplinary Committee, the petitioner had filed an Appeal under Section 22E of the Company Secretaries Act, 1980, before the Appellate Authority but the said Appeal could not be heard as Appellate Authority is not functional for the want of its Chairman. The High Court vide order dated 24.02.2015 had granted status quo with regard to the impugned proceedings, however, this Court vide its order dated 27.03.2015 had modified its earlier order dated

24.02.2015 and stayed the impugned order of the Respondent No.2 herein.

6. A bare perusal of the order dated 29.02.2016 in Appeal No.01/ICSI/2015 (referred to and extracted above) clearly indicates that since the Petitioner himself did not want to prosecute the said Appeal for the reason that he had already approached to the High Court at Hyderabad, the said Appeal had been dismissed as withdrawn.

7. This Court opines that Chapter V of the Company Secretaries Act, 1980, provides a comprehensive mechanism to deal with misconduct (professional and other misconduct) of members of the Institute of Company Secretaries of India. The Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) provides for the process from receipt of complaints and information till their disposal. Section 22E of the Company Secretaries Act, 1980 stipulates that any member aggrieved by an order of the Board of Discipline or the Disciplinary Committee, as the case may be, may prefer an

Appeal under Section 22E of the CS Act, before the Appellate Authority constituted under Section 22A of the Company Secretaries Act, 1980. Section 22E (1) provides that any member of the Institute aggrieved by any order of the Board of Discipline of the Disciplinary Committee imposing on him any of the penalties referred to in Sub-Section (3) of Section 21A and Sub-Section (3) of Section 21B, may within 90 days from the date on which the order is communicated to him, prefer an Appeal to the Authority. Hence, under Section 22E of the Company Secretaries Act, 1980 statutory remedy of Appeal is provided to the members of the Institute of Company Secretaries of India who feel aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him penalty. This Court opines that there is an alternative efficacious remedy available to the Petitioner against the orders impugned in the present writ petition.

8. It is pertinent to refer to the observations of the Apex Court in judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, which referred to Whirlpool

Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 and the said view had been reiterated in a recent full bench judgment reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others", dated 24.09.2021. The principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy had been summarized in the said Judgment at para 28 and the same is extracted hereunder:

"28. The principles of law which emerge are that:

(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."

In the present case this Court opines that (ii) (iv) (v) and (vi) extracted above of para 28 of the judgment of the Apex Court reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others, dt. 24.09.2021 are attracted, hence the present writ petition is maintainable and the plea of availability of alternative remedy is unsustainable.

9. This Court heard the learned counsel for the Petitioner and the learned counsel appearing on behalf of 2nd and 3rd Respondent as well, but however, without going into the rival contentions put-forth by all the learned counsel on record, duly taking into consideration :

- a) the specific averments made by the Petitioner in particular at para 13, 14, and 15 (referred to and extracted above)
- b) duly considering the prayer sought for by the Petitioner herein (referred to and extracted above)
- c) duly taking into consideration the order dt. 29.02.2016 passed in Appeal No.01/ICSI/2015 of the Appellate Authority constituted under ICSI Act, 1980 (referred to and extracted above),
- d) the averments made in the counter affidavit filed by the 3rd Respondent who specifically alleges filing of fabricated documents by writ petitioner before ICSI ,
- e) the averments made in the counter affidavit filed by the 2nd Respondent who specifically contends that Petitioner has an efficacious alternative statutory remedy to prefer an Appeal before the Appellate Authority against the orders impugned of the 2nd Respondent in the present writ petition,
- f) taking into consideration the observations of the Apex Court at para 28 in particular clause (ii) (iv) (v) and (vi) (referred to and extracted above) of the judgment of the Apex Court reported in 2021 SCC Online SC 801 in

"Magadh Sugar & Energy Ltd. Vs. State of Bihar and others, dt. 24.09.2021.

10. This Court opines that since the Petitioner has been provided alternative efficacious statutory remedy to prefer an Appeal before the Appellate Authority against the impugned orders of Respondent No.2, this Court is not inclined to proceed with the matter and to adjudicate the same on merits. Accordingly the writ petition is disposed of directing the Petitioner to prefer an Appeal before the Appellate Authority against the impugned orders of Respondent No.2 dated 20.11.2014 and 24.09.2014 passed in ICSI/DC:207/2013 within a period of 4 weeks from date of receipt of copy of the order. The orders impugned of the 2nd Respondent dated 20.11.2014 together with the decision dated. 24.09.2014 passed in ICSI/DC:207/2013 shall remain stayed for a period of two (02) weeks from the date of receipt of the copy of the order to enable the Petitioner to initiate appropriate steps before the Appellate Authority constituted under ICSI Act, 1980, and the same may be disposed of by the Appellate Authority expeditiously within a period of 2 months thereafter upon the Petitioner preferring the said Appeal

in accordance to law in conformity with the principles of natural justice by providing reasonable opportunity and notice to all concerned. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SUREPALLI NANDA,J

Date: 03.06.2024

**Note: L.R.Copy to be marked
(B/o) Yvkr/ktm**