

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1153 of 2016

Rajendra Rai S/o Late Shri Kedar Nath Rai, Aged About 65 Years
Professor Durg, Seller, Proprietor Of Bajrang Medical Store, R/o
Shanti Nagar, Ward, Jagdalpur, District Bastar Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Health And Family Welfare, Ministry, Mahanadi Bhavan, New Raipur, District Raipur Chhattisgarh
2. The Controller, Office of the Controller, Food And Durg, Administration, 4th Floor, Block 1, Indravati Bhawan, Naya Raipur, District Raipur Chhattisgarh
3. The Collector, District Bastar Jagdalpur Chhattisgarh
4. Durg Licensing Authority, Office Of Deputy Director, Food, And Durgs Administration, Jagdalpur, District Bastar Chhattisgarh

---- Respondents

For Petitioner	:	Shri Alok Kumar Dewangan, Advocate
For respondent/State	:	Shri Satish Gupta, Government Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/05/2016

Heard.

1. The petitioner has assailed legality and validity of an order dated 30.01.2016 (Annexure P/1) by which drug licence of the petitioner has been cancelled.
2. The ground raised by the petitioner in the petition do not relate to either violation of principles of natural justice in the sense that the order has been passed without giving any show cause notice nor

is there any ground relating to absence of jurisdiction or personal malice of the authority exercising the power resulting in passing of the impugned order.

3. The grounds can be raised by the petitioner by filing statutory appeal, which remedy is available to the petitioner under the law.
4. The legal position in this regard is well settled. The Supreme Court in the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1** has clearly held that-

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed v. Municipal Board, Kairana, AIR 1950 SC 163 : 1950 SCR 566 laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission, AIR 1954 SC 207 : (1954) 25 ITR 167 which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “unless there are good grounds therefor”, which

indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in *State of U.P. v. Mohd. Nooh* AIR 1958 SC 86 : 1958 SCR 595 as under:

“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.”

18. This proposition was considered by a Constitution Bench of this Court in *A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani* AIR 1961 SC 1506 : (1962) 1 SCR 753 and was affirmed and followed in the following words:

“The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.”

19. Another Constitution Bench decision in *Calcutta Discount Co. Ltd. v. ITO, Companies Distt.* AIR 1961 SC 372 : (1961) 41 ITR 191 laid down:

“Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act.”

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

5. In view of the above, I am not inclined to entertain this petition and is dismissed with liberty to file statutory appeal.

Sd/-
(Manindra Mohan Shrivastava)
Judge