

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-12577-2014 (O&M)
Date of decision:- 24.03.2015

Prem Kumar & Company

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

1. Whether reporters of local papers may be allowed to see the judgement?
2. Whether to be referred to the reporters or not?
3. Whether the judgement should be reported in the digest?

Present: Mr. Vivek Singla, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana.

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S.J. VAZIFDAR, A.C.J.

Rule. Rule returnable and heard forthwith.

The petitioner has sought a writ of certiorari to quash an order dated 11.06.2014 passed by the respondent No. 3 – Deputy Excise and Taxation Commissioner, Excise, Karnal and a writ of mandamus directing the respondents to allow the petitioner to deposit the license fee according to the petitioner's bid and to act accordingly. Consequential reliefs have also been sought.

2. The respondents advertised the excise arrangement for the Karnal District on the basis of an excise policy for the years 2013-2015. One Sanjay Mann's bid of ₹ 201.20 lacs for Group No. 2, L-14/A, country liquor license was accepted against a reserve price of ₹ 161 lacs. The said Sanjay Mann defaulted in paying the installments after November, 2013. The respondents, therefore, took steps for re-allotting Group No. 2 which had been allotted to him. The respondents invited fresh tenders by issuing a tender notice

dated 15.03.2014. It is necessary to refer to the public notice. It will be

convenient, however, to first refer to the excise policy pursuant to which the allotment of the vends is undertaken.

3. The relevant provisions of the excise policy are as follows:-

“2. MANNER OF DISPOSAL OF RETAIL OUTLETS OF LIQUOR:

2A. LONG TERM POLICY:

In order to bring stability in the liquor trade the liquor vends [both country liquor (L-14A) as well as IMFL(L-2)] shall be allotted for a period of two years i.e. from 1st April, 2013 to 31st March, 2015 subject to the following conditions:-

The license shall be granted to the successful bidder on the basis of highest bid received for the year 2013-14.

The allotment will be for the year 2014-15 also with the condition that the license fee for 2014-15 will be 5% more than the license fee of the year 2013-14.

Vend-wise quota of liquor (both country as well as the IMFL) shall remain same for each of the years.

2.30 PROCESS OF ALLOTMENT OF UN-ALLOTTED GROUPS/VENDS:

Those Groups/vends for which, there are no takers and could not be allotted before the start of the financial year, shall again be advertised and after inviting tenders and following the same procedure, shall be allotted at the earliest.

The process of inviting tenders shall be adopted and continued by successively reducing the reserve price in the slab of 5% of original reserve price till it is allotted or upto 15th May or the next working day, which ever is earlier. In case any Group/vend still remains unallotted upto 15th May or the next working day, the Group/vend shall be disposed off by the Excise and Taxation Commissioner taking appropriate measures as he may deem fit in the interest of revenue in consultation with the Excise Collector and the DETC (Excise) concerned.

2.31 PROCESS OF RE-ALLOTMENT OF GROUPS/VENDS:

In case of re-allotment, the process shall begin with inviting tenders on the reserve price computed from original license fee or the balanced license fee of the Group/Vend by reducing it in the successive slabs of 10% of original license fee or the balanced license fee of Group/Vend till it is allotted in the manner prescribed for fresh allotment in the currency of the year. The re-allotment shall be done at the risk and cost of original allottee. In case of a bid higher than the original bid, no benefit is to be given to the original allottee.

Note:- In the case of re-allotment of the Group/Vend, there will be no reduction in the original quota or balanced quota, as the case may be, of that Group/Vend.”

4. The said public notice dated 15.03.2014 for the re-allotment of the vend that was earlier allotted to the said Sanjay Mann in so far as it is relevant reads as under:-

“PUBLIC NOTICE

General Public is informed that under the Excise Policy for the year 2013-14 (3 vends of Group No. 2), one vend (Group No. 2) of country liquor in District Karnal is being allotted at 90% less than the reserve price. Sealed applications are invited on 15.03.2014 from 10 AM to 4 PM in the office of Deputy Excise and Taxation Commissioner (Excise), First Floor, Purani Kachehri, Karnal. The said application would be opened in the presence of the applicants by the Committee headed by Deputy Commissioner, Karnal. Information with regard to earnest money, documents, location of the vend, licence fee (reserve amount), quota and other conditions of allotment can be taken from local Excise Office and from the website of the Department www.haryanatax.com. ”

5. We must mention at this stage that the petitioner and the respondents agree that the petitioner is entitled to continue to operate the vend for the year 2014-2015. In fact, they agree that the petitioner is bound to continue to operate the vend for the year 2014-2015. They further agree that this is to be on the

basis of the said excise policy for the years 2013-2015. The dispute pertains to the amount payable by the petitioners for the extended period, namely, for the year 2014-2015. Clause 2A set out above provides that the license fee for the year 2014-2015 would be 5% more than the license fee of the year 2013-2014. The petitioners contend that the enhancement of 5% is to be calculated on the basis of the bid submitted by them and not on the basis of the bid submitted by the said Sanjay Mann.

As we mentioned earlier, Sanjay Mann had submitted a bid of ₹ 201.20 lacs and the petitioner had submitted a bid of ₹ 6,69,870/- for the residual period of 2013-2014. The residual period was only sixteen days. The rate per day, therefore, was ₹ 41,866/-. The rate per month, therefore, is about ₹ 12,56,006/-. Accordingly, the annual rate is ₹ 1,50,72,075/-. According to the petitioner, the 5% enhancement for the year 2014-2015 is to be calculated on this amount of ₹ 1,50,72,075/- and not on the said Sanjay Mann's bid of ₹ 201.20 lacs. The respondents on the other hand contend that the enhanced rate of 5% is to be calculated on the basis of the said Sanjay Mann's bid of ₹ 201.20 lacs.

6. The respondent No. 3 by the impugned order upheld the respondents' contention. The respondent No. 3 held that if the petitioner's intention was to pay an amount by calculating the 5% enhancement on the basis of its bid, it ought to have made the same clear while submitting the bid and that having remained silent on this issue it is bound to pay the amount as calculated on the basis of the original bid i.e. the bid submitted by the said Sanjay Mann.

7. To decide the issue before us, it is necessary to consider the provisions of the excise policy and the public notice. The petitioner not having mentioned at the time of submitting its bid its understanding of the same is not relevant. We are entirely in agreement with the submission made on behalf of

the petitioner. The issue in fact has been decided in favour of the petitioner by the judgement of a Division Bench of this Court dated 10.02.2015 in the case of *Kaptan Singh Vs State of Haryana and others* (CWP-10423-2014). The Division Bench specifically referred to the provisions of the excise policy set out by us and construed the same. The Division Bench held as follows:-

“The petitioner was re-allotted vends for licence fee of Rs. 25,00,000/- for a period of 68 days only for 68 days of the remainder of the financial year 2013-14 at the risk and cost of the original allottee. As per Clause 2A, the liquor vends were allotted for a period of two years i.e. 01.04.2013 to 31.03.2015. Initially licence was to be granted for a period of one year i.e. for the year 2013-14, whereafter it was to be got renewed for the year 2014-15 with 5% more licence fee than for the year 2013-14 and on failure to get the licence renewed, the licensee was to forfeit his security deposit and vend would be re-allotted as per prescribed procedure at his risk and cost. These aspects of the policy were fully to the knowledge of the original allottee, Sher Singh, as well as the petitioner, Kaptan Singh. Thus, both original allottee Sher Singh as well as Kaptan Singh being aware of the provisions of Clause 2A as well as Clause 2.31 of the Haryana Excise Policy, are bound by the terms and conditions contained therein. Since the petitioner was allotted the licence for a period of 68 days only i.e. from 23.01.2014 to 31.03.2014, therefore, he would step into the shoes of the original allottee i.e. Sher Singh and would be bound to seek renewal of the licence for the year 2014-15 subject to the condition that renewal would be at 5% more than the licence fee of the year 2013-14. The term 5% more than the licence fee of the year 2013-14 in the case of the petitioner has to be read as the licence fee paid by the petitioner and computed on the said basis for the entire year i.e. 01.04.2013 to 31.03.2014 + 5% of the said price. So computed, the licence fee for the year 2013-14 works out to Rs. 1,40,90,073/- and the petitioner had offered to renew the licence for the year 2014-15 at the said rates vide legal notice Annexure P-4 dated 27.03.2014. However, the respondents chose not to accept the same and insisted that the petitioner seek renewal of the licence for the year 2014-15 by treating the licence fee for the year 2013-14 as per allotment to the original licensee i.e. Sher Singh i.e. Rs. 2,49,99,999/-. In fact the afore-mentioned

stand of the respondents is very surprising since in terms of Clause 2.31, re-allotment of the liquor vend was done to the petitioner after cancelling the allotment of the original allottee i.e. Sher Singh and as per Clause 2.31, re-allotment is to be done at the risk and cost of the original allottee. Order (Annexure P-7) mentions that re-allotment of the liquor vend allotted to Sher Singh was done to the petitioner in terms of Clause 2.31. Therefore, claim, if any, qua loss caused on account of getting a licence fee for the remaining part of the year 2013-14 as well as for the year 2014-15, lesser than 5% more than the licence fee of the year 2013-14 i.e. at the rate at which the licence was allotted for the year 2013-14 and the resulting loss, would be recoverable in terms of Clause 2.31 from the original allottee, namely, Sher Singh. The respondents not only did not accept the offer of the petitioner for renewal of the liquor vend at Rs. 1,40,90,073/-, but also did not proceed against Sher Singh in terms of Clause 2.31 for recovery of loss caused by him i.e. the original allottee for reasons best known to them.

Regarding availability of alternative remedy of appeal suffice it to notice that the same was not pressed. Even otherwise in a case like this involving interpretation of the provisions of the Excise Policy we refrain from relegating the petitioner to avail the remedy of appeal since the rule of alternative remedy is merely a rule of caution. Accordingly, the questions posed above having been answered as above, the writ petition is allowed. Order (Annexure P-7) is quashed. It is held that although the petitioner was bound to seek renewal of the licence for the year 2014-15 on licence fee 5% more than the licence fee of 2013-14 yet the petitioner's offer in terms thereof as made vide legal notice (Annexure P-4) dated 27.03.2014 not having been accepted, the petitioner stood absolved of his responsibility to get the license renewed. The petitioner is not responsible for the loss attributable to the initial allottee. In the circumstances, the respondents are duty bound to refund the security amount of Rs. 5,25,000/- as also additional amount of Rs. 1,00,000/- to the petitioner. The same would be without prejudice to the petitioner's right to seek recompense in accordance with law against the respondents for the delay in the refund of the afore-mentioned amount. However, the respondents would be at liberty to take action in accordance with law to recover the loss on account of getting an amount on renewal of the

liquor vends for the year 2014-15 lesser than the licence fee + 5% for the year 2013-14 from Sher Singh i.e. the original allottee.

Writ petition is allowed. No order as to costs.”

8. We are bound by the judgement of the Division Bench. In respect of the issue under consideration, the ratio is clear. The Division Bench held that 5% enhancement is to be calculated on the basis of the license fee paid by the petitioner.

9. It is contended on behalf of the respondents that the judgement would not apply to the present case as in that case the petitioner had refused to apply for the renewal for the subsequent year in view of the respondents' stand that the 5% enhancement was to be calculated on the amount bid by the original licensee. It is contended that had the petitioner before us done the same, the judgement would have been applicable. We are unable to agree. The ratio of the judgement does not depend upon the stand taken and the approach adopted by the parties. The interpretation of the policy cannot depend upon the same. Even in that case, it would have been open to the petitioner to continue to operate the license without prejudice to his contention regarding the correct interpretation of the policy and then to adopt appropriate proceedings in support of his contention as has been done by the petitioner in the case before us. It was not necessary for the petitioner before us to refuse to operate the license for the subsequent year i.e. the year 2014-2015 in the first instance, challenge the incorrect interpretation by the respondents and thereafter file proceedings for the allotment for the subsequent year in accordance with the decision of the Court.

10. We are in any event in respectful agreement with the judgement of the Division Bench. Clause 2A of the policy does not indicate that the enhancement by 5% must be calculated on the basis of the license fee applicable to the original allottee. Upon re-allotment the bidder obviously does

not take into consideration the original bidder's bid. The bidder at the re-allotment is concerned with his bid and not with the bid of the previous bidder. His bid would be relevant throughout. There is nothing to indicate that the bidder at the re-allotment would be bound by the bid of the original licensee. We do not see any rationale for the basis of any such interpretation.

11. The respondents relied upon the judgement of the Division Bench of this Court dated 11.07.2014 in *Karambir Nain and another Vs The State of Haryana and others* (CWP-5573-2014). The case is clearly distinguishable from the one before us. The main issue before the Division Bench in that case was that Clause 2B of the amended policy for the year 2014-2015 was illegal to the extent that the licensee had been given an option to surrender only one vend which fell on the highway out of the complete group compelling the licensee to continue with the vends. The petitioners in that case had also challenged a public notice whereby the individual vends on the highway had been put to auction by the respondents. In that case, the petitioners were allotted licenses for retail outlets of country liquor in different groups. This was inspite of the directions of the National Highway Authority of India. A PIL was filed challenging the policy of the State based on the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 prescribing 30 meters distance being contrary to the directions issued by the NHAI and the Ministry of Road Transport and Highways. The State of Haryana issued an amended policy relating to the distance from the National Highway and the State Highway which was the subject matter of the PIL. The State of Haryana's amended policy also related to the shifting of the vends and the surrender thereof. Clause 2B amended the policy by trying to bifurcate the group as well as the license unilaterally without seeking the licensees' consent. The question was whether the State Government was entitled to do so unilaterally. The Division Bench held that whenever a composite liquor license

is issued relating to liquor vends on a National or State Highway alongwith liquor vends in a rural area, the State would not be entitled to enforce the amended clause against the licensees without their consent. The Division Bench further held that such licensees would not be obliged to continue with the vends in the rural area against their express affirmative response. The issue before us was not decided by the Division Bench.

12. In these circumstances, the impugned order dated 11.06.2014 (Annexure P7) is quashed and set aside. The license fee payable by the petitioner for the year 2014-2015 shall be determined on the basis of the bid submitted by the petitioner and not on the basis of the bid submitted by the original licensee, namely, the said Sanjay Mann.

There shall, however, be no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

24.03.2015
Amodh

Whether to be referred to the reporter	Yes ☒	No ☐
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