

# M/S Blue Moon Cafe vs Deputy Commissioner Of Police & Ors on 2 April, 2024

**Author: Subramonium Prasad**

**Bench: Subramonium Prasad**

\$~89

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(C) 15876/2023 & CM APPL. 63855/2023  
M/S BLUE MOON CAFE

DEPUTY COMMISSIONER OF POLICE & ORS.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD  
ORDER

% 02.04.2024

1. Petitioner has approached this Court with the following prayers:

"(i) Allow the present Writ Petition and issue appropriate writ, order or direction;

(ii) Restrain the Respondent No. 1 not to interfere with the peaceful operation of the Restaurant and Bar known as "Big Daddy" situated at Shop No. GF 20A, Ground Floor, Cross River Mall, Plot No. 9B & 9C, Central Business District, Shahadra, Delhi - 110092 falling under the jurisdictional limit of Police Station Anand Vihar, Delhi;

(iii) Direct the Respondent No. 2 to grant / issue / renew the Eating House License to the Petitioner for This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:41 Restaurant and Bar known as "Big Daddy" situated at Shop No. GF 20A, Ground Floor, Cross River Mall, Plot No. 9B & 9C, Central Business District, Shahadra, Delhi - 110092 falling under the

jurisdictional limit of Police Station Anand Vihar, Delhi or it has already been renewed, the Respondent No. 2 may be directed to provide the same to the Petitioner;

(iv) Direct the Respondent No. 3 to activate and remove the restriction on Transport Permit under the Excise License for Restaurant and Bar known as "Big Daddy" situated at Shop No. GF 20A, Ground Floor, Cross River Mall, Plot No. 9B & 9C, Central Business District, Shahadra, Delhi - 110092 falling under the jurisdictional limit of Police Station Anand Vihar, Delhi;

(v) Call for the records of the case and issue appropriate writ, order or direction in the nature of writ of certiorari quashing kalandra / challan vide GD No. 0096A dated 22.09.2023 at 20:53:22 PM U/s 28/112 of Delhi Police Act 1978;

(vi) Issue any other Writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to give complete relief to the Petitioner; (vii) Award costs of the petition and the proceedings to the Petitioner."

2. It is stated that the Petitioner runs a bar under the name and style of "Bid Daddy" at Shop No. GF 20A, Ground Floor, Cross River Mall, Plot No. 9B & 9C, Central Business District, Shahadra, Delhi - 110092. It is stated that the Petitioner obtained all the necessary licenses from the concerned Departments. It is stated that the Petitioner has filed numerous applications for grant of Eating House License from Delhi Police, however, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:41 his application is rejected by the Delhi Police on every occasion. It is stated that the Petitioner's Excise license is valid upto 31.03.2024.

3. Notice in the present Writ Petition was issued on 11.12.2023 on the ground that there is no reason as to why the application of the Petitioner for Eating House License has been rejected. Material on record does not disclose any detailed order rejecting the application of the Petitioner.

4. It is stated by the learned Counsel for the Delhi Police that against any order of rejection, an appeal is maintainable under the Regulations. He states that it is always open for the Petitioner to file an appeal against the Order of rejection.

5. It is stated by the learned Counsel for the Petitioner that the Petitioner has already filed nine applications and that the Respondents are acting in a high handed and arbitrary manner and, therefore, the Petitioner should not be relegated to alternate remedy and this Court should exercise its jurisdiction under Article 226 of the Constitution of India. Learned Counsel for the Petitioner places reliance on the Judgment of the Apex Court in Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107, to contend that mere existence of an alternate remedy does not take away the jurisdiction of the High Court under Article 226 of the Constitution of India. He states that the Petitioner has been deprived of his bread and butter for more than two years and that the Petitioner should not be relegated to the alternate remedy.

6. At this juncture, this Court is not inclined to accede to the request of the learned Counsel for the Petitioner. The Apex Court in Commissioner of Income Tax and Ors vs. Chhabil Dass Agarwal, (2014) 1 SCC 603, has held as under:

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:43 "13. In Nivedita Sharma v. Cellular Operators Assn. of India [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14) "12. In Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] this Court adverted to the rule of self-

imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7) „7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11) „11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:44 statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336 :

141 ER 486] in the following passage: (ER p. 495) "... There are three classes of cases in which a liability may be established founded upon a statute. ...

But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.* [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* [1935 AC 532 (PC)] and *Secy. of State v. Mask and Co.* [(1939-40) 67 IA 222 : (1940) 52 LW 1 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

14. In *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77) „77. ... So far as the jurisdiction of the High Court under Article 226--or for that matter, the jurisdiction of this Court under Article 32--is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:44 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. "

(See *G. Veerappa Pillai v. Raman & Raman Ltd.* [(1952) 1 SCC 334 : AIR 1952 SC 192] , *CCE v. Dunlop India Ltd.* [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , *Ramendra Kishore Biswas v. State of Tripura* [(1999) 1 SCC 472 : 1999 SCC (L&S) 295] , *Shivgonda Anna Patil v. State of Maharashtra* [(1999) 3 SCC 5] , *C.A. Abraham v. ITO* [AIR 1961 SC 609 : (1961) 2 SCR 765] , *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , *Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons* [1992 Supp (2) SCC 312] , *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] , *Tin Plate Co. of India Ltd. v. State of Bihar* [(1998) 8 SCC 272] , *Sheela Devi v. Jaspal Singh* [(1999) 1 SCC 209] and *Punjab National Bank v. O.C. Krishnan* [(2001) 6 SCC 569] .)

14. In *Union of India v. Guwahati Carbon Ltd.* [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed: (SCC p. 653, para 8) "8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram v. Municipal Committee, Chheharta* [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23) „23. ... [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:44 particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and

all the other forums and modes of seeking [remedy] are excluded. "

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:45 effective and not a mere formality with no substantial relief. In Ram and Shyam Co. v. State of Haryana [(1985) 3 SCC 267] this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

7. In view of the fact that an alternate efficacious remedy is available to the Petitioner, this Court is inclined to dispose of the Writ Petition by directing the Respondents to pass a detailed order rejecting the application of the Petitioner for grant of Eating House License. Let a detailed order be passed and communicated to the Petitioner within three days from today.

8. Liberty is granted to the Petitioner to file an appeal against the order of rejection.

9. As and when and if and when the Petitioner files an appeal, the Appellate Authority is directed to apply its mind on the merits of the case without being influenced by the fact that the present Writ Petition has been disposed of by this Court.

10. With these directions, the Writ Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J APRIL 2, 2024 Rahul This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/04/2024 at 22:03:46