



2026:AHC:60105

Reserved On:09.03.2026

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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 5977 of 2025

Vijay Kumar Sharma

.....Petitioner(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Petitioner(s) : Raj Kumar Singh, Rajat Aren
Counsel for Respondent(s) : C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Rataj Aren, learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned ACSC for the State – respondents.
2. The instant writ petition has been filed challenging the impugned order dated 13.10.2020 as well as the show cause notice dated 18.09.2020 passed by the Licensing Authority/Collector, Meerut cancelling the petitioner's country liquor retail shop license in respect of Village – Maukhas, Meerut with forfeiture of entire basic license fees and security amount. The petitioner has further

challenged the impugned order dated 07.03.2022 passed by the respondent no. 3 in Appeal No. 75/2020.

3. The learned counsel for the petitioner submits that the petitioner is not pressing for revocation of his excise C.L.R. Licence in respect of Village – Maukhas, Meerut, but only pressing the illegal action of the respondents taken under section 34(2) of the U.P. Excise Act, read with Rule 21(3) of the Rules framed thereunder.
4. Learned counsel for the petitioner submits that after fulfilling all the eligibility criteria, the petitioner was granted licenses to run retail country liquor shop in Village Mau Khas and Village Parikshitgarh, Meerut, which were renewed for the Excise Year 2020-21. He further submits that during the period of COVID – 19, on 29.03.2020, an FIR was lodged against the petitioner, which was registered as Case Crime No. 0083/2020, Police Station – Parikshitgarh, Meerut under sections 188, 169, 270 & 271 IPC, section 3 of Epidemic Diseases Act and sections 60 & 72 of U.P. Excise Act alleging that the petitioner in White Scorpio car was transporting liquor. Thereafter, on 30.03.2020, a show cause notice was issued by the respondent no. 4, to which the petitioner submitted reply. On 23.06.2020, the Licensing Authority/Collector, Meerut passed an order cancelling the license in respect of Village – Parikshitgarh, Meerut. The appeal preferred by the petitioner was dismissed vide order dated 21.10.2021.
5. He further submits that on 18.09.2020, a show cause notice was issued in respect of Village – Maukhas, Meerut to show cause as to why the license of the said shop may not be cancelled, to which the petitioner submitted reply on 23.09.2020. Thereafter, vide impugned order dated 13.10.2020, the Licensing Authority/Collector, Meerut cancelled the petitioner's country liquor retail shop license in respect of Village – Maukhas, Meerut with forfeiture of entire basic license fees and security amount. The petitioner was also blacklisted without specifying any period

of such blacklisting. The petitioner challenged the said order by preferring Appeal No. 75/2020, which has been dismissed vide impugned order dated 07.03.2022.

6. Learned counsel for the petitioner further submits that neither there any violation nor allegation against the second shop, i.e., Village – Maukhas, Meerut, for cancellation. He further submits that the car in question, which was alleged to be used for transportation of liquor stock from his shop at Village – Parikshitgarh, Meerut has been released in favour of its owner, Sanjay Kumar, who is a serving Police Constable and no proceeding against the said owner of the car has been initiated till date. He further submits that in order to harass the petitioner, a story of transportation of liquor through white Scorpio car was concocted with malice intention.
7. He further submits that while cancelling the shop at Village – Maukhas, Meerut under section 34 (2) of the U.P. Excise Act, the authorities were duty bound to apply its mind independently showing therein that if the petitioner is permitted to continue its another shop, it would be detrimental to the interest of the Revenue. In support of his submissions, he has placed reliance on the judgements of this Court in ***Sandeep Singh (Licensee of Country Liquor) Vs. State of U.P. & 3 Others*** [Writ Tax No. 278/2020, decided on 21.01.2021 and ***Sandeep Singh Vs. State of U.P. & 2 Others*** [Writ Tax 816/2021].
8. He further submits that the order of blacklisting cannot operate for indefinite period and must necessary indicate the duration for which such disqualification is to operate. In support of his submissions, he has placed reliance on the judgements of the Apex Court in the cases of ***Daffodills Pharmaceuticals Limited & Another Vs. State of U.P. & Another*** [(2020) 18 SCC 550], ***M/s Mar's Developers & Suppliers Vs. The State of Odisha & Others*** [SLP © No. 7861/2023], ***Kulja Industries Limited Vs.***

Chief General Manager, Western Telecom Project, BSNL & Others [(2014) 14 SCC 731], **Vindhyawasini T. Transport Vs. State of U.P.** [2018 SCC Online All 6183], **M/s Cropscare Infotech Private Limited Vs. State of U.P. & Others** [Writ C No. 6285/2025], **Baba Construction Private Limited Vs. State of U.P. & Others** [2023 SCC Online All 937] and **Union of India Vs. Tarsem Singh** [(2008) 8 SCC 648].

9. Per contra, learned ACSC supports the impugned orders and submits that against the order of cancellation, the petitioner has preferred an appeal under section 11(1) of the U.P. Excise Act, which has been dismissed. Against the said order, the petitioner has equally efficacious remedy of preferring revision under section 11(2) of the U.P. Excise Act and instead of approaching the revisional court, the petitioner has preferred the instant writ petition, which is not maintainable. He further submits that once the licence of the petitioner was cancelled under section 34(1) U.P. Excise Act, the authorities were empowered to cancel another licence held by the petitioner under section 34(2) of the U.P. Excise Act, read with rule 21(3) of the Rules framed thereunder, which empowers for de-barring the petitioner from holding any other excise licences.
10. Rebutting to the said submission, learned counsel for the petitioner submits that under section 11(2) of the U.P. Excise Act, there is no power to condone the delay and approaching the authorities will be futile exercise. He further submits that under Article 226 of the Constitution of India, there is no absolute bar for entertaining the writ petition. In support of his submissions, he has placed reliance on the judgements in **Godrej Sara Lee Limited Vs. Excise & Taxation Officer-Cum-Assessing Authority & Others** [(2023) SCC Online SC 95], **Harbanslal Sahnia & Another Vs. Indian Oil Corporation Limited & Others** [(2003) 2 SCC 107], **Rajasthan State Electricity Board Vs.**

Union of India & Others [(2008) 5 SCC 632] and *Magadh Sugar & Energy Limited Vs. State of Bihar & Others* [(2022) 16 SCC 428], wherein, the Apex Court primarily held that mere availability of an alternative remedy does not render a writ petition not maintainable.

11. After hearing learned counsel for the parties, the Court has perused the records.
12. The learned counsel for the petitioner very categorically has stated that the petitioner is not pressing the revocation of his excise licence in respect of Village – Maukhas, Meerut, but has challenged the action being taken by the authorities under section 34(2) of the Excise Act for cancellation of petitioner's excise licence of Village – Maukhas, Meerut without there being any violation of the provision of Excise Act, but merely because the licence of the petitioner for Village - Parikshitgarh, Meerut was cancelled.
13. Learned Standing Counsel has raised a preliminary objection with regard to the maintainability of the writ petition on the ground that the petitioner has equally efficacious remedy of filing a revision under section 11(2) of the Excise Act. The record further shows that pleadings have been exchanged. The petitioner could not approach the authorities for filing revision within time due to his neurological disorder and financial distress attributable to complete break down of his sale income source. Further, revisional authorities are bereft of any power to condone delay unlike power given in section 11(1) of the Act.
14. The Apex Court in *Godrej Sara Lee Ltd.* (supra) has held as under:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders

passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court

on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (*State of Uttar Pradesh vs. Mohd. Nooh*) had the occasion to observe as follows: “10. 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 Edn., Vol. 11, 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.”

6. At the end of the last century, this Court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (*Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of principles of natural justice; (iii) where the order or the proceedings are wholly without jurisdiction; or (iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (*Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited*) has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (*State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.*) and (2000)

10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available. ”

15. The Apex Court in another case of ***Harbanslal Sahnia & Anr.*** (supra) has held as under:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

16. The Apex Court in ***Rajasthan State Electricity Board*** (supra) has held as under:

“3.By now it is a well-settled principle of law that availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution.

5.We are clearly of the view that as the respondent Union of India has clearly admitted the liability, the High Court ought not to have relegated the appellant to its alternative remedy and should not have dismissed the writ petition on that count. There is no disputed question of fact in this case. As already noted, in the present case the respondent had admitted its liability and, therefore, the question raised before the High Court being an admitted fact the High Court ought not to have directed the appellant to resort to its alternative remedy under the Act.”

17. The Apex court in **Magadh Sugar & Energy Limited** (supra) has held as under:

“20. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternative remedy is available, the existence of an alternative remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallised by this Court in Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn.v. Registrar of Trade Marks, (1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahniv. ndian Oil Corpn. Ltd., (2003) 2 SCC 107] Recently, in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771] a two-Judge Bench of this Court of which one of us was a part of (D.Y. Chandrachud, J.) has summarised the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternative remedy. This Court has observed : (Radha Krishan Industries case[Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771] , 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 alternative remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternative 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 alternative 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 alternative 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.”

(emphasis supplied)

21. The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Commr. of State Tax v. Commercial Steel Ltd. [Commr. of State Tax v. Commercial Steel Ltd., (2022) 16 SCC 447] In State of H.P. v. Gujarat Ambuja Cement Ltd. [State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499] this Court has held that a writ petition is maintainable before the High Court if the Taxing Authorities have acted beyond the scope of their jurisdiction. This Court observed : (Gujarat Ambuja Cement case [State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499] , SCC pp. 517-18, para 23)

“23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the Taxing Authorities are shown to have assumed jurisdiction which they do not possess can be the

grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.”

22. *The above principle was reiterated by a three-Judge Bench of this Court in Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill [Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108] . In that case, a show-cause notice/provisional assessment order was issued to the assessee on the ground of an unauthorised use of electricity under Section 126(1) of the Electricity Act, 2003 and a demand for payment of electricity charges was raised. The assessee contended that Section 126 was not applicable to it and challenged the jurisdiction of the Taxing Authorities to issue such a notice, before the High Court in its writ jurisdiction. The High Court entertained the writ petition. When the judgment [Sri Seetarama Rice Mill v. Jeypore Electrical Division, 2010 SCC OnLine Ori 467] of the High Court was appealed before this Court, it held that the High Court did not commit any error in exercising its jurisdiction in respect of the challenge raised on the jurisdiction of the Revenue Authorities. This Court made the following observations : (Sri Seetaram Rice Mill [Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108] , SCC p. 140, paras 81 & 82)*

“81. Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters

which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. ...

*82. It is argued and to some extent correctly that the High Court should not decline to exercise its jurisdiction merely for the reason that there is a statutory alternative remedy available even when the case falls in the above stated class of cases. It is a settled principle that the courts/tribunal will not exercise jurisdiction in futility. The law will not itself attempt to do an act which would be vain, *lex nil frustra facit*, nor to enforce one which would be frivolous—*lex neminem cogit ad vana seu inutilia*—the law will not force anyone to do a thing vain and fruitless. In other words, if exercise of jurisdiction by the tribunal *ex facie* appears to be an exercise of jurisdiction in futility for any of the stated reasons, then it will be permissible for the High Court to interfere in exercise of its jurisdiction. This issue is no longer *res integra* and has been settled by a catena of judgments of this Court, which we find entirely unnecessary to refer to in detail.”*

(emphasis supplied)

25. The appellant is admittedly a sugar mill producing electricity from bagasse (a byproduct of sugar production). The electricity that is produced is used for running the Mill and the excess is sold to BSEB. There is no dispute about the nature of the transaction between the appellant and BSEB. The petition before the High Court was initially tagged with the petition filed by NTPC since it involved similar issues. However, it was subsequently de-tagged and heard separately on the ground that the appellant in this case is a sugar mill that also produces electricity, while NTPC is a power generation company. The writ petition filed by the appellant was dismissed by the impugned judgment [New Swadeshi Sugar Mills v. State of Bihar, 2017 SCC OnLine Pat 3688] . Both the petitions — filed by the appellant and NTPC before the High Court challenged the power of the State Government to levy tax on sale of electricity to Electricity Boards. A three-Judge Bench of this Court in Sree Meenakshi Mills Ltd. v. CIT [Sree Meenakshi Mills Ltd. v. CIT, 1956 SCC OnLine SC 42 : (1957) 31 ITR 28 : AIR 1957 SC 49] succinctly explained the tests for the identification of questions of fact, questions of law and mixed questions of law and facts. T. L. Venkatarama Aiyar, J. writing for the Bench observed that:

“9. ... To take an illustration, let us suppose that in a suit on a promissory note the defence taken is one of denial of execution. The court finds that the disputed signature is

unlike the admitted signatures of the defendant. It also finds that the attesting witnesses who speak to execution were not, in fact, present at the time of the alleged execution. On a consideration of these facts, the court comes to the conclusion that the promissory note is not genuine. Here, there are certain facts which are ascertained, and on these facts, a certain conclusion is reached which is also one of fact. ...

10. In between the domains occupied respectively by questions of fact and of law, there is a large area in which both these questions run into each other, forming so to say, enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then a determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained. To take an example, the question is whether the defendant has acquired title to the suit property by adverse possession. It is found on the facts that the land is a vacant site that the defendant is the owner of the adjacent residential house and that he has been drying grains and cloth and throwing rubbish on the plot. The further question that has to be determined is whether the above facts are sufficient to constitute adverse possession in law. Is the user continuous or fugitive? Is it as of right or permissive in character? Thus, for deciding whether the defendant has acquired title by adverse possession the court has firstly to find on an appreciation of the evidence what the facts are. So far, it is a question of fact. It has then to apply the principles of law regarding acquisition of title by adverse possession, and decide whether on the facts established by the evidence, the requirements of law are satisfied. That is a question of law.”

The test that is to be applied for the determination of a question of law is whether the rights of the parties before the court can be determined without reference to the factual scenario. In this case, the High Court was entrusted with the determination of the meaning of the phrases used in Section 3 of the Act to determine if the supply of electricity by the appellant would fall within its ambit. Unlike a dispute on the execution of a promissory note or a plea of adverse possession, there is no adjudication on facts required here. There is also no dispute on the nature of the transaction involved.”

- 18.** The plain reading of the judgements of the Apex Court, hereinabove, shows that the writ petition is maintainable if pure

question of law raised and if investigation into the facts is unnecessary, then the High Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of.

19. In the case in hand, only pure question of law has been raised and no dispute of facts is involved and therefore, the writ petition is maintainable.
20. With regard to the objection of the learned Standing Counsel for approaching the Court belatedly, there is no bar for approaching the writ Court as held by the Supreme Court in the following judgements.
21. The Apex Court in **Ram Autar Singh Yadav v. State of Uttar Pradesh 2024 SCC Online SC 6091** has held as under:

“20. Be that as it may, the High Court having been approached, the appellant was told off the gates. The sole reason for dismissal of the writ petition was premised on the inordinate delay of the appellant in invoking the writ jurisdiction. While delay and laches on the part of a writ petitioner could disentitle him to grant of discretionary relief under Article 226 of the Constitution in certain cases where either there is no explanation or a lame excuse is put forward as an explanation, it is not an inflexible rule. A number of factors need to be considered before a writ petition is dismissed on the sole ground of delay and laches. What are those factors are elegantly articulated by Hon'ble P.N. Bhagwati, J. (as His Lordship then was) in State of Madhya Pradesh v. Nandlal Jaiswal 8. We can do no better than quote the relevant passage hereunder: “24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause

confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489, and the other in Ashok Kumar Mishra v. Collector, (1980) 1 SCC 180. We may point out that in R.D. Shetty case, even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs. 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesis every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.”

21. Taking a cue from the above, we can safely conclude that the foremost factor based whereon relief could be declined in a case of unexplained delay and laches is the accrual of a parallel right in favour of a third party. The other vital factor to be borne in mind is whether grant of relief in a belated claim is likely to cause confusion and public inconvenience like unsettling matters which have long settled. Relief could also be denied if by reason of the delay, the official respondents are hopelessly inconvenienced in defending their

action for lack of the relevant records and to establish their defence to the full satisfaction of the court.

22. In the present case, neither is there accrual of any parallel right of a third party nor could grant of relief cause confusion and public inconvenience. There has also been no occasion for the State authorities to claim that they are in any manner handicapped to defend their action. On the contrary, this is a case where the appellant sought to explain the belated approach by referring to his repeated unyielding persuasions, which the High Court brushed aside mechanically, without appreciating that the appellant had invoked its writ jurisdiction for enforcement of his Fundamental Rights under Articles 14 and 21 of the Constitution. When a litigant approaches a high court invoking its high prerogative writ jurisdiction with a petition under Article 226 of the Constitution alleging that the impugned State action is in breach of his Fundamental Right and claims that the breach be bridged by issuing appropriate writ/order/direction as distinguished from a claim for enforcement of a statutory right, it partakes the character of a duty on the part of such high court to enforce the right breached as the guardian of the Constitution. Law is well-settled that there is no loss of a Fundamental Right for non-exercise thereof and also that there cannot be waiver of a Fundamental Right. Hence, no argument can commend acceptance that a litigant seeking enforcement of his Fundamental Right should be declined relief in all cases of a belated approach. Notwithstanding delay, which might not have been explained to the full satisfaction of a high court, we hold that in cases where a high court finds that facts, as they have been presented, are not seriously disputed, no further investigation into facts is required to be made, the relief claimed in the petition was otherwise due to the writ petitioner and the same would have followed as a matter of course and been granted had he approached the high court without delay, it would be iniquitous and inappropriate to deny relief for no better reason than that the relief has been belatedly claimed.

23. The writ petition of the appellant provided an opportunity to the High Court to right the wrong which, unfortunately, it failed to seize. It is with a deep sense of regret that we end the discussion here expressing hope that as the sentinel on the qui vive, the high courts in the country would do well not to mechanically dismiss writ petitions on the ground of delay and laches without considering all the relevant factors.

22. The Apex Court in **Ram Autar Singh Yadav v. State of Uttar Pradesh 2024 SCC Online SC 6091** has held as under:

“4. The explanation furnished for the delay in filing the writ petition has not been considered properly. The order of blacklisting being in violation of the principles of natural justice, delay is irrelevant and the cause of action continues because of its indefinite nature and consequences. The learned counsel has relied heavily on *Gorkha Security Services v. State (NCT of Delhi)* [*Gorkha Security Services v. State (NCT of Delhi)*, (2014) 9 SCC 105] , to submit that the show-cause notice dated 21-10-2008 did not meet the requirement of the law. She has further relied upon *Daffodills Pharmaceuticals Ltd. v. State of U.P.* [*Daffodills Pharmaceuticals Ltd. v. State of U.P.*, (2020) 18 SCC 550 : 2019 SCC OnLine SC 1607] , where this Court opined that a debarment of approximately four years was sufficient.

12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show-cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.

14. Since the order of blacklisting has been found to be unsustainable by us, and considering the long passage of time, we are not inclined to remand the matter to the authorities. In *Daffodills Pharmaceuticals* [*Daffodills Pharmaceuticals Ltd. v. State of U.P.*, (2020) 18 SCC 550 : 2019 SCC OnLine SC 1607] , relied upon by the appellant, this Court has observed that an order of blacklisting beyond 3 years or maximum of 5 years was disproportionate.

15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto

sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in Basanti Prasad v. Bihar School Examination Board [Basanti Prasad v. Bihar School Examination Board, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , after referring to Moon Mills Ltd. v.M.R. Meher [Moon Mills Ltd. v. M.R. Meher, AIR 1967 SC 1450] , Maharashtra SRTC v. Balwant Regular Motor Service[Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329] and State of M.P. v.Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] , held that if the delay is properly explained and no third-party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows : (Basanti Prasad case [Basanti Prasad v. Bihar School Examination Board, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , SCC p. 796, para 18)

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”

23. The record further shows that the licence of Village - Parikshitgarh, Meerut was cancelled only on the ground that during the period of Lockdown, the petitioner was transporting 10 cartons of liquor on the back seat of white coloured Scorpio car having registration No. UP 30 BF 8248. The said vehicle belongs to a Police constable of that area, but no proceedings, whatsoever, were initiated against the owner of the vehicle in question.

न्यायालय श्रीमान ए० सी० जे० एम० प्र०
मु०अ०स०- 83/2020

सरकार बनाम र
धारा-60/72 आबकारी एक्ट
थाना-परीक्षितगढ, मेरठ

श्रीमानजी,
प्रार्थना पत्र वास्ते वाहन स्कोर्पियो पंजीकरण संख्या-यू०पी०-13 बी०एफ०
8248 इंजन संख्या-WRJ 4K 21909 चेचिस संख्या-MA1TA2WR2J2L11790 को
रिलीज कराने हेतु:-

1. यह कि उपरोक्त वाद मे वर्णित गाडी का प्रार्थी पंजीकृत स्वामी है।
2. यह कि उपरोक्त वर्णित गाडी थाना परीक्षितगढ पर निरूद्ध है थाना पर खड़े रहने से गाडी के खराब होने का पूर्ण अन्देशा है।
3. यह कि उपरोक्त वाद में प्रार्थी की गाडी थाना हाजा पर बेवजह खड़े रहने से उसके खराब होने से प्रार्थी को काफी हानि हो रही है।
4. यह कि प्रार्थी भी उ०प्र० पुलिस में आरक्षी के पद पर तैनात है और गाडी का पंजीकृत स्वामी है, उपरोक्त गाडी प्रार्थी द्वारा आपस में जान पहचान होने के कारण दी गयी थी।
5. यह कि उपरोक्त घटना का पुलिस के पास कोई भी स्वतन्त्र साक्षी नहीं है। और मुल्जिम विजय कुमार शर्मा को मौके से फरार दिखाया है। उपरोक्त कथन बिल्कुल मनघडन्त व झूठे तथ्यों पर प्रतीत होते है। पुलिस ने जानबूझकर रजिशन विजय कुमार शर्मा के विरूद्ध उपरोक्त झूठा मुकदमा लगाया है।

श्रीमानजी

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6. यह कि प्रार्थी सम्भ्रान्त परिवार से ताल्लुक रखता है जो अवैध शराब की तशकरी व बेचने का कोई नहीं करता है प्रार्थी बिल्कुल निर्दोष है तथा प्रार्थी का कोई आपराधिक इतिहास नहीं है। प्रार्थी सरकारी सेवा में कार्यरत है।

अतः श्रीमानजी से प्रार्थना है कि उपरोक्त वर्णित स्कोर्पियो गाडी संख्या-यू०पी०-13 बी०एफ० 8248 इंजन संख्या- WRJ 4K 21909 चेचिस संख्या-MA1TA2WR2J2L11790 को प्रार्थी के पक्ष मे रिलीज करने के आदेश पारित करने की कृपा करे।

दिनांक-05.10.2020

प्रार्थी / वाहन स्वामी
संजय कुमार पुत्र राजवीर
R1. सैदपुर मंडला
थाना. वी. वी. नगर.
मु० 218 305.

द्वारा अधिवक्ता-
MOHD. MUKHEB
(Advocate)
E. No. - D-4795/17
Ch. No.-D-828 KKD Court Delhi
M. No.-9557360537

24. The record further shows that no action against the Police constable, who was the owner of the vehicle in question, has been initiated or brought on record at any stage. This itself shows the meritless intent of the respondents for initiating proceedings for cancellation of the licence of the petitioner for Village - Parikshitgarh, Meerut. On the said premise, the licence of the petitioner was cancelled with respect to Village – Maukhas. The said proceedings have been initiated without any finding as to how permitting the petitioner to continue with the second licence is detrimental to the interest of the Revenue.
25. This Court in the case of **Sandeep Singh (Licensee of Country Liquor) Vs. State of U.P. & 3 Others** [Writ Tax No. 278/2020, decided on 21.01.2021 and **Sandeep Singh Vs. State of U.P. & 2 Others** [Writ Tax 816/2021], held that section 34(2) of the U.P. Excise Act is discretionary and not mandatory. For taking action against the petitioner, the authorities must apply their independent mind, wherein, it has been held that section 34(2) of the U.P. Excise Act is discretionary and not mandatory. Its application cannot be consequence of cancellation of another licence of licensee without offering any reason of doing so.
26. In the case in hand, the record shows that neither there is any independent findings nor any reason recorded for cancellation of the licence of Village – Maukhas, except the reference of section 34(2) of the U.P. Excise Act, read with Rule 21(3) of the Rules framed there-under.
27. The power conferred does not *ifso facto* commands exercise of the same and more particularly, if the said power is purely discretionary, then the said discretion must be reflected in the proceedings as held by the Apex Court in **Andhra Pradesh SRTC Vs. State Transport Appellate Tribunal & Others** [1998 (7) SCC 353]. In **Andhra Pradesh SRTC BI** (supra) it has been held as under:-

“14. Though there is no direct ruling on the point, learned counsel for the appellant has drawn our attention to two passages in de Smith's Judicial Review of Administrative Action, Fourth Edn., pp. 283 and 285 which read as follows:

“An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers are frequently coupled with duties. A Minister may be empowered to confirm or refuse to confirm a compulsory purchase order. In making his decision, he is entitled to exercise a very wide discretion, but he is under a legal duty to determine the application for confirmation one way or the other. Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that condition the manner in which its discretion may be exercised. The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.”

28. The record further shows that the petitioner has been blacklisted for indefinite period, which cannot be permitted as held by the Apex Court in the following judgements:-
29. The apex court in **Union of India v. Tarsem Singh (2008) 8 SCC 648** has held as under:

“4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A “continuing wrong” refers to a single wrongful act which causes a continuing injury. “Recurring/successive wrongs” are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj

Sansthan [AIR 1959 SC 798] explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

“31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.”

6. In Shiv Dass v. Union of India [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] this Court held: (SCC p. 277, paras 8 & 10)

“8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be

granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

30. Similar view has been taken in the cases of ***Daffodills Pharmaceuticals Limited & Another Vs. State of U.P. & Another*** [(2020) 18 SCC 550], ***M/s Mar's Developers & Suppliers Vs. The State of Odisha & Others*** [SLP © No. 7861/2023], ***Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project, BSNL & Others*** [(2014) 14 SCC 731], ***Vindhyawasini T. Transport Vs. State of U.P.*** [2018 SCC Online All 6183], ***M/s Cropscare Infotech Private Limited Vs. State of U.P. & Others*** [Writ C No. 6285/2025] and ***Baba Construction Private Limited Vs. State of U.P. & Others*** [2023 SCC Online All 937].
31. The learned ACSC submits that the business of liquor does not come under Article 19(1)(g) of the Constitution of India and therefore, the petitioner has no fundamental right to challenge the impugned order before this Court.
32. The said submission has been rebutted by the learned counsel for the petitioner by placing reliance on the judgement of the Apex Court in ***Khoday Distilleries Industries Limited & Others Vs.***

State of Karnataka & Others [1995 (1) SCC 574], Para 60(9). In the said case, the Apex Court has held that once the State permit to trade or business in the liquor with or without limitation, the citizen has a right to carry on trade or business, subject to the limitation, if any. The State cannot make discrimination between the citizens, who are qualified to carry on trade or business.

33. The record shows that the licence of the petitioner's shop at Maukhas, Meerut has been cancelled only by referring to section 34(2) of the Excise Act and Rule 21(3) of the Rules framed thereunder, but no reason has been assigned as contemplated by this Court in ***Sandeep Singh*** (supra). The authorities are bound to show that the discretion has been applied judicially only after recording a finding of fact independently, not just section and rules.
34. In view of the above discussion, this Court finds that neither in the show cause notice, nor in the order, any finding of facts has been mentioned to show as to how, permitting the petitioner to continue with Village – Maukhas, is detrimental to the interest of the Revenue. The record further shows that the petitioner has been blacklisted for indefinite period, which is against the settled principle of law laid down by the above referred judgement of the Apex Court.
35. In view of the aforesaid facts & circumstances of the case, the impugned order dated 13.10.2020 passed by the Licensing Authority/Collector, Meerut as well as the impugned order dated 07.03.2022 passed by the respondent no. 3 in Appeal No. 75/2020 cannot be sustained in the eyes of law. The same are hereby quashed.
36. The writ petition succeeds and is allowed in part.

37. Ordinarily, since the excise year is long over, the petitioner has no right to claim continuance of his licence. The petitioner, if so advised, may follow up with the new policies, if any, and if succeeds therein, the amounts forfeited need to be adjusted.
38. Otherwise, the respondents – authorities are directed to refund the forfeited amounts to the petitioner within a period of three months from the date of production of a certified copy of this order.

(Piyush Agrawal,J.)

March 24, 2026

Amit Mishra