IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 22737 of 2014
Date of Decision: 14.08.2015

Mr. Vijay Garg ..Petitioner

versus

State of Haryana and another ..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 judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. A.K.Jain, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana, for respondent No.1.
Mr. Rajiv Virmani, Sr. Advocate with
Ms. Alka Sarin and Mr. Ankit Virmani, Advocates,
for respondent No.2.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks a writ of certiorari to quash and set-aside Ex-Distillery Price list of IMFL Brands issued by the State of Haryana in respect of three brands of the 2nd respondent M/s Pernod Ricard India (P) Ltd. Gurgaon. The petitioner has also sought an order directing respondent Nos.1 and 2 to stop the sale of what he alleges to be deceptive brands by the 2nd respondent a multi national company. The petitioner alleges this to be in violation of the policy framed under the provisions of the Punjab Excise Act, 1914. The petitioner further seeks a refund of the amounts charged allegedly in excess from him on the ground that the three brands do not find mention in the excise policy. Lastly, the petitioner seeks a writ directing the respondents to stop an on-going scam involving more than 100 crores annually.

2. Although it is highly doubtful that this writ is maintainable we will presume it is. The petitioner's rights are not even remotely affected even assuming his allegations are well founded. The petitioner's grievance briefly is that the 2nd respondent sold three of its brands at unfairly high prices and that the EDP in respect thereof had not even been fixed. Firstly, the EDP is fixed. Secondly, the petitioner is not even remotely affected as he is not bound to buy the 2nd respondent's products. Thirdly, though not bound to do so, the petitioner has been buying these products for two years. The real grievance, therefore, is obviously something else which we will refer to later.

3. Respondent No.2 produces various brands of Indian made foreign liquor, three of which are sold under the brand name 'Royal Stag Deluxe Whisky', 'Imperial Blue Superior Grain Whisky' and 'Blenders Pride Rare Premium Whisky', at the Ex Distillery Price (EDP) of Rs.1288/-, Rs.967/- and Rs.2706/- respectively. We will refer to them as the first three brands/products. There is no grievance regarding the pricing of these three brands.

The grievance is in respect of three other products sold under the brand names 'Blenders Pride ultra premium whisky', 'Imperial Blue Authentic Grain Whisky' and 'Royal Stag Classic Whisky', at the EDP of Rs.3000/-, Rs.1080/- and Rs.1495/-, respectively. We will refer to them as the other three brands/products.

4. As is evident from the prayers, the petitioner's grievance was that the other three brands do not find mention in the excise policy. It was, however, also contended before us that there is no difference in the quality or the composition of the corresponding products of the first three and the other three brands/products, namely, between the brands Royal Stag Deluxe

Whisky and Royal Stag Classic Whisky; between the brands Imperial Blue Superior Grain Whisky and Imperial Blue Authentic Grain Whisky and between the brands Blenders Pride Rare Premium Whisky and Blenders Pride Ultra Premium Whisky. The petitioner contended that it is mere difference in words in the brand names and nothing more.

5. The petition is an after thought. The petitioner's grievance is really something else. It is difficult to believe that the grievance that was expressed before us is the real grievance. The first thing that would strike anyone is that the petitioner had for two years been buying the petitioner's products without any grievance or dispute as to the quality or price thereof. The petitioner has been dealing in similar products not merely of the 2nd respondent but of various other manufacturers and producers for over thirty years. The petitioner was not compelled to do so. He chose to do so voluntarily. It is difficult to believe that if there was no difference in the quality between the corresponding products of the first three brands and the other three brands, the petitioner would have voluntarily paid a much higher price for the other three brands/products when he could have got the first three brands/products at a much lower price.

6. The first respondent announces an excise policy for each year. The petitioner has referred to the excise policy for the year 2011-12. Clause 3.6 specifies the brand label fee. Any distillery/brewery/winery or bottling plant which wants its products to be sold in the State of Haryana has to get its brand labels approved from the Excise Commissioner and the distilleries and bottling plants situated in the State of Haryana are also required to get their labels approved on the same terms and conditions. The fee structure for each product including Whisky/Scotch is prescribed. While submitting an application for registration of labels, the applicant must submit the ex

factory rates of the said product alongwith its prevalent ex-factory rates in neighboring States and only thereafter can the brand be registered. The State Government is entitled to refuse registration and even to deregister the brand in the State of Haryana if there is an unreasonable difference in rates prevalent in the neighboring States and the applicant's brand. The owners of the registered brands are liable to seek the approval of the department in case of any change in the ex-factory price.

Clause 4 relates to 'Fixed Fee Licences'. This petition concerns L-1B licences. Clauses 4 and 4.1 read as under:-

> "*4.1 L-1B Licences:-*
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> *"A distiller of repute willing to market its brands in the State of Haryana shall have to obtain a license in the form of L-1B except as provided under the provision of L-1AB license. The brands of distillers having dubious reputation and known/suspected for indulging in malpractices shall not be permitted. For this purpose, a Committee of Officers shall be constituted to examine the request of new entrants wanting to market their products in Haryana. This Committee shall look into the facilities at the distillery and reputation and quality of their produce and the opinion of the licensees and public about the produce of these distilleries. Fresh L-1B licenses will be granted on the recommendations of this Committee.*
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> *L-1B shall make its supplies to L-1s of the State. L-1B licensee shall ensure to meet the requirement of liquor both in terms of brand and quantity through L-1 licenseees. Failure on this account shall make him liable for cancellation of his L-1B license.*
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> *The license fee of L-1B is fixed at Rs. 6 lacs per annum. Further excise duty levied on IMFS shall also be paid by L-1B licensees while obtaining permits.*

Excise & Taxation Commissioner may determine the reasonability of rates to be charged by L-1B licensees by way of fixing sale price of their products or profit margin/value addition keeping in view, all relevant factors including the rates for such products in other States. Each brand to be marketed in the State of Haryana is required to be registered under the provisions of the policy."

7. As we mentioned earlier, there is no dispute or grievance about the fixation of the EDP of the first three brands. It is alleged that the EDP in respect of the other three brands had not been fixed and that despite the same the 2nd respondent was marketing them at a much higher price of Rs.3000/-, Rs.1080/- and Rs.1495/-, respectively.

8. Firstly it is difficult to entertain the petition on this ground at the petitioner's instance. The petitioner himself bought these products voluntarily for about two years. On his admission he was then a party to the illegality. Assuming it was an illegality, which we will presently show it was not, the petitioner must have known about the same. He has been in this business for over thirty years.

9. Secondly, this contention appears to be factually incorrect. There is no replication to the written statements/affidavits in reply filed by the respondents. The petitioner has himself annexed Annexure P-2 'EDP excluding excise levies of IMFS brands of L-1B licensees in the State of Haryana for the year 2011-12'. Ms. Talwar, learned Deputy Advocate General, appearing on behalf of respondent No.1 confirmed that this is the EDP list in respect of the products referred to therein. She confirmed that the EDP including of the 2nd respondent's other three brands has been fixed as reflected in Annexure P-2. The written statement states that as per clause 2.14, only the minimum price is fixed and not the maximum price. It is

however not even the petitioner's case that the 2nd respondent's prices are higher than even this listed price. If indeed the EDP price had not been fixed by the first respondent it is open to the first respondent at any time to prevent the 2nd respondent from selling its three other products in the State of Haryana at the said prices or even otherwise.

10. It was then contended that the quality of the corresponding products from the first three brands and the other three brands are infact the same and that the 2nd respondent was illegally and dishonestly charging a higher rate for the other three products despite the same.

11. The question as to the quality of the products cannot be determined by the Court at least in the first instance and that too in a writ petition under Article 226 of the Constitution of India. That is for the authorities concerned to decide. There is nothing to indicate that the authorities have fixed the EDP in respect of any other products otherwise than in accordance with law. Here again it is always open to the authorities to revisit the issue if they think it necessary in respect of any products whether of the 2nd respondent's or of any other party.

12. Secondly, prima-facie at least it is difficult to accept that even the petitioner actually believes that the quality of the corresponding brands of the first three products and the other three products is the same and that despite the same the 2nd respondent is charging higher rates for the other three products. As we mentioned earlier, the petitioner has been dealing in similar products of various other parties for about thirty years. He has been purchasing/dealing in the 2nd respondent's products in respect of the other three brands for about four years.

13. It was submitted on behalf of the petitioner that he has been complaining about the same for the last three years. We repeatedly asked the

learned counsel appearing on behalf of the petitioner as to why then the petitioner bought the other three products of the 2nd respondent at a much higher price although he believed that the quality thereof was the same as the corresponding brands of the first three brands which were much cheaper. The petitioner was not compelled to deal in any particular manufacturer or producer's products. He was not bound to deal in any of the products of the 2nd respondent. He was entitled but not bound to buy any of the products of the 2nd respondent. If he thought that the quality of the corresponding products of the first three brands and the other three brands was the same, he could have chosen to buy the products of the first three brands alone. Understandably there was no answer.

14. As the petitioner had been dealing with the 2nd respondent's products all these years voluntarily and without being compelled to do so in any manner whatsoever by law or by contract, it appears that the real reason for this petition was something else. If we are to look for the real reason it is possibly the one suggested by Mr. Virmani, the learned Senior Counsel appearing on behalf of the 2nd respondent. The 2nd respondent has annexed the correspondence which the petitioner did not annex to the petition. It is a series of *e-mails* addressed between the parties in the course of which the petitioner had complained strongly about the behaviour and attitude of the officers of the 2nd respondent.

For instance, by an e-mail dated 16.01.2014, he complained about the indifferent, casual and extremely derogatory attitude of the 2nd respondent's officers. He stated that he had been in the liquor business for the last 30 years and that this was his first official complaint regarding the misconduct of the officials of any company. He further stated that his relations with the 2nd respondent had been friendly till the end of the year

2011-12 but that the new staff which had come since April, 2012 was extremely proud, indifferent and partial; that they rarely answered his phone; that the promises made to him were yet to be fulfilled and that whatever had been done till then was after causing him a lot of embarrassment. He requested the 2nd respondent to do something about this.

The 2nd respondent by an e-mail dated 21.01.2014 stated that their officers would visit Ambala in two days and would like to meet the petitioner and sort everything out. There apparently was a meeting between the parties. The petitioner by an e-mail dated 08.03.2014 expressed satisfaction thereat but lamented that the attitude of the staff had not changed even after the meeting. The petitioner alleged that though the 2nd respondent agreed to compensate him fully for the renovation and decoration of the shops the costs whereof was about Rs.15 lacs only Rs.5 lacs had been reimbursed. The petitioner called upon the 2nd respondent to clear the balance dues. There were several further e-mails regarding similar grievances.

The correspondence took a slightly acrimonious turn after the 2nd respondent's e-mail dated 21.04.2014. It was denied that any payments had been made to the petitioner. The petitioner stated that he would continue to write and act till he found that the 2nd respondent's policies favoured his competitors. Verbal commitments allegedly made by the 2nd respondent were also referred to. The petitioner raised a grievance that he had not received any promotional scheme from the company.

15. By an e-mail dated 21.09.2014 the petitioner alleged that the 2nd respondent had assured him reimbursement of the difference in rates between the corresponding products of the first three brands and the other three brands as the petitioner had demanded the first three brands and not the

other three brands. The petitioner alleged that there was no difference in packaging between the products demanded and the products supplied except that the supplied products were more expensive. It was now alleged that the changes were made only to increase the profits of the 2nd respondent at the cost of state exchequer and L-2 licensee with a malafide intent.

16. There appear to have been considerable differences between the petitioner on the one hand and the 2nd respondent and its officers on the other. We do not suggest that the petitioner's indignation regarding the attitude and the conduct of the 2nd respondent's executive officers was not justified. It is however neither necessary nor possible to assess the same in this writ petition. Moreover, the commercial relationship between the parties is not relevant to the issues raised in this petition. We wish to clarify that we do not express any final views on the alleged oral agreements between the parties regarding the reimbursement of the difference in cost between the products demanded by the petitioner and the products supplied to him by the 2nd respondent. It is not possible in this writ petition to adjudicate such differences. The petitioner must adopt appropriate proceedings in respect thereof. Our observations on merits are only prima-facie.

17. In the circumstances, the writ petition is disposed of subject to the above observations.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

14.08.2015
'ravinder'