IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21398 of 2015

Date of Decision: 17.12.2015

Mohinder Singh Rana

....Petitioner.

Versus

State of Haryana and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. A.K. Jain, Advocate for the petitioner,
(in CWP No. 21398 of 2015).

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Amandeep Singh, Advocate for the petitioner(s)
(in CWP Nos. 22019, 22032 and 22071 of 2015).

Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Madan Sandhu, Advocate for respondent No.5,
(in CWP No. 21398 of 2015).

AJAY KUMAR MITTAL, J.

1. This order shall dispose of bunch of four petitions bearing CWP Nos. 21398, 22019, 22032 and 22071 of 2015 as they arise from the common order dated 11.6.2015 (Annexure P-25) passed in Excise Appeal Nos. 26 to 29/2014-15 and further that the learned counsel for

the parties are agreed that the issue involved herein is similar. For brevity, the facts are being taken from CWP No. 21398 of 2015.

2. Prayer in this writ petition filed under Articles 226/227 of the Constitution of India is for quashing the impugned orders dated 26.9.2014 (Annexure P-19), dated 1.10.2015 (Annexure P-20) and dated 11.6.2015 (Annexure P-25) passed by respondent No.1 wrongly interpreting the letter of the petitioner to transfer the old stock of highway vend to rural vends of Group No.16, Jagadhri. Further, a writ of mandamus has been sought directing the respondent-State to release the security amount of the petitioner lying deposited for the year 2013-14.

3. Put shortly, the relevant facts necessary for adjudication as narrated in the petition are that a Public Interest Litigation (PIL) bearing CWP No. 25777 of 2012 was filed before this Court for removal of liquor vends located on the Highways. An application dated 13.2.2013 (Annexure P-1) was moved in the said petition for stay of issuance of licences for installation of liquor vends on the Highways and vide order dated 15.2.2013 notice was issued to the respondents. Thereafter, the State of Haryana framed the excise policy for two years, i.e. 2013-14 and 2014-15 and collected 21% security from the liquor vend owners. Vide order dated 30.7.2013, removal of the liquor shops was directed and in pursuance thereto, the respondents issued notice dated 23.8.2013 for removal of liquor vends on Highways. Further, vide order dated 13.9.2013 (Annexure P-4), it was observed that the licences given in the near past for opening the liquor vends have to be closed and the Government would refund the proportion of the fee collected so that the liquor vendors did not suffer any financial loss. During the pendency of

the said PIL, respondent No.3 filed an affidavit dated 17.12.2013 (Annexure P-5) praying for continuation of the excise policy upto 31.3.2015 as the removal of the liquor vends on Highways would cause heavy loss to the exchequer as well as to the liquor vend owners. This Court vide order dated 17.12.2013 (Annexure P-6) declined the request of respondent No.3 for continuation of the liquor vends on Highways upto 31.3.2015. Against the order, Annexure P-6, the respondents filed SLP No. 2658 of 2014 before the Supreme Court which was dismissed vide order dated 10.3.2014 (Annexure P-7). Vide order dated 29.1.2014 (Annexure P-8), the States of Punjab and Haryana were directed to frame new liquor policy w.e.f. 1.4.2014 and in pursuance thereto, the State of Haryana instead of framing the new policy, amended the policy for rehabilitation of liquor vends located on Highways and termed such vends as affected vends. The petitioner had been granted a composite license (Annexure P-9) of three liquor vends in Group No.16 in District Jagadhri for the year 2013-14, out of which one liquor vend at village Alipur was on the Highway. The Deputy Excise and Taxation Commissioner (Excise), Panchkula issued a notice dated 20.3.2014 (Annexure P-10) to the petitioner for shifting of vend falling on the National Highways/State Highways. Against the said notice, Annexure P-10, the petitioner filed CWP No. 5856 of 2014 and during the pendency of the said writ petition, the respondents issued a memo dated 17.6.2014 (Annexure P-11) to the petitioner that the liquor license of Group No.16 has been renewed and to deposit the license fee for the months of April and May, 2014. The petitioner filed reply dated 30.6.2014 (Annexure P-12) to the said memo pleading that he has neither operated these vends till date nor had applied for the issue of permits for lifting of quota. This Court vide order dated 11.7.2014 (Annexure P-13) allowed CWP No. 5856 of 2014. Since the liquor vend situated at Alipur on a National Highway had to be shifted, the petitioner vide letter dated 3.4.2014 sought permission for transfer of left over quota of the vends located on Highway for the year 2013-14 to the other two liquor vends situated in the rural area at villages Khurdban and Bakana. Since the petitioner had never operated his vends after 31.3.2014, he applied for the refund of the security vide application dated 2.8.2014 (Annexure P-14). Instead of refunding the security amount, notices dated 8.8.2014, 12.8.2014 and 29.8.2014 were issued for installment of the license fee. Thereafter, the petitioner filed CWP No. 16032 of 2014 for refund of the security amount of ₹ 30,74,900/- along with interest as he did not want to continue with the liquor vend in Group No.16. This Court vide order dated 13.8.2014 (Annexure P-15) disposed of the said writ petition with a direction to the petitioner to make a representation and directing the authority concerned to pass a speaking order thereon after affording an opportunity of hearing within one month from the date of filing of the representation in accordance with law. In pursuance thereto, the petitioner filed a representation dated 5.9.2014 (Annexure P-16). The Excise Inspector visited the site on 2.9.2014 in the absence of the petitioner and vide his report of even date, Annexure P-17, reported that the vends are lying closed and the licences had not been renewed and the goods had not been purchased by getting the permit issued and the vends are lying sealed. The respondents issued a notice dated 4.9.2014 (Annexure P-18) to the petitioner for cancellation of the license as he had failed to deposit the licence fee for the months of April to August, 2014 along with interest.

The Excise and Taxation Commissioner, Haryana vide order dated 26.9.2014 (Annexure P-19) held the petitioner entitled to refund of security qua Alipur vend alone and rejected the request for other two vends. Respondent No.4- the Collector-cum-Joint Excise and Taxation Commissioner (HQ), Haryana, Panchkula vide order dated 1.10.2014 (Annexure P-20) cancelled the L-14A licence of the petitioner qua remaining two vends in Group No.16 on account of default in payment of license fee of ₹ 40,40,735/- for the months of April to August, 2014. The petitioner vide letter dated 11.11.2014 (Annexure P-21) sought information under the Right to Information Act, 2005. The petitioner challenged the order dated 1.10.2014 (Annexure P-20) by way of an appeal. In the meantime, the respondents re-auctioned and allotted the liquor vends in Group No.16 to respondent No.5-Narinder Kumar and the petitioner handed over the left over stock to him and received the amount as per writing dated 3.12.2014 (Annexure P-22). The State Public Information Officer-cum-Deputy Excise and Taxation Commissioner (Excise), Jagadhri replied the said application vide reply dated 22.1.2015 (Annexure P-25) that an application dated 24.3.2014 had been submitted for renewal of the license and the licenses were prepared which were not collected and that no notice had been issued for the months of April and May, 2014. It was further stated therein that due to pendency of the writ petition, the demand would be raised thereafter. Respondent No.3 vide notice dated 20.1.2015 (Annexure P-24) demanded the license fee for the renewal of the liquor vends situated at Bakana and Khurdban. The petitioner filed appeal before respondent No.2 who vide order dated 11.6.2015 (Annexure P-25) dismissed the appeal along with other appeals. Hence, the present writ petitions.

4. We have heard learned counsel for the parties.

5. The primary issue involved in these appeals is whether the petitioner(s) had operated the liquor vend after 1.4.2015 or not?

6. The issue being a question of fact depends upon the evidence in each case. The Excise and Taxation Commissioner, Haryana (exercising the powers of Financial Commissioner) had disposed of all the appeals of the petitioners by one order without referring to separate evidence in each case which was produced before the authority concerned. The relevant part of the order impugned herein (Annexure P-25) reads thus:-

> "Both the parties have been heard at length and the record of the case has also been examined with their assistance. As the application for renewal of the license of this unaffected vend (Azadnagar) for the year 2014-15 has been made without any condition and therefore there was express affirmative consent of the appellant. Further, as the order dated 24.07.2014 was not challenged by the appellant, it shows admittance of the events mentioned therein. The impugned order has been passed after proper notice and after considering all aspects of the case. In my considered view, the impugned order does not suffer from any infirmity and therefore, does not call for any interference. The other appeals are also disposed of in the same terms."

7. A perusal of the above order shows that it is neither

speaking nor has been passed after appreciating the evidence in each case. The revisional authority has only noticed that as the application for renewal of the license of the vend in question for the year 2014-15 was made without any condition and therefore there was express affirmative consent of the petitioner. Further, it has been recorded that since the order dated 24.07.2014 was not challenged by the petitioner(s) which showed the admittance of the events mentioned therein. The revisional authority has failed to consider each case individually and record findings independently on the basis of factual matrix involved therein.

8. In view of the above, the impugned order dated 11.6.2015 (Annexure P-25) is set aside and the matter is remitted to the Excise and Taxation Commissioner, Haryana (exercising the powers of Financial Commissioner) to re-decide the same afresh by passing a speaking order and after affording an opportunity of hearing to the parties in accordance with law. Needless to say that respondent No.1 shall pass the order after appreciating the evidence and material produced in each case individually and nothing observed in the present order shall be taken to be expression of opinion on the merits of the controversy.

9. Writ petitions stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

December 17, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**