

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Writ Petition No.23483 of 2013 (O&M)

RESERVED ON: 23.03.2015

DATE OF DECISION: 7.04.2015

Sunil

....Petitioner

versus

State of Haryana and others

.....Respondent

2. Civil Writ Petition No.20033 of 2014 (O&M)

Sunil

....Petitioner

versus

State of Haryana and others

.....Respondent

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

Present: Mr. Rajbir Sehrawat, Advocate for the petitioner
Ms. Mamta Singla Talwar, AAG, Haryana
..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE :

Rule in both the writ petitions. Rule returnable and heard forthwith.

2. It was agreed that the result in CWP No.20033 of 2014 would follow the result in CWP No.23483 of 2013. Both the writ petitions are, therefore, disposed off by this common order and judgment.

The petitioner seeks a writ of certiorari to quash a letter dated 25.09.2013 and a writ of mandamus directing the respondents to consider his claim as per the directions issued by this Court in an order we will refer to shortly and/or an order directing the respondents to accept the surrender of his Liquor Vend Group No.19 and Group No.17 in Rohtak and to refund the advance deposited by him in respect thereof after deducting the proportionate amount for the period during which he operated the vends.

3. Respondent No.2 is the Excise and Taxation Commissioner, Haryana and respondent No.3 is the Deputy Excise and Taxation Commissioner (Excise), Rohtak.

4. Pursuant to the excise policy for the year 2013-15 bids were invited for allotting various vends. The petitioner's bid of Rs.1,72,05,000/- was accepted in respect of Group No.17 and Group No.19, District Rohtak. Three vends in respect of each group were allotted. The letter of allotment stated that the licence authorizing the retail sale of IMFL at the vends specified therein for the year 2013-14 was granted to the petitioner subject inter alia to the provisions of the Punjab Excise Act, 1914 and the rules/regulations made therein. Clauses 1.2.1 to 1.2.5 of the Excise Policy, 2013-15 read as under:

"1.2 LOCATION OF VENDS AND COMMAND OF RURAL COUNTRY
LIQUOR (L-14A) & IMFL (L-2) VENDS:

1.2.1 The command area shall be prescribed for all rural country liquor vends/group of vends (L-14A) & all rural IMFL vends/group of vends (L-2).

The command area will include the area of main vend. Wherever the vends are clubbed into a group for the purpose of allotment, the command area of that group would comprise the command area of all the included vends taken together. The licensee has the freedom to locate his main vend in any village falling in the command area of that particular vend subject to approval of the DETC (Excise) concerned in case of resistance from local residents. Similarly for locating other main vends comprised in the group, the command area of those respective vends would be applicable. The vend shall be located within the area specified subject to other provisions of law. The licensee shall make his own arrangement for opening of the retail outlet with prior approval of site plan by the Department. Prior approval of site plan of vend shall have to be obtained from concerned DETC (Excise) both in case of vends as well as sub vends. The location of the business premises is required to conform to all the provisions of the Punjab Excise Act and the Rules framed there under and the provisions of any other Act/Rules, as may be applicable.

1.2.2 No liquor vend or sub vend shall be located in the villages where "KANYA GURUKUL" are functioning.

1.2.3 ESTABLISHMENT OF VEND AT A NEW LOCATION:

No person to whom a license for retail liquor outlet is granted shall establish the same on such premises as is situated at a distance of less than 150 meters from the main gate of a recognized school/College/main bus stand and a place of worship. However, Excise Commissioner can relax such distance for the location of retail liquor outlet from 150 meters to 75 meters on the recommendations of the Deputy Excise and Taxation Commissioner (Excise). Further, in urban areas, the retail liquor outlets may preferably be located in the market places.

1.2.4 ESTABLISHMENT OF VEND AT AN EXISTING LOCATION:

The above stipulation of locating a vend at a distance of not less than 150 meters from the main gate of a recognized school, college, main bus stand and a place of worship shall be applicable to the vends which are being established at a new location. Those vends which are already running and are re-established at the same location year after year shall not be subjected to any such restrictions.

1.2.5 RESTRICTION OF LOCATION ON SCHEDULED ROADS
ETC:

(a) The retail liquor outlets on National Highway/ State Highways (except in case of retail liquor outlets located in the areas of Municipal Committees/ Municipal Corporations/ Councils/ Housing Boards or any other local authority/ Urban Estates/ the areas developed by the colonizers with the approval of the Government) shall be located at a distance as stipulated in the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963).

(b) No liquor vend shall be located along the National Highways. They shall not be accessible and preferably not visible from the National Highways or the service lane running along such highways.

Note:- It shall be the personal responsibility of the DETC (Excise) of the district concerned to ensure the strict compliance of the above stipulated restrictions."

5. Under the excise policy of 2013-15, the petitioner was entitled to operate the vends for a period of two years. For the second year i.e. 2014-15, there was to be a 5 percent increase in the licence fee.

6. A public interest litigation was filed by the Arrive Safe Society against the National Highway Authority of India and another being CWP No.25777 of 2012. The same was disposed of by an order and judgment dated 18.03.2014. Pursuant to an order passed in the said PIL dated 30.07.2013, the respondent No.3 by a letter dated 21.08.2013 (Annexure P-5) directed the petitioner to strictly comply with the order in the PIL within five days of the receipt of the letter. It was agreed that this in effect directed the removal of the vends on the highway.

7. By a reply dated 27.08.2013, the petitioner stated that by the said notice respondent No.3 had directed him to discontinue the liquor vends and to relocate the same. He stated that he had offered his bid pursuant to the excise policy. He further stated that the site of the liquor vend was also approved by the respondents and that the respondents were not entitled to change the terms of the allotment in the middle of the financial year. However, considering the respondents' request, he stated that his bid was ascertained on the basis of the arrangements arrived at between the parties. The petitioner, therefore, stated that the respondents must either withdraw the notice or permit him to surrender his licences and to refund the balance of the advance deposited for the remaining period of the licences after deducting the proportionate amount for the period for which he had operated the licences i.e. up to 31.08.2013.

8. As there was no order or direction taken upon the petitioner's letter dated 27.08.2013, the petitioner filed CWP No.19593 of 2013 which was disposed off by the order and judgment of the Division Bench of this Court dated 06.09.2013 by directing the respondents to decide the petitioner's representation.

In the meantime, the respondents cancelled the licences of the petitioner and forfeited the security vide orders dated 20.09.2013. Thereafter, vide communication dated 24.09.2013, the Assistant Excise and Taxation Officer sought to recover a sum of Rs.80,31,000/- and vide notice dated 24.12.2013 called upon the

petitioner to deposit the said amount failing which recovery proceedings would be started under the Punjab Land Revenue Act, 1887. The said orders of cancellation and forfeiture and the show cause notice are subject matter of Civil Writ Petition No.20033 of 2014.

9. We would normally not have interfered in this writ petition for it would always be open to the petitioner to raise the contentions as a defence to any action taken or proceedings filed by the respondents against the petitioner. We may well have left it to the petitioner to file the proceedings to recover the balance of the advance after making the necessary adjustments. The respondents, however, stated that they intend recovering the amounts pursuant to the impugned order as arrears of land revenue as noticed above. Further, in our opinion, this matter is covered in the petitioner's favour by a judgment of the Division Bench of this Court dated 11.07.2014. We have, therefore, entertained this petition.

10. Pursuant to the above notice, the respondents passed the order impugned in this writ petition dated 25.09.2013. In our opinion, this case is covered by a judgment of the Division Bench of this Court dated 11.07.2014 in Karambir Nain and another vs. The State of Haryana and others, CWP No.5573 of 2014. In Karambir Nain's case, the Division Bench dealt with a similar situation. The Division Bench noted that after the order and judgment in the PIL, the State of Haryana instead of curtailing

the policy for one year, issued an amended policy for the year 2014-15. The amendments related to the distance from the national highway and State highway and also related to the shifting of the vends on the highways. The amendment bifurcated the groups as well as the licences unilaterally. The petitioners contended that the amendments were illegal and arbitrary as they compelled the licencees to continue with the unaffected vends. They contended that the bidders could not be compelled to continue with the unaffected vends alone and that the State of Haryana was not entitled to amend the terms and conditions unilaterally. The amended policy permitted the licencees to close down only the vends on the highways and not the other vends. The petitioners contended that the allocation of the vends was a composite arrangement and could not be bifurcated in such a manner without their consent. The Division Bench held as under:

"23. Examining the factual matrix herein, it may be noticed that as per excise policy, the State had formulated Excise policy for the years 2013-14 and 2014-15. The unit of allotment of retail liquor outlets of country liquor and IMFL was to be group-wise. A group would comprise of a maximum number of three contiguously located retail outlets of either country liquor or IMFL. The petitioners had bid for the groups of liquor vends and accordingly composite licence was issued by the State. The licence fee had been determined for the entire group as a unit. In CWP No.25777 of 2012 decided on 18.3.2014, it has been directed that no liquor vend shall be permitted to be opened on the National or State Highway with effect from 1.4.2014. In such a situation, the petitioners have been asked to close down or shift retail liquor vends on the National or State Highway being affected vends but required to continue with the other vends of the group which do not fall on National or State Highway. There is alteration in the terms of the licence. Alteration cannot be enforced unless both the parties agree to

it. The terms of licence are, although statutory in nature, cannot be unilaterally changed by the State in between the licence period, without either seeking consent of the licensees or without giving opportunity to the licensee to repudiate the contract. The licence fee for all the three vends was single and there was no vend-wise bifurcation of the licence fee. The method of calculation of licence fee adopted by the State upon the quota of each vend cannot be imposed unilaterally on the liquor vends without their consent. None of these clauses or eventuality had been provided in the excise policy for the year 2013-14 and 2014-15. No provision under the Punjab Excise Act, 1914 or the Haryana Liquor Licence Rules, 1970 had been shown which empowered the State to change the terms of the licence during the currency of the licence or change the location of the vends. The State cannot be permitted to change the rules of the game announced at the time of Excise policy unilaterally. Moreover, the State is in the present situation because of its own doing as would be apparent from the following observations of the Division Bench in **Safe Arrive's** case (supra):-

"The problem was aggravated on account of the fact that the State of Haryana came up with the Policy for two years for the first time when the lis was already pending before this Court and we were of the view that the endeavour was to avoid the possible rigors of the orders which may be passed in these proceedings, especially as the State of Haryana had been taking time on more than one occasion to file response. We were, thus, influenced by the fact that the Liquor Policy for the State of Haryana purported to be for a period of two years and taking cue from what was stated by the State of Punjab, we were willing to give concession also to the State of Haryana till 31.3.2014 so that a new regime came into play with effect from 1.4.2014. As noticed above, the endeavour of the State of Haryana to challenge the said direction passed by this Court before the Hon'ble Supreme Court of India has not been successful."

24. It is concluded that wherever a composite liquor licence has been issued relating to liquor vends on National or State Highway alongwith liquor vends in rural area, the State shall not be entitled to enforce clause 2B of the amended policy against such licencees without their consent. As a consequence, such licencees shall not be obliged to continue with the vends in rural area against their

express affirmative response. The State shall be entitled to recover the licence fee from such licencees till 31.3.2014. However, it is clarified that wherever, such licencees had operated vends in the rural area from 1.4.2014, they shall not be entitled to any benefit under this order as their continuance would amount to implied consent on their part to operate the unaffected vends located there.

... ● ●

.....

..... ●

... ● ●

38. Accordingly, the writ petitions are allowed with the direction that the State shall not penalise any licensee who has not opted for renewal of the licence in respect of liquor vends included in the composite licence of a group of vends relating to vends situated in rural area. The State shall be authorised to recover the licence fee from such licensees till 31.3.2014. The petitioners shall be entitled to refund of the security deposit after adjustment of any amount due from them on the basis of excise policy of 2013-15 by treating that the liquor vend had been operated till 31.3.2014. As a consequence, the State shall not be entitled to forfeit any amount of security deposit made by the licensee due to the aforesaid reason. However, wherever, such licensees had continued with the liquor vends in the rural area, the benefit under this order shall not be available to them. All the petitions stand disposed of in the above terms. "

The judgment is binding on us. As held by the Division Bench, the petitioners would not be entitled to any benefit under the order up to the date on which they continued to operate the licence i.e. 31.03.2014.

11. Ms. Mamta Singla Talwar, learned AAG appearing on behalf of the respondents stated that the petitioner was not interested in operating the vend in any event and that he had relied on the judgment of the Division Bench merely as an excuse.

12. It is difficult to accept this contention as the petitioner continued to operate the vends till he received the

said notice dated 21.08.2013 which, in effect, called upon him to discontinue the vends on the highways in view of the interim order dated 30.07.2013 in the PIL. Ms. Talwar agreed that upon the receipt of the letter dated 21.08.2013, the petitioner could not have continued to operate the vends on the highways.

13. Ms. Talwar then contended that the judgment applies only to those licencees who did not start operating the vends.

14. We are unable to agree. The ratio of the judgment of the Division Bench in Karambir Nain's case does not apply only to those licencees who did not start operating the vends. It would apply equally to those who had commenced the operation of the vends but were affected by the amendments in the policy. The judgment dealt with the rights between the State of Haryana and the licensees. The ratio applies to cases where persons are granted licenses to run vends on highways as well as at other locations and had been called upon to discontinue vends only in the highways.

15. By the impugned order, respondent No.3 merely stated that as per the Punjab Excise Act, a licensee can surrender a licence, while refusing to accept the petitioner's request, and is, therefore, contrary to the order and judgment of the Division Bench in Karambir Nain's case.

16. In the circumstances and in view of the order and judgment of the Division Bench of this Court in Karambir Nain's

case, this writ petition is disposed off by making the rule absolute in terms of prayer (a), which reads as under:

"a) a writ in the nature of Certiorari /Mandamus quashing the letter dated 25-09-2013 at Annexure P-8 and directing the respondents to consider the claim of the petitioner on merits as per the direction issued by this Hon'ble Court and/or directing the respondents to accept the surrender of the Liquor Vend Group No.19 and Group No.17 of District Rohtak made by the petitioner and to direct the respondent to refund the amount advance deposited by the petitioner after deducting the proportionate amount for the period for which the petitioner has operated the liquor vend in view of the fact that the respondents are changing the locational conditions and the premises of allotment to the petitioner which are not acceptable to the petitioner."

The licence fees may be recovered up to and including 31.08.2013 i.e. date till which the petitioner operated the licences and the vends.

17. As we mentioned at the outset, it was agreed that the result in CWP No.20033 of 2014 would follow the result in CWP No.23483 of 2013. CWP No.20033 of 2014 is, therefore, disposed of in the similar terms except as to the date till which the petitioner operated the licences/vends. There shall be no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

7.04.2015
parkash*

(G.S. SANDHAWALIA)
JUDGE

√

Note:- Whether reportable - YES/ NO .
--