IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1641 OF 2024

1. Shakuntalabai Shrikant Jaiswal, Aged 65 years, Occ: Nil, Through her Power of Attorney Holder, Prashant Shrikant Jaiswal, At Pusla, Dist-Amravati, R/o Kemkalesh Apartment, Nagar, Amravati, Tq & Dist-Amravati (Existing Licensee of CL-III License No.99).

2. Dhiraj Mangalprasad Jaiswal, Age: 41 years, Occ: Nil, R/o Gadchandur, Tahsil-Korpana, District Chandrapur. **PETITIONERS**

VERSUS

1. State of Maharashtra, Through Secretary, Department of Excise and Prohibition, Mantralaya, Mumbai-32.
2. Collector, State Excise, Amravati, Tah. & Dist. Amravati.
3. Ashok Shriram Jaiswal, Aged 60 years, Occ:Business.
4. Omprakash Shriram Jaiswal, Aged 64 years, Occ.Business.

Nos.3 & 4 R/o Opp.Chirayu Hospital, Sadar Tikari, Link Road, Betul, Tah. and District-Betul (M.P.) 460001.

5. Chhaya Harikisan Jaiswal, Aged 66 years, Occ:Housewife, R/o In front of Ramuset Workshop, Chhota Bazar, Paratwada, Tq. Achalpur, Dist. Amravati – 444 805.
6. Kanchan Madan Jaiswal, Aged 60 years,Occ:Housewife, R/o Raipur, Tah. & District Buldana-443002.
7. Asha Ashok Jaiswal, Aged 58 years, Occ: Housewife, R/o Opp. Paris Bakery, Near Mata Mandir, Lohapul, Main Road, Sitabuldi, Nagpur – 440 002.
8. Neeta Girdharilal Jaiswal, Aged 56 years, Occ:Housewife, R/o Jaiswal Complex, Civil Lines, Railway Station Road, Saunsar 480106, Tah.Saunsar, Dist. Chhindwara (MP).
9. Prashant Shrikant Jaiswal, Aged 47 years, Occ. Private.
10. Nishant Shrikant Jaiswal, Aged 45 years, Occ. Private.
11. Shashikant Shrikant Jaiswal, Aged 43 years,Occ. Private.
12. Swapnil Shrikant Jaiswal, Aged 37 years, Occ. Private.

Nos.9 to 12 R/o 156 Hemkalash Apartment, Near Sai Garden, Sai Nagar, Amravati, Tah. & Dist. Amravati 444607.

13. Kiran Surendra Jaiswal, Aged 58 years, Occ:Housewife.
14. Sandhya Suresh Jaiswal, Aged 56 years, Occ:Housewife.
15. Jyoti narendra Jaiswal, Aged 54 years, Occ:Housewife.
16. Seema Jaiswal, Aged 52 years, Occ: Housewife.

Nos.13 to 16 R/o C/o Dhiraj Jaiswal, Gadchandur, Tah. Korpana, District Chandrapur - 442908. **RESPONDENTS**

Shri A.C. Dharmadhikari, Advocate with Shri C.B. Dharmadhikari, Counsel for the petitioners.
Ms P.C. Bawankule, Assistant Government Pleader for the respondent nos.1 and 2.
Ms Apurva D. Kolhe, Counsel for the respondent nos.5 to 8.
Shri R.D. Dhande, Counsel for the respondent nos.9 to 12.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE ON WHICH ARGUMENTS WERE HEARD : SEPTEMBER 16, 2025
DATE ON WHICH JUDGMENT IS PRONOUNCWED : NOVEMBER 03, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. The petitioners have impugned the order dated 29.12.2023 passed by the respondent no.2-Collector to the extent of directing the petitioners to pay renewal charges of Rs.9,67,490/- along with interest of Rs.43,38,603/- in respect of the CL-III license no.99 at Mouza Pusla, District Amravati.

3. The controversy involved in the instant petition is with respect to a CL-III license, which was granted to the original licensee Shivprasad Jodhalal Jaiswal in the year 1973. He carried out the business during his lifetime till 1982. The said license was renewed in the name of Shivprasad Jaiswal till 1990. Thereafter, the license was renewed in the name of his son Shriram Shivprasad Jaiswal and daughter-in-law Shakuntalabai Shrikant Jaiswal. The original licensee had two wives, viz. Rajkumari and Kamlabai and after the death of the original licensee, the business was run by the legal representatives till the year 2005-06 despite controversies among them with regard to their respective shares. Thereafter, the license was not renewed for a long period on account of serious disputes between the legal representatives, which were contested before the civil Court and up to the

Hon'ble Supreme Court. After the disputes were resolved, some of the legal heirs made an application seeking to include the names of all legal representatives of late Shivprasad Jaiswal, as licensees in the CL-III license and after rejection of the said application, a petition was filed before this Court bearing Writ Petition no.4529 of 2019. By order dated 21.03.2023, the petition came to be disposed of and the matter was remanded to the Collector to take fresh decision in the light of the judgment and decree passed by the trial court, which had attained finality. After the matter was decided initially by an order dated 03.08.2023, it was again subjected to challenge vide Writ Petition no.4729 of 2023, mainly on the ground of denial of an opportunity of hearing. The said petition came to be allowed by order dated 04.11.2023, by which the matter was again remanded to the Collector for taking a fresh decision. In this background, the Collector has passed order dated 29.12.2023, thereby directing renewal of the license in the name of legal representatives of the original licensee, subject to compliance of various conditions, including the requirement to pay the renewal charges for the year 2005-06, along with interest on the said amount. By way of instant petition, the petitioners have raised a challenge to the said order restricted to direction to pay the renewal fees from the year 2005-06 and the interest on the said amount.

4. As such, the controversy involved in the petition is about the liability of the petitioners for payment of renewal fees and interest, for the period for which the business was not run. As regards, the compliance of other conditions, no grievance is raised.

5. Shri A.C. Dharmadhikari, learned counsel for the petitioners submitted that undisputedly, the disputes between the legal representatives of the original licensee have been resolved and the legal representatives are entitled for running the license. He also invited attention to the order dated

21.03.2023 passed by this Court in Writ Petition no.4529 of 2019 and pointed out that taking note of the fact that the disputes have been resolved by the dismissal of the S.L.P. (C) no.3365 of 2018 by order dated 09.03.2018, the judgement and decree passed in Special Civil Suit no.133 of 2005 dated 30.11.2007 has attained finality. He submitted that accordingly, the matter was remanded to the Collector, and therefore the Collector was required to simply permit renewal of the license. He submitted that there is no provision requiring the licensee to pay interest on renewal charges and therefore, the condition of payment of interest at the rate of 2% per month is grossly illegal.

6. Shri R.D. Dhande, learned counsel appearing for respondent nos.9 to 12, who are the legal representatives of the original licensee, also made submissions in support of the petitioners. He submitted that the license fee is not due and payable for the period when the license was not being operated and therefore there is no question of payment of license fee and interest thereon. He also submitted that there is no power conferred under Section 49 of the Maharashtra Prohibition Act, 1949 upon the authorities to levy interest on the license fee. In support of his submissions, he submitted that the position of law with respect to direction to pay interest on license fee is settled by the judgment of Division Bench of this Court in ***Beena Lal Avatramani Versus State of Maharashtra & Others*** [**2024 (2) All MR 545**]. He also relied on another Division Bench judgment of this Court in **Writ Petition no.477 of 2020** [***Sushilabai Mohansingh Thakur Versus The State of Maharashtra & Others***], which was a decision on reference by a Single Bench of this Court on the issue about period for which interest can be payable in terms of Section 114 of the Act of 1949 read with rule 24(2-A) of the Maharashtra Country Liquor Rules, 1973. He submitted that the Division Bench has decided the reference by considering the judgment in ***Beena Lal***

Avatramani (supra) and the judgment in ***Ashok Pandurang Rane Versus State of Maharashtra & Others*** [**Civil Application No.2300 of 2019 in W.P. No.13623 of 2018**] and concluded that the interest under section 114 of the Act of 1949 would be payable from the date it becomes due or from the date of demand as the case maybe. Thus, he submitted that the issue as to whether interest can be charged on the license fee has been decided by the Division Bench of this Court and the Collector is not empowered to charge any interest on the license fee for the period as claimed by the impugned order.

7. Ms P.C. Bawankule, learned Assistant Government Pleader appearing for the respondent nos.1 and 2 strenuously submitted that the instant petition is not maintainable on account of availability of an alternate remedy. She submitted that the petitioners have challenged the order passed by the Collector without invoking the alternate remedy of filing an appeal under Section 137 of Act of 1949 before the Appellate Authority i.e. the Excise Commissioner or to file a revision under Section 138 of the Act of 1949 before the revisional authority i.e. the State Government, as the case may be. Apart from this, she submitted that the license is a privilege granted by the Government and the same can be regulated as and when situation arises and accordingly in view of the disputes between the legal representatives of the original licensee, the license was rightly suspended. She invited attention to the Government Circular dated 20.08.1996, which provides for suspension of license in case of disputes between the legal representatives of the original licensee. Thus, she submitted that the legal representatives have maintained the dispute for a long time for which they themselves are responsible and as such, they are liable to pay the license fees for the entire period. As regards the power to charge interest, she

invited attention to provisions of Section 114 of the Act of 1949 and submitted that the petitioners are liable to pay interest at the rate of 2% per month on the license renewal fees from the date the same has become due.

To buttress her submission about non-maintainability of the petition on account of availability of an alternate remedy, learned Assistant Government Pleader submitted that there is no justifiable reason for the petitioners for avoiding to avail the alternate remedy. She submitted that although the rule of alternate remedy is a self imposed restriction, the same applies with greater rigour in matters involving recovery of taxes, cess, fees or other type of public money. In support of her submissions, she placed heavy reliance on the judgment of the Hon'ble Supreme Court in ***United Bank of India Versus Satyawati Tondon & Others*** [**(2010) 8 SCC 110**]. In support of the submissions for availability of alternate remedy, she placed reliance on the following case laws;-

a. ***Union of India & Another Versus M/s Guwahati Carbon Ltd.*** [**(2012) 11 SCC 651**].

b. ***Punjab National Bank Versus O.C. Krishnan & Others*** [**(2001) 6 SCC 569**].

c. ***Commissioner of Income Tax & Others Versus Chhabil Dass Agarwal*** [**(2014) 1 SCC 603**].

d. ***Travancore & Another Versus Mathew K.C.*** [**(2018) 3 SCC 85**].

e. ***Assistant Collector of Central Excise Chandan Nagar, West Bengal Versus Dunlop India Ltd. & Others*** [**(1985) 1 SCC 260**].

f. ***Gulabsingh Anantramsingh Thakur Versus The Collector, Amravati*** [**1996(1) Mh.L.J. 549**].

8. To counter the argument of alternate remedy, learned counsel for the petitioners relied upon various judgements of the Hon'ble Supreme Court and submitted that despite availability of an alternate remedy, a petition can be entertained, particularly when the position of law involved in the matter is fairly settled. He submitted that availability of an alternate remedy, would not operate as a bar to entertain a petition where the impugned order is wholly without jurisdiction. The learned counsel for petitioners submitted a list of several judgements relied upon by him to highlight the legal position that availability of an alternate remedy is not a bar for entertaining a writ petition and therefore submitted that the instant petition needs to be entertained despite availability of an alternative remedy. In support of his submissions, he has relied upon the following case laws:-

i. ***Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai & Others*** [**(1998) 8 SCC 1**].

ii. ***South Indian Bank Limited & Others Versus Naveen Mathew Philip & Another*** [**(2023) 17 SCC 311**].

iii. ***Maharashtra Chess Association Versus Union of India & Others*** [**(2020) 13 SCC 285**].

iv. ***Tamil Nadu Cements Corporation Limited Versus Micro and Small Enterprises Facilitation Council & Another*** [**(2025) 4 SCC 1**].

v. ***ABL International Ltd. & Another Versus Export Credit Guarantee Corporation of India Ltd. & Others*** [**(2004) 3 SCC 553**].

vi. ***State of Kerala & Others Versus M.K. Jose*** [**(2015) 9 SCC 433**].

vii. ***Union of India & Others Versus Tantia Construction Private Limited*** [**(2011) 5 SCC 697**].

viii. ***Godrej Sara Lee Ltd. Versus Excise and Taxation Officer-Cum-Assessing Authority & Others*** [**2023 SCC OnLine SC 95**].

9. The controversy involved in the petition is with respect to the legality to demand license fees for renewal alongwith interest on the said amount. As regards this issue, the position of law appears to have been settled by the judgment of the Division Bench of this Court in ***Beena Lal Avatramani*** (supra) wherein it is categorically held that there is no power conferred upon the Authorities to levy interest on license fee. Thus, in the instant case, the demand of interest on license fee for the entire period from 2005-06 till the date of the order does not appear to be backed by any legal provision. References need to be made to paragraphs 10 and 12 of the judgment in ***Beena Lal Avatramani*** (supra), which are as under:-

> "*10. A bare perusal of the above referred provision of law shows that interest on duties, taxes or fines and fees leviable under any of the provisions of Act under this section can be charged only when duties or taxes or fine or any other fees are not paid within the due date or the prescribed period and whenever there is such a failure to pay a duty or tax or fine or any other fees within the stipulated time, the interest would be chargeable at the rate of 2% per month from the date "it has become due". A duty or tax or fine or fees or any other fee as contemplated in Section 114(1) would become due only when there is a failure to pay the same within the prescribed time line i.e., within the due date, that is on or before the due date or the time given for payment of the same. That means, the interest at the said rate is chargeable not from the date of the demand of the duty or tax or fine etc. but from the date on which there is a failure to pay the same within the due date or the prescribed period.*
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> *12. When we apply the above referred law to the facts of the present case, we find that Respondents have committed a serious error of law and facts in charging interest on the accumulated license fees. Now it is well settled law, as seen from the discussion made herein above, that license fee is not due and payable for the period when the license was not being operated. Besides there is no power conferred under Section 49 of the Act upon the authorities to levy interest on the license fee. The license fee interest demanded in the present case is on the amount of license renewal fee of Rs.1,44,11,060/- and it is to the extent of Rs.2,86,58,892/-. Having*

regard to the settled position of law, such interest could not have been charged upon the license renewal fees and to that extent the action of the Respondent would have to be termed as bad in law. Of course, the Respondents would be within their right to charge interest at the rate of 2% per month at least from the date of demand which is on account of Rs.1,44,11,060/- from the date of the demand i.e. 30th August 2022, which is the date on which demand notice came to be issued."

10. It must, however, be noted that while clarifying the position of law after considering Section 114 of the Act of 1949, the Division Bench has also very categorically held that the Authorities would be within their right to charge interest at the rate of 2% per month from the date of demand. It is crucial to note that even the judgment in ***Sushilabai Mohansingh Thakur*** (supra) also held that the interest under Section 114 of the Act of 1949 would be payable from the date it becomes due or from the date of demand as the case may be. Thus on consideration of the position of law as laid down by the Division Bench of this Court, it becomes clear that the respondent no.2 is not empowered to charge interest on the renewal fees for the entire period for which the license was not operated, however, interest can be charged only for the period from the date it became due or from the date of demand, as the case maybe.

11. It is crucial to note that the impugned order is dated 29.12.2023 and the judgments in ***Beena Lal Avatramani*** and ***Sushilabai Mohansingh Thakur*** (supra) were delivered on 17.10.2023 and 10.11.2023. As such, the Collector who is the competent authority to take decision about renewal of the license and demand of license fees with interest, was required to consider the legal position laid down by these judgements before passing the impugned order.

12. A perusal of the impugned order shows that the respondent no.2-Collector has not at all taken into consideration the position of law as clarified by the Division Bench of this Court. The levy of interest for the entire period from 2005-06 till the date of impugned order, does not appear to be justified, particularly in absence of any reference to any date on which the amount of renewal fees became due or it was demanded. It is, therefore, necessary for the respondent no.2-Collector to give due consideration to the position of law as laid down in this regard and take a fresh decision about the period for which the interest can be charged, by considering the date on which the renewal fees became due and the date on which the actual demand was made.

13. In view of the aforesaid discussion, following order is passed:-

I. The writ petition is partly allowed.

II. The order dated 29.12.2023 passed by the respondent no.2-Collector, Amravati is quashed and aside.

II. It is directed that the respondent no.2 shall consider the matter afresh and take a decision after granting an opportunity of hearing to the parties concerned and by considering the position of law as laid down in ***Beena Lal Avatramani*** (supra) within a period of one month from the date of this judgment.

14. Rule is made absolute in above terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE