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STAR PAPER MILLS LTD.

v.

STATE OF U.P. AND ORS.

SEPTEMBER 19, 2006

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[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Constitution of India, 1950—Article 226—Writ Petition—Maintainability of, when factual disputes involved—Held, not maintainable particularly when alternative remedy available.*

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Appellant filed Writ Petition under Article 226 of the Constitution, challenging the levy of market fee in terms of Rule 70 of the Uttar Pradesh Krishi Utpadan Mandi Niyamavali, 1965 on the purchases made by the appellant from U.P. Forest Corporation. High Court dismissed the Writ  
D Petition holding that factual disputes were involved and, therefore, it would be appropriate for the appellant to approach the concerned authority. A review petition was filed wherein it was stated that several points other than those relating to captive consumption were raised and, therefore, the matter should be heard afresh. The High Court dismissed the review  
E petition on the ground that the points raised in the review petition were neither raised in writ petition nor were contended before the Court when the matter was heard. The present appeals are against the orders dismissing writ petition and review petition.

Disposing of the appeals, the Court

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HELD: 1. This is not a case where no factual adjudication is necessary. Therefore, the High Court was justified in its view that the statutory remedy is to be availed. The appellant is directed to file necessary details before the concerned authority for consideration. The said authority shall consider the stand of appellant and dispose of the same  
G expeditiously. [386-E]

2.1. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and

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never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or the procedure required for decision has not been adopted.

[384-C-E; G-H]

*K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors.*, AIR (1954) SC 207; *Sangram Singh v. Election Tribunal, Kotah and Ors.*, AIR (1955) SC 425; *Union of India v. T.R. Varma*, AIR (1957) SC 882; *State of U.P. and Ors. v. Mohammad Nooh*, AIR (1958) SC 86; *M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras*, AIR (1966) SC 1089; *State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. etc.*, AIR (1964) SC 1006; *N.T. Veluswami Thevar v. G. Raja Nainar and Ors.*, AIR (1959) SC 422; *Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr.*, AIR (1965) SC 1321; *Siliguri Municipality and Ors. v. Amalendu Das and Ors.*, AIR (1984) SC 653; *S.T. Muthusami v. K. Natarajan and Ors.*, AIR (1988) SC 616; *R.S.R.T.C. and Anr. v. Krishna Kant and Ors.*, AIR (1995) SC 1715; *Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors.*, AIR (2000) SC 2573; *A. Venkatasubbiah Naidu v. S. Chellappan and Ors.*, [2000] 7 SCC 695; *L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors.*, [2001] 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharej)-Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors.*, [2001] 8 SCC 509; *Pratap Singh and Anr. v. State of Haryana*, [2002] 7 SCC 484; *G.K.N. Driveshafis (India) Ltd. v. Income Tax Officer and Ors.*, [2003] 1 SCC 72; *Harbans Lal Sahnia v. Indian Oil Corporation Ltd.*, [2003] 2 SCC 107; *G. Veerappa Pillai v. Raman & Raman Ltd.*, AIR (1952) SC 192; *Assistant Collector of Central Excise v. Dunlop India Ltd.*, AIR (1985) SC 330; *Ramendra Kishore Biswas v. State of Tripura*, AIR (1999) SC 294; *Shivgonda Anna Patil and Ors. v. State of Maharashtra and Ors.*, AIR (1999) SC 2281; *C.A. Abraham v. I.T.O. Kottayam and Ors.*, AIR (1961) SC 609; *Titaghur Paper Mills Co. Ltd. v. State of Orissa and Anr.*, AIR (1983) SC 603; *H.B. Gandhi v. M/s Gopinath and Sons*, [1992] Suppl. 2 SCC 312; *Whirlpool Corporation v. Registrar of Trade Marks and Ors.*, AIR (1999) SC 22; *Tin Plate Co. of India Ltd. v. State of Bihar and Ors.*, AIR (1999) SC 74; *Sheela Devi v. Jaspal Singh*, [1999] 1 SCC 209 and *Punjab National Bank*

A *v. O.C. Krishnan and Ors.*, [2001] 6 SCC 569, relied on.

2.2. If the appeal is from “Caeser to Caeser’s wife” the existence of alternative remedy would be a mirage and an exercise in futility. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. Firstly, 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. Where the proceedings itself are an abuse of process of law, the High Court in an appropriate case can entertain a writ petition. [386-A-C]

*Ram and Shyam Co. v. State of Haryana and Ors.*, AIR (1985) SC 1147 and *U.P. State Spinning Co. Ltd. v. R.S. Pandey & Anr.*, [2005] 8 SCC 264, relied on.

*Krishi Utpadan Mandi Samiti and Ors. v. Shree Mahalaxmi Sugar Works and Ors.*, [1995] Suppl. 3 SCC 433 and *State of Himachal Pradesh and Ors. v. M/s. Gujarat Ambuja Cement Ltd. and Anr.*, [2005] 6 SCC 499, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2595-2596 of 2000.

From the Judgment/Order dated 11.12.1998 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition Nos. 6710(M/B) of 1986 and 3290 (M/B) of 1991.

WITH

C.A. Nos. 2597-2598/2000.

G Dr. A.M. Singhvi, Vijay Hansari, Gaurav Jain and Ashok Mathur for the Appellant.

H Shobha Diskshit, Ashok Srivastava, Praveen Swarup, Pradeep Misra, Pramod Swarup, Javed M. Rao, Chandrakant Nayak, Santosh Kumar, Divesh Singh, Rakesh K. Sharma, Ajay K. Agrawal and Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

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**ARIJIT PASAYAT, J.** Challenge in these appeals is to the judgment rendered by a Division Bench of the Allahabad High Court. Two of the appeals i.e. Civil Appeal Nos. 2595-96 of 2000 relate to the order requiring the appellant to avail statutory remedy and other two appeals i.e. Civil Appeal nos. 2597-98 of 2000 relate to the order passed in the a review application filed by the appellant, rejecting the prayer for review.

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The basic prayer in the writ petition was to restrain the respondents Rajya Krishi Utpadan Mandi Parishad and several Krishi Utpadan Mandi Samitis from levying and/or collecting any market fee on the purchases made by the appellant from Uttar Pradesh Forest Corporation, Lucknow (in short the 'Corporation'). Appellants stand in essence was as follows:

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Appellant purchases paper for its own consumption and therefore it is not liable to pay any market fee in terms of Rule 70 of the Uttar Pradesh Krishi Utpadan Mandi Niyamavali, 1965 ( in short the 'Niyamavali'). It was submitted that a person who purchases agricultural produces for his domestic consumption does not come within the ambit of the said rule. It was also pointed out that it being not a seller within the meaning of Rule 2 (xiii) of the Niyamavali, no tax can be realized from it under the provisions of the Niyamavali framed under Section 40 of the Uttar Pradesh Krishi Utpadan Mandi Adhinyam, 1964 (in short the 'Adhinyam'). Though it is presently urged that several other pleas in addition to the plea relating to captive consumption were raised, the same was not considered and therefore the review petition was filed. The High Court noted that there factual disputes were involved, and, therefore, it would be appropriate for the appellant to appear before the concerned authority after paying the provisional assessment of mandi fee, so that its objections, if any, can be heard. A review petition was filed wherein it was stated that several points other than those relating to captive consumptions were raised and, therefore, the matter should be heard afresh. The High Court dismissed the review petition on the ground that the points raised in the review petition were neither raised in writ petition nor were contended before the Court when the matter was heard.

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In support of the appeal learned counsel for the appellant submitted that the High Court was clearly in error by directing the appellant to avail the statutory remedy. According to him, the decision of this Court in *Krishi Utpadan Mandi Samiti & Ors. v. Shree Mahalaxmi Sugar Works & Ors.*,

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A [1995] Supl.3 SCC 433 clearly supports the stand taken by the appellant.

In response, learned counsel for the respondents submitted that on factual adjudication it was to be established by the appellant that its case is covered by the ratio of this Court's decision in *Krishi Utpadan Mandi Samiti's case* (supra).

B

The issues relating to entertaining writ petitions when alternative remedy is available, were examined by this Court in several cases and recently in *State of Himachal Pradesh and Ors. v. M/s Gujarat Ambuja Cement Ltd. and Anr.*, [2005] 6 SCC 499.

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Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion

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of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing

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the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

Constitution Benches of this Court in *K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors.*, AIR (1954) SC 207; *Sangram Singh v. Election Tribunal, Kotah and Ors.*, AIR (1955) SC 425; *Union of India v. T.R. Varma*, AIR (1957) SC 882; *State of U.P. and Ors. v. Mohammad Nooh*, AIR (1958) SC 86; and *M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras*, AIR (1966) SC 1089, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and

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the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

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Another Constitution Bench of this Court in *State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. etc.*, AIR (1964) SC 1006 held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been re-iterated in *N.T. Veluswami Thevar v. G. Raja Nainar and Ors.*, AIR (1959) SC 422; *Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr.*, AIR (1965) SC 1321; *Siliguri Municipality and Ors. v. Amalendu Das and Ors.*, AIR (1984) SC 653; *S.T. Muthusami v. K. Natarajan and Ors.*, AIR (1988) SC 616; *R.S.R.T.C. and Anr. v. Krishna Kant and Ors.*, AIR (1995) SC 1715; *Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors.*, AIR (2000) SC 2573; *A. Venkatasubbiah Naidu v. S. Chellappan and Ors.*, [2000] 7 SCC 695; and *L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors.*, [2001] 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors.*, [2001] 8 SCC 509; *Pratap Singh and Anr. v. State of Haryana*, [2002] 7 SCC 484 and *G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors.*, [2003] 1 SCC 72.

In *Harbans Lal Sahnia v. Indian Oil Corporation Ltd.*, [2003] 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In *G. Veerappa Pillai v. Raman & Raman Ltd.*, AIR (1952) SC 192; *Assistant Collector of Central Excise v. Dunlop India Ltd.*, AIR (1985) SC 330; *Ramendra Kishore Biswas v. State of Tripura*, AIR (1999) SC 294; *Shivgonda Anna Patil and Ors. v. State of Maharashtra and Ors.*, AIR (1999) SC 2281; *C.A. Abraham v. I.T.O. Kottayam and Ors.*, AIR (1961) SC 609; *Titaghur Paper Mills Co. Ltd. v. State of Orissa and Anr.*, AIR (1983) SC 603; *H.B. Gandhi v. M/s Gopinath and Sons*, [1992] Suppl. 2 SCC 312; *Whirlpool Corporation v. Registrar of Trade Marks and Ors.*, AIR (1999) SC 22; *Tin Plate Co. of India Ltd. v. State of Bihar and Ors.*, AIR (1999) SC 74; *Sheela Devi v. Jaspal Singh*, [1999] 1 SCC 209 and *Punjab National Bank v. O.C. Krishnan and Ors.*, [2001] 6 SCC 569, this Court held that where

A hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

If, as was noted in *Ram and Shyam Co. v. State of Haryana and Ors.*, AIR (1985) SC 1147 the appeal is from "Caeser to Caeser's wife" the existence of alternative remedy would be a mirage and an exercise in futility. 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 itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

The above position was recently highlighted in *U.P. State Spinning Co. Ltd. v. R.S. Pandey & Anr.*, [2005] 8 SCC 264.

This is not a case where no factual adjudication is necessary.

Therefore, the High Court was justified in view that the statutory remedy is to be availed. Let the appellant file the necessary details as required under the Niyamavali within three weeks from today and place its stand before the concerned authority for consideration. The said authority shall consider the stand of the appellant and dispose of the same as expeditiously as practicable preferably within six weeks from the date when the necessary details and/or objections are filed before the authority.

In the peculiar circumstances of the case let no coercive steps be taken for recovery of any amount claimed by respondents as payable by the appellant till the final adjudication by the concerned authority.

The appeals are disposed of accordingly.

No costs.

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Appeals disposed of.