

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.16637 OF 2023

Between:

Mrs.Shobha Gupta

... Petitioner

And

Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 29.11.2023

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

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

SUREPALLI NANDA, J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**WRIT PETITION No.16637 OF 2023****% 29.11.2023****Between:****# Mrs. Shobha Gupta****... Petitioner****And****\$ Union of India & others****... Respondents****< Gist:****> Head Note:****! Counsel for the Petitioner** : Mr.Md.Sharfuddin

^ Counsel for the Respondents :Mr.G.Praveen Kumar,
Dy.Solicitor General of India,
for R1
Mr.K.Rathanga Pani Reddy,
for R2
Mr.P.Ramachandran, for R3

? Cases Referred:

- (1) (2003) 10 SCC,733
- (2) 1989, AIR 1607
- (3) W.P.(C) No.476 of 2020
- (4) W.P.(Civil) Diary No.10955/2020
- (5) 2012, Volume 12, SCC, 331
- (6) (2021) 6 SCC, 771

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No. 16637 OF 2023****ORDER :**

Heard Mr.Md.Sharfuddin, learned Counsel for the petitioner, Mr.G.Praveen Kumar, learned Deputy Solicitor General of India, for Respondent No.1, Mr.K.Rathanga Pani Reddy, learned counsel for Respondent No.2 and learned Senior Counsel Mr.Prabhakar, appearing on behalf of Mr.P.Ramachandran, learned counsel for Respondent No.3.

2. This Writ Petition is filed praying to issue a Writ of Mandamus to direct and declare the action of 3rd respondent turning the Account of the petitioner as Non-performing Asset on 09.02.2021 by Notice dated 26.05.2021 as Void being Contrary to the Order dated 03.09.2020 passed by the Hon'ble Supreme Court of India and also direct the 2nd respondent to initiate instructions and guidelines to 3rd respondent to adhere to the notification dated 27.03.2020 RBI/2019-20/186 DOR No.BP.BC.47/21.04.048/2019-20 and Circular dated 17.04.2020 and Circular dated 05.05.2021 and subsequently direct the 1st and 2nd respondent to initiate instructions and guidelines for the implementation of the Emergency Credit Line Guarantee Scheme

(ECLGS) Operational Guidelines updated as on October 06, 2022 and issue of directions/guidelines to the 2nd respondent to direct and cease the illegal activity of 3rd respondent of realizing the default amounts from the secured assets through action etc., and to prevent the 3rd respondent from persistently threatening the petitioner for the recovery of defaulted amounts and also direct the respondent Nos.2 and 3 to grant ex-gratia compensation of Rupees Five Crore amount to the petitioner for not implementing the Moratorium Circulars dated 27.03.2020 and 17.04.2020, 05.05.2021 and ECLGS guidelines and Schedules in Letter and Spirit and causing damage to the reputation and business of the petitioner by turning its Account NPA illegally.

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:

a) The petitioner has filed this Writ Petition seeking for the implementation of the implementation of the COVID-19 reliefs announced by the Government and RBI. The restructuring facility announced by the RBI on 05.05.2021 is not implemented in its

letter and Spirit. Earlier in 2020 this court intervened in implementation of the moratorium circular dated 27.03.2020 and issued directions for the implementation of the circular in its letter and spirit, and because of these directions the Citizens were relaxed from the Economic burden during COVID-19 in 2020. Thereafter, the RBI Circular dated 27.03.2020 providing moratorium to all commercial borrowers under the light of COVID-19 came as relief to such entities as it would have become a huge financial burden for the borrowers to pay the EMIs regularly in this period. However, that facility was denied to the petitioner.

b) Furthermore, the RBI Circular vide No. RBI/2019-20/186 DOR. No. BP. BC.47/21.04. 048/2019-20 of 27.03.2020 under the COVID-19 relief package which came as a relief for the business entities provided for the initiation of loan moratorium period wherein the customers of the financial institutions can defer the EMIs under the light of COVID-19 circumstances and therefore during such moratorium there will be no pressure on the borrowers to comply with the payment of the instalments. Further, notification dated 17.04.2020 was brought by the RBI which restricted to declare any account NPA as per the guidelines issued.

c) Subsequently, the 3rd respondent on 09.02.2021 declared the petitioner's loan account as NPA without any prior information or justification. During the moratorium period no relief was provided by the 3rd Respondent rather during such window the account was declared NPA. Moratorium relief is applicable to all those commercial loans which were in default on 01.03.2020 and yet the petitioner's loan account was declared NPA and this period of moratorium was taken into consideration for the computation of 90 days for declaration of NPA.

d) Moreover, the Notification in simple sense portrays the fact all those accounts which were granted as standard account on or before 29.02.2020, and such account's cannot be converted into Non-Performing Assets further, in later stage after this notification is brought in. The Statement pertaining to development and regulatory policies issued by the 2nd Respondent on 27.03.2020 along with the regulatory package issued on 27.03.2020 primarily establishes the fact that the 2nd Respondent has prima facie tried to maintain a status quo as on 01.03.2020 in respect to all the installments payment for which had to be made post 01.03.2020 till 31.05.2020.

e) Therefore, the non-action and reluctance by the 3rd Respondent along with the inhuman action of the Bank has

resulted in the violation of petitioner's fundamental rights primarily right to livelihood and right to live with dignity under Article 21 of the Constitution of India. Hence this Writ Petition.

4. The averments in the Counter Affidavit filed by Respondent No. 3, in brief are as under:

a) The petitioner along with her family members have availed against the property to an extent of Rs.3,00,00,000/- vide loan account No. PCR000800686123 but the petitioner herein has violated the norms and conditions of the loan agreement, which lead to declaring petitioner's account as NPA on 09.02.2021. The petitioner had been provided initial moratorium of 6 months by default in terms of guidelines of 2nd respondent herein, though loan account of this petitioner was not regular. However, the account of petitioner herein was neither eligible for further restructuring nor for ECLGS as his loan account was delinquent prior to 28.02.2020, as such the account was not eligible & same was intimidated to the petitioner vide reply dated 11.08.2022.

b) Since the petitioner being the co-borrower/guarantor herein failed to repay the amounts even after issuance of section 13(2) Notice under SARFAESI Act, the respondent herein had issued possession notice under rule 8(1) of SARFAESI Act which

was challenged by the petitioner in S.A. No. 211 of 2021 and the petitioner herein obtained stay on a condition to deposit 25% in two installments in I.A. No. 177/2023 vide order dated 24.01.2023 but the petitioner herein failed to comply the orders.

c) Furthermore, the relief sought by the Petitioner in this Writ Petition is already been challenged in the SA, the petitioner is not entitled for the said relief from both the Courts and the Writ Petition is not maintainable. The petitioner had intentionally failed to comply the orders of the Tribunal by not depositing the 25% of the outstanding amount and now come up with the present petition before this Court after two years of filing S.A.

d) The petitioner along with principle borrower has raised the similar grounds in the said appeal before the Tribunal and this Court in W.P No. 532 of 2022, which are pending adjudication, though the petitioner herein is harping on the ground to adhere to the notification dated 27.03.2020 and the circulars and for implementing ECLGS, does not fall under the parameters of the said circulars and ECLGS schemes.

e) Moreover, under ECLGS all borrowers accounts pertaining to the business enterprises to the individuals for specific business purposes with total credit outstanding across all lending institutions up to Rs.50 crores as on 29.2.2020. However, the

petitioners account herein does not fall under the parameters of ECLGS Scheme, as the petitioner account was delinquent prior to March 2020, as per the ECLGS Scheme, all the borrowers accounts which had NPA or SMA status as on 29.02.2020 shall not be eligible under ECLGS.

f) Alongside, the petitioner has intentionally failed to comply the orders of the Tribunal by not depositing the 25% of the outstanding amount, and to overcome the same has come up with the W.P No. 532 of 2022 and the present petition respectively. The RBI circular dated 27.03.2020 is not applicable to the petitioner herein as the account of petitioner herein was not eligible which was replied by a letter on 11.08.2021.

g) Furthermore, it is denied that the respondent bank herein has declared the loan account as NPA without any prior intimation and justification and contrary to the stay order of the Hon'ble apex court and reiterated that the account of the petitioner has been delinquent even prior to Covid-19 still a cushion period was given which was not utilized by the petitioner

h) The petitioner herein has filed the present petition after the lapse of 2 years and the petitioner committed default and declared NPA in the year 2021 but not in the year 2020. The respondent herein strictly followed the instructions of the RBI

and its circular and provided eligible relief to the petitioner herein. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD :

5. Counter affidavit filed by the 3rd respondent - Bank, in particular, Paras 3, 4 and 5, read as under:

"3. It is humbly submitted that with due respect to the Hon'ble court, the Judgements referred by the Petitioner in the present Writ are not applicable to the petitioner, more specifically the petitioner relying on the Judgment of the Bombay High Court, which clearly specifies at page 60 of the material papers at para 44 of the judgment clearly states that "it is also clarified that this order will not serve as a precedent for any other case in regard to any other borrower who is in default or any other bank. Each of these cases will have to be assessed on their own merits." Further it has also clarified in para 45 of the judgement that "Lastly it is clarified that these are only prima facie and tentative views. Nothing in this order is to be construed as a final determination of any issues or competing rights", therefore in view of the said expressions made by the Hon'ble court, the judgments are not applicable in the present case to the petitioner. It is further submitted that the account was delinquent even before the Covid-19 circulars issued by the second respondent, however the petitioner was given cushion to

his account. It is submitted that the petitioner along with her family members have availed loan as borrower, guarantor, and co-borrower, availed the loan against Property to an extent of Rs.3,00,00,000/- vide loan account No. PCR000800686123, by mortgaging the property by executing necessary documents agreed to repay the same in 144 monthly instalments @ Rs.4,03,158/- per month, the petitioner also agreed to abide by the terms and conditions of the agreement.

It is submitted that the petitioner violated the norms and conditions of the loan agreement, having failed to pay the amounts in time, which lead to declare petitioner's account as NPA on 09-02-2021. It is submitted that the respondent herein got issued a notice under Sec. 13(2) of the SARFAESI Act, the petitioner who had replied to said notice never raised about the contents of the present Writ Petition.

4. It is submitted that the petitioner herein had been provided initial moratorium of 6 months by default in terms of guidelines of respondent No.2 herein, though loan account of this petitioner was not regular. However the account of petitioner herein was not eligible for further restructuring nor for ECLGS as his loan account was delinquent prior to 28-02-2020, as such his account was not eligible & same was intimated to the principal borrower of petitioner vide reply dated 11-08-2021, very categorically stated that the their account is not eligible for the facility as their account does not fit into the parameters

framed by the RBI, as such the petitioner herein cannot allege that the respondent bank has not implemented the Covid-19 reliefs and financial schemes announced by Respondent No.1 and 2.

5. It is further submitted that since the petitioner being the co-borrower/guarantor failed to repay the amounts even after issuance of section 13(2) of SARFEASI Act, the respondent herein had to issue possession notice under rule 8(1) of SARFAESI Act which was challenged by the petitioner along with the other borrowers/co-borrower by approaching the Debts Tribunal Recovery - II in S.A.No.211 of 2021, pending the appeal the respondent herein filed a petition under section 14 of the SARFAESI act and got appointed an advocate commissioner, and when the learned advocate commissioner served notice, the petitioner herein got amended the prayer and obtained stay on a condition to deposit 25% in two instalments, in I.A.No.177/2023, ON 24/01/2023, the petitioner along with her family members herein failed to comply the orders of the Hon'ble DRT till this date and initially principle borrower Mrs. Rashmit Guptha approached this Hon'ble court by way of writ petition bearing No WP No. 532 of 2022 apart from the present petition. The petitioner along with principle borrower has raised the similar grounds in the said appeal before the Hon'ble Tribunal and this Hon'ble Court in the Writ Petition No. 532 of 2022, which are pending adjudication. The petitioner herein and the principle borrower filed the appeal and the Writ Petition

intending to have a double benefits from both the Tribunal and from this Hon'ble Court, which needs to be curtailed, though the petitioner herein in harping on the ground to adhere to the notification dated 27.03.2020 and the circulars and for implementing ECLGS, does not fall under the parameters of the said circulars and ECLGS schemes."

6. Learned counsel for the petitioner put forth the following submissions.

- (1) The writ petition is maintainable under Article 226 of the Constitution of India, since the subject issue pertains to fundamental rights of the petitioner under Article 21 of the Constitution of India and also the infringement of constitutional rights of the petitioner.
- (2) The 3rd respondent – Bank primarily on 09.02.2021 declared the petitioner's loan account as Non-Performing Asset (NPA), without any prior intimation and justification.
- (3) During the moratorium period no relief was provided by the 3rd respondent.
- (4) The benefit of moratorium as per Regulatory Package should be made available to the borrowers who were in-default as on 01.03.2020.

- (5) Period of moratorium during which there is a lockdown will not be reckoned by the lenders or financial institution for the computation of 90 days to classify the account as Non-Performing Asset, as per the Reserve Bank of India Guidelines.
- (6) The Circular dated 27.03.2020 issued by the Reserve Bank of India has not been implemented by the 3rd respondent.
- (7) The moratorium relief had been denied to the petitioner as applicable even to the loans which were in-default as on 01.03.2020.
- (8) The petitioner is under persistent threat by the 3rd respondent and its recovery agents who are threatening to realize the defaulted amount through secured assets.
- (9) Learned counsel for the petitioner seeks a direction to the 2nd respondent to initiate instructions and guidelines to the 3rd respondent to adhere to the Notification dated 27.03.2020 and Circular dated 17.04.2020 and Circular dated 05.05.2021.
- (10) Through the Reserve Bank of India Circular dated 27.03.2020, Covid-19 relief package was released for the business entities and the said notification provided

for initiation of loan moratorium period wherein the customers of the financial institutions can defer the EMIs under the light of Covid-19 circumstances, and therefore, during such moratorium there will be no pressure on the borrowers to comply with the payments of the instalments as per the Circular dated 17.04.2020 which was brought by the RBI which restricted to declare any amount NPA as per the guidelines issued and through the Circular dated 05.05.2021 restructuring facility has been announced by the RBI. But, however, the 3rd respondent is not implementing the same in its letter and spirit.

- (11) The fundamental rights Right to Live with Dignity and Right to Livelihood of the petitioner is at stake, and therefore, the learned counsel submits that the writ petition should be allowed as prayed for.

7. Learned counsel for the petitioner placed reliance on the following judgments.

- 1) The Delhi High Court Order dated 06.04.2020 in the matter of "ANANT RAJ LIMITED v. YES BANK LIMITED", wherein the Delhi High Court observed that the moratorium relief is applicable even to loans which were in default as on

01.03.2020, the Delhi High Court had indicated in the said order dated 06.04.2020 that the extension of the said moratorium relief should be given to all commercial borrowers as mentioned in the RBI package.

- 2) The Judgment of the Bombay High Court vide order dated 11.04.2020 in the matter of "TRANSCON SKYCITY PRIVATE LIMITED AND OTHERS v. ICICI BANK AND OTHERS", wherein the Bombay High Court has concurred with the view of the Delhi High Court in *Anant Raj's* case and mentioned with greater clarity that the benefit of moratorium as per the Regulatory Package shall be available to the borrowers who were in-default as on 01.03.2020. The Bombay High Court also affirmed that the period of moratorium during which there is a lockdown will not be reckoned by the lender or financial institution for the computation of (90) days to the classified account as 'Non-Performing Asset' (NPA) as per the RBI guidelines.
- 3) The Judgment of the Apex Court dated 30.04.2020 passed in W.P.(Civil) Diary No.10955/2020 in the matter of **"KAMAL KUMAR KALIA v. UNION OF INDIA AND ANOTHER"**, whereunder the Apex Court directed the

Reserve Bank of India to ensure implementation of the Circular dated 27.03.2020 in its letter and Spirit.

The learned counsel for the petitioner prayed for the writ petition to be allowed as prayed for.

8. Learned Senior Counsel Mr.Prabhakar, appearing on behalf of the 3rd respondent – Bank had put forth the following submissions:

- (1) The writ petition is neither maintainable in law nor on facts and the same is devoid of merits and is liable to be dismissed.
- (2) The petitioner has an alternative remedy by approaching the Debt Recovery Tribunal.
- (3) The petitioner is a chronic defaulter in repaying the loans which led to declare petitioner's account as 'NPA' on 09.02.2021.
- (4) The petitioner had been provided initial moratorium of six months by default in terms of guidelines of respondent No.2, though loan account of the petitioner was not regular.
- (5) The account of the petitioner was not eligible for further restructuring nor for ECLGS as his loan account was

delinquent prior to 28.02.2020 and the same was intimated to the petitioner vide reply dated 11.08.2022.

- (6) The petitioner challenged the possession notice issued under Rule 8(1) of SARFAESI Act before the Debt Recovery Tribunal – II in Second Appeal No.211 of 2021 and obtained stay on a condition to deposit 25% in two instalments in I.A.No.177 of 2023 vide order dated 24.01.2023 that the petitioner failed to comply the orders of the Hon'ble Debt Recovery Tribunal till date and approached the Court by filing the present writ petition.
- (7) The petitioner is not entitled for the relief as prayed for in the present writ petition, because the 3rd respondent is a private bank.
- (8) The petitioner suppressed the true facts and the petitioner committed default and was declared 'NPA' in the year 2021 and not in the year 2020.

The learned counsel placed reliance on the Judgment of "FEDERAL BANK LIMITED v. SAGAR THOMAS AND OTHERS", reported in (2003) 10 Supreme Court Cases 733 and the learned counsel prayed for dismissal of the writ petition.

9. Learned counsel appearing on behalf of 2nd respondent – Reserve Bank of India, put forth submissions as follows:

- (1) The petitioner had not represented to the RBI with regard to the subject issue even as on date.
- (2) It is for the 3rd respondent to first examine the grievance of the petitioner and thereafter only the 2nd respondent's role would come into play.
- (3) Any borrowing arrangement is a commercial contract between the lender and the borrower and each lending institution is best placed to assess the requirements of its customers and therefore the discretion is left to the lending institutions concerned.
- (4) The Reserve Bank of India only provides an enabling mechanism for the lenders to implement the resolution plans in terms of resolution frameworks. However, the discretion regarding extending the same in specific cases is left to the lending institutions concerned who were to decide as per their Board approved policies.
- (5) Finally, the petitioner had not addressed any representation to the 2nd respondent as on date and hence no Mandamus can be issued against the 2nd

respondent and no in action can be alleged against the 2nd respondent.

DISCUSSION AND CONCLUSION :

10. In so far as the plea of the 3rd respondent placing reliance on the judgment of the Apex Court in “FEDERAL BANK LIMITED v. SAGAR THOMAS AND OTHERS”, reported in (2003) 10 Supreme Court Cases 733, that the writ petition is not maintainable against the 3rd Respondent is concerned, this Court opines that the said plea of the learned counsel appearing n behalf of the 3rd respondent is not tenable as per the discussion arrived at below:-

The grievance of the petitioner in the present writ petition admittedly relates to enforcement of the Circulars dated 27.03.2020, 17.04.2020 and 05.05.2021 and the said Circulars having been issued to protect and preserve the economy of the country on account of the Covid-19 Pandemic, this Court opines that the issuance of the said Circulars is in the public interest, interest of the economy and the country and the enforcement thereof would also come within the purview of enforcement of a public

duty under the Circular dated 27.03.2020. In terms of the RBI Circulars, this Court opines that a Right is created in the petitioner as a borrower from the Bank to avail a Moratorium which however had not been considered by the 3rd respondent.

The Apex Court in **ANANDI MUKTA SADGURU SHREE MUKTA v. V.R.RUDANI AND OTHERS**", reported in 1989 AIR 1607, in the judgment dated 21.04.1989 observed at para Nos. 6, 8 and 9 of the said Judgment, reads as under:

"(6) Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

(8) The words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

(9) Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute."

The Full Bench of the Apex Court in the Judgment dated 23.03.2021 in W.P.(C) No.476 of 2020 in "SMALL SCALE INDUSTRIAL MANUFACTURES ASSOCIATION (REGISTERED) v. UNION OF INDIA AND OTHERS", in its conclusion observed as under:

"Writ Petition (Civil) No.955 of 2020 stands disposed of in terms of the statement made by Shri V.Giri, learned Senior Advocate appearing on behalf of the RBI that Circular dated 27.03.2020 shall be applicable to all banks, non-banking financial companies, housing finance companies and other financial institutions compulsorily and mandatorily."

11. The order of the Apex Court dated 30.04.2020 passed in W.P.(Civil) Diary No.10955/2020 in the matter of "Kamal Kumar Kalia v. Union of India and another", wherein it is observed as under:

"However, learned counsel for the petitioner submits that the Circular dated 27.03.2020 issued by the Reserve Bank of India has not been implemented by the banks. In view of the above, we direct the Reserve Bank of India to

ensure implementation of the Circular dated 27.03.2020 in its letter and spirit.

12. The Apex Court in the Judgment of “RAMESH AHLUWALIA v. STATE OF PUNJAB AND OTHERS”, dated 13.09.2012 reported in 2012, Volume 12, SCC, page 331, wherein in the relevant paras it is observed as under:

“20. The terms “authority” used in Article 226, in the context, must receive a liberal meaning unlike the terms in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the

development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition." The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgment in Unni Krishnan and Zee Telefilms Ltd.(supra), brought to our notice by the learned counsel for the Appellant Mr.Parikh.

In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent – institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions, i.e.

providing education to children in their institutions throughout India."

13. The Apex Court in a judgement dated 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishan Industries vs. State of Himachal Pradesh referring to Whirlpool Corporation vs. Registrar of Trade Marks (reported in 1998 (8) SCC 1) at para 15 observed as under:

"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 15(i) (extracted above) are attracted and hence the present writ petition is maintainable and the plea of availability of alternative remedy is unsustainable.

14. Taking into consideration the aforesaid facts and circumstances of the case this Court is of the firm opinion that there is no inaction on behalf of the 2nd or 3rd respondent in considering the grievance of the petitioner as put forth in the present writ petition since admittedly as borne on record and as even admitted by the learned counsel appearing on behalf of the petitioner, the petitioner had not represented about his grievance as put forth in the present writ petition either to the 2nd respondent or 3rd respondent even as on date and therefore the relief as prayed for by the Petitioner cannot be granted in the present writ petition. But however duly considering the observations of the Apex Court at paras 6, 8 and 9 of the Judgment dated 21.04.1989, reported in 1989 AIR 1607 in "ANANDI MUKTA SADGURU SHREE MUKTA Vs. V.R.RUDANI AND OTHERS", and also the observation's at para 15(i) of the judgment of the Apex Court dated 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishan Industries vs. State of Himachal Pradesh and also the observations of the Apex Court in the various judgments (referred to and extracted above), it is however observed that it is open to the petitioner to

submit a detailed representation raising all the pleas as put forth by the petitioner in the present writ petition to the 2nd respondent and 3rd respondent herein, within a period of two (02) weeks from the date of receipt of a copy of the order, and upon receipt of the said representation, the 2nd and 3rd respondents herein are directed to consider the same in accordance to law, and pass appropriate orders, within a period of two (02) weeks thereafter by affording reasonable opportunity of hearing to the petitioner, in conformity with principles of natural justice duly taking into consideration the Full Bench Judgment of the Apex Court dated 23.03.2021 passed in W.P.(C) No.476 of 2020 in "Small Scale Industrial Manufactures Association (Registered) v. Union of India and others", and the order of the Apex Court dated 30.04.2020 passed in W.P.(Civil) Diary No.10955/2020 in the matter of "Kamal Kumar Kalia v. Union of India and another" (referred to and extracted above) and also duly considering the observations of this Court in the present order and duly communicate the decision to the petitioner. With these observations the

writ petition is disposed off. However, there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

SUREPALLI NANDA, J

Date: 29.11.2023

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