

WPO/43/2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

PIC DEPARTMENTALS PVT.
LTD.

-VERSUS-

THE KOLKATA MUNICIPAL
CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA DUTT (PAUL)

Date : 8th July, 2025.

Appearance:

Mr. Joydeep Kar, Sr. Adv.
Ms. Suparna Mukherjee, Sr. Adv.
Mr. Raghunath Chakraborty, Adv.
Mr. Anjan Kumar Mukherjee, Adv.
...for the petitioner

Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kumar Debnath, Adv.
..... for the KMC.

Mr. Soumya Majumdar, Sr. Adv.
Mr. Arindam Banerjee, Sr. Adv.
Mr. Sumanta Biswas, Adv.
Mr. Bikash Shaw, Adv.
Sk. Saad Nafirul Islam, Adv.
...for the respondent no.6.

1. The writ application has been preferred challenging the resolution passed in the MIC meeting as communicated by the order of the Special Officer Building dated 27th February, 2020, the order of the Special Officer Building dated 27th February, 2020 and the communication dated 16th July, 2020.

2. The respondent no. 6 has raised the point of maintainability of the writ application, on the ground that the order challenged in the writ application is appealable under Section 400(3) of the Kolkata Municipal Corporation Act 1980 and as such a writ is not maintainable.
3. Learned senior counsel Mr. Kar appearing from the petitioner has submitted that the writ petition is maintainable in this case as there has been violation of natural Justice and thus an abuse of process of law.
4. The following judgments have been relied upon by the petitioners in support of their said argument:-

i. Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Anr., (2025) 4 SCC 1.

ii. Radha Krishan Industries vs State of Himachal Pradesh & Ors., (2021) 6 SCC 771.

5. Section 400 (3) of the Kolkata Municipal Corporation Act, lays down:-

“Section 400(3) KMC Act:-

Any person aggrieved by an order of the Municipal Commissioner made under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under Section 415.”

6. Admittedly the order under challenge has been passed by the special officer building, who has been delegated as per clause 2 to Section 400 KMC Act.
7. From the judgments relied upon by the petitioner, it appears that, the Supreme Court in *Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Anr.*, (*Supra*), has held as follows:-

“56. Following the aforesaid dictum, this Court in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], had taken notice of the fact that the High Court had referred to the arbitration clause which the writ petitioner could take recourse to, to hold that the rule of exclusion of writ jurisdiction is a rule of discretion and not of compulsion. In an appropriate case, in spite of availability of alternative remedy, the writ courts can exercise its jurisdiction at least in three contingencies, as referred to above. In the facts of the said case, this Court interfered observing that there were peculiar circumstances as the dealership had been terminated on an irrelevant and non-existence cause. Therefore, there was no need to drive the parties to initiate arbitration proceedings.

57. Following the judgments in Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1] and Harbanslal Sahnia [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], this Court in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : (2021) 88 GSTR 228] laid down the following principles : (Radha Krishan Industries case [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771 : (2021) 88 GSTR 228], SCC p. 795, para 27)

“27. The principles of law which emerge are that:

27.1. 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.

27.2. 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.

27.3. 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.

27.4. 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.

27.5. 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.

27.6. 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.”

8. The matter was then referred to a five Judge Bench and as such the judgment in *Radha Krishan Industries vs State of Himachal Pradesh & Ors., (Supra)* still stands.

9. The judgment of the Supreme Court in *Radha Krishan Industries vs State of Himachal Pradesh & Ors., (Supra)*, was followed in *Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and Anr., (Supra)*.
10. **In the present case**, this Court finds that there is no prima facie any infringement of a fundamental right.
11. There has been also no prima facie violation of the principle of natural Justice.
12. Considering, the fact that though the petitioner has repeatedly contended that no notice was served upon them, and as such they were not heard is not supported by the order under challenge. **It is clearly noted in the Order under challenge that notice was served upon the petitioners on 30.01.2019.**
13. A case of the order or proceedings being without jurisdiction is also not prima facie made out and is an issue which is to be considered by the appellate authority and finally there is also no challenge to the vires of a legislation in the present case.
14. The learned counsel for the petitioner has also submitted that as the order challenged is of the year 2020, the question of limitation arises. But in view of the observation as made

above, this court finds that this is a fit case where the petitioner should have been invoked the provision of appeal.

15. Accordingly, **the writ application is disposed of** with the direction that the petitioner shall be at liberty to prefer an appeal against the order under challenge in the present writ application within 30 days from the date of this order.
16. The period of limitation is accordingly extended for a period of 30 days from the date of this order in the interest of justice.
17. The point of limitation is decided accordingly.
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.
20. Urgent certified website copy of this Order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)