IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21175 of 2014
Reserved on: 13.03.2015
Date of decision: 25.03.2015

Saroj Rani ....Petitioner(s)

Versus

Finance Secretary-cum-Secretary, Excise and Taxation Department, Chandigarh and others
....Respondent(s)

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

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Bhanu Partap Singh, Advocate,
for the petitioner.

Mr. Sanjiv Ghai, Advocate,
for U.T.-respondetns no. 1, 4 and 5.

Mr. J.S. Toor, Advocate,
for respondents no. 2, 3 and 6.

G.S. SANDHAWALIA (J.)

The prayer in the present writ petition filed under Articles 226 and 227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing the respondent-authorities for initiating appropriate measures for making operational the allotted L-2 vend bearing Code No. 220, Sector 38 (West), UT., Chandigarh and for providing police protection for running the same. The alternative prayer made is not to charge license fee till the vend is made operational or to refund the amount already deposited and compensate for damages in terms of Clause 3.19 of the Punjab Excise Manual, Vol.III. Challenge has also been laid to the order dated 19.09.2014 (Annexure P-8) passed by the Senior Superintendent of

Police wherein, the claim for providing police protection has been rejected and also the show cause notice dated 22.09.2014 (Annexure P-9) whereby, the 30% of the bid money paid by the petitioner is sought to be forfeited and fresh bids were sought to be invited by cancelling the license issued to the petitioner.

The pleaded case of the petitioner is that she had submitted a tender for allotment of the Indian Made Foreign Liquor Vend for a sum of ₹41,41,414/- and was a successful bidder for the vend bearing Code No. 220 to be opened in Sector 38 (West), Chandigarh. She had arranged booth no. 1009 in the said sector at the monthly rate of ₹40,000/- and had invested on furniture and fixtures including wooden racks for storage of liquor. The 30% of the bid amount had been deposited as per Clause 21 of the Excise Policy within the stipulated time and she was entitled to run liquor vend from 01.06.2014. That on the said date, about 20-30 people including women had entered the shop and misbehaved with the employees and ransacked the furniture and fixtures and protested against the opening of the liquor vend at the allotted site. The police had reached at the spot and the belongings of the petitioner had been put back in shop which had been closed indefinitely. A legal notice had been sent to the Excise Department, U.T., Chandigarh on 16.06.2014 (Annexure P-2) and request was made for police protection which was forwarded by the Deputy Commissioner to the Senior Superintendent of Police on 26.06.2014 (Annexure P-3) but no heed was paid. Legal notice dated 22.07.2014 (Annexure P-4) was also served. An attempt had been made to open the vend and even the SHO had been informed but the persons with vested interest had reached the spot alongwith lathis and threatened to set the vend on fire due to which she was not able to open the vend in spite of the fact that the Assistant Excise and Taxation Commissioner, U.T., had written to the police authorities to get the vend operational under police protection.

The petitioner had approached this Court by filing CWP No. 16409 of 2014 which was disposed of on 19.08.2014 (Annexure P-8) directing the SSP to pass a speaking order who had accordingly rejected the representation on the ground that a law and order problem was being created on 19.09.2014. Thereafter, the show cause notice dated 22.09.2014 had been served, on the basis of which, present cause of action arose and the present writ petition had been filed seeking the abovesaid relief. An additional affidavit was also filed by the petitioner bearing C.M. No. 12781 of 2014 wherein, it was deposed that she had been given the option to open the vend in village Shahpur, Sector 25 but the same was not feasible as there was no commercial market in the village and there was no pacca construction available to open the vend which was mandatory as per Clause 50 of the Excise Policy.

The respondents no. 4 and 5, in their written statement, took the plea that as per Clause 22 of the Excise Policy, the licencee was responsible for providing space for opening the liquor vend and it was not the obligation of the department. The action was thus justified that 30% of the bid money paid amounting to ₹12,42,800/- was liable to be forfeited on account of the vend found being non-functional. It was submitted that the location had been prescribed for opening of the liquor vend as per the policy where the vend could be opened and it was the responsibility of the petitioner to arrange for suitable premises and the petitioner had failed to get the suitable premises. The department could not be held responsible and the location was as per the Excise Policy and other parameters were in consonance with the excise rules and no religious place, educational institutions or entertainment place were situated near the proposed sites. The department had written to the concerned SHO as to get the liquor vend operational under police protection and reference was made to the letters dated 04.06.2014 and 17.06.2014 addressed to the SSP.

Counsel for the petitioner has accordingly argued, placing reliance upon the judgment of this Court in ***CWP No. 6631 of 2008, Harpreet Singh vs. State of Haryana and others*** decided on 20.08.2008 (Annexure P-6) to submit that the State had failed in its obligations to provide adequate security and the petitioner could not open the vend and, therefore, the forfeiture of the amount deposited was not permissible. It was pleaded that the same should be refunded to him since at this stage he was only limiting his relief to the challenge to the order dated 22.09.2014 as the Excise Policy was only till 31.03.2015 and the year had come to an end.

Counsel for the respondent, on the other hand, submitted that as per Clause 22, the responsibility to provide a suitable premises was of the licensee and not of the department.

After hearing counsel for the parties, we are of the view that the dispute rotates around the obligation of the petitioner to arrange for a space for opening of a liquor vend in a SCO/SCF/Shop/Booth or in the already existing pacca structures where the structures are allowed by the administration in the villages. The relevant clause provides as such and reads thus:-

> *"22. The licenses will be granted at the locations advertised in the tender notice. These licenses*

> *will be granted in SCO/SCF/Shop/Booth, etc. in sectors, Industrial Areas, NAC, Rehabilitation Colonies, already existing Pucca Structures in the areas where such structures are allowed by the Administration in the villages, etc. The Department will not be responsible for providing space for opening of liquor vend. The licencee has to prove legal possession of space before opening of the vend. In case, a successful tenderer fails to arrange suitable/eligible premises within 30 days, the 30% of bid money paid by him will be forfeited and the bids will be invited again for the said license after re-fixing the minimum reserve price for the remainder period of the license. Liability of a bidder in such case will be limited upto 30% of bid money."*

As noticed, an attempt was made for opening the vend at an alternative site in village Shahpur as per the affidavit of the petitioner herself dated 14.10.2014 filed in this Court, the relevant clause of which reads as under:-

> *"5. That deponent was also given the option of opening the vend in Village Shahpur (Opp. O/o Directorate of Coordination Police Wireless, Sector 25, but the same was not a feasible option as there is no commercial market in the village and also there is no pakka construction available to open the vend in that area, which is mandatory as per Clause no. 50 of the Excise Policy (Annexure P-1)."*

Thus, it is apparent that from the reading of the above affidavit, an effort was made by the Authorities to relocate the vend at village Shahpur but the same could not be done for the justification given above in para no. 5 of the affidavit that there was no commercial market in the village and no pacca construction was available to open the vend. The stand of the petitioner is that once the administration was not allowing the vend to be run in any other structure and due to lack of availability, the vend could not be opened. This factum as to whether the area was feasible or not in village Shahpur is a question of fact and the writ Court as such will not be in a position to adjudicate upon the factual aspects as to the availability of any commercial market in the village or lack of any pacca construction to open the vend.

In such circumstances, it would not be possible to opine upon whether the petitioner had made any effort or not for relocating the vend and such dispute would be best left for adjudication by way of leading evidence. It is to be noticed that admittedly there is no denial to the fact that the petitioner had made a arrangement in booth no. 1009, Sector 38 (West), Chandigarh but the same could not be opened due to the protest by the public therein and, therefore, the State also failed as such to provide necessary protection for running the vend in question.

The reliance upon the judgment in *Harpreet Singh's case (supra)* would be without any basis since the State in that case had not approved the alternative sites for setting up the liquor vend and the defence thus was not accepted by the Court by holding that the maintenance of law and order was the duty of the Court and it would be unjust and unfair on the part of the officials to cover up their mistakes.

In the present case, there is an admission that an alternative site was offered and thus, the said judgment is not applicable in the facts and circumstances of the present case.

In such circumstances, prima facie it cannot be said that the action of the State also is justified whereby, it seeks to forfeit the whole amount of ₹12,42,800/- despite its inability to provide the necessary protection for running the liquor vend. However, keeping in view the limitations of the writ jurisdiction as disputed questions are arising as to whether the petitioner chose not to opt for the optional location at village Shahpur or whether there was any availability of any pacca construction in the village, the petitioner is relegated to her remedy for the relief of recovering the amount she has deposited with the respondents.

Accordingly, the present writ petition is disposed of in the above said terms, relegating the petitioner to her alternative remedy.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

25.03.2015
shivani