

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26572 of 2015

Date of Decision: 26.4.2016

Sanjeev Kumar

....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 MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. A.K. Jain, Advocate for the petitioner(s).

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of bunch of three petitions bearing CWP Nos. 26572 of 2015, 480 and 2902 of 2016 as according to the learned counsel for the parties, the issue involved therein is similar. For brevity, the facts are being taken from CWP No. 26572 of 2015.

2. CWP No. 26572 of 2015 has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the orders dated 9.11.2015 (Annexure P-12) passed by respondent No.2 on the representation dated 5.10.2015 (Annexure P-11) filed in pursuance to the order dated 14.9.2015

(Annexure P-10) passed by this Court in CWP No. 24366 of 2014, denying the equal treatment to him as other allottees had been allotted the liquor vends by reduction of 60% of price fixed for the year 2013-14. Further, a writ of mandamus has been sought directing the respondents to treat the petitioner at par with other allottees and refund the license fee charged in excess.

3. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. 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 in pursuance to the letter dated 1.12.2011 issued by Ministry of Road Transport and Highways. Despite the issuance of notice for stay of installation of liquor vends on highways by this Court vide order dated 15.2.2013 (Annexure P-1), the respondent-State allotted the liquor vends on Highways for two years by concealing the factum of pendency of the writ petition from the vend owners. Thereafter, the State of Haryana framed the excise policy for two years, i.e. 2013-15 and collected 21% security from the liquor vend owners. Vide order dated 30.7.2013 (Annexure P-2), removal of the liquor shops was directed on the highways in compliance with the letter dated 4.8.2012 issued by the National Highway Authority of India. This Court vide order dated 17.12.2013 declined the request of respondent No.3 for continuation of the policy upto 2015. Against the order dated 17.12.2013, the respondents filed SLP No. 2658 of 2014 before the Supreme Court which was dismissed vide order dated 10.3.2014. Vide order dated 29.1.2014, the States of Punjab and Haryana were directed to frame new excise policy for the year 2014-15 and in pursuance thereto, the State of Haryana instead of framing the new policy for the

year 2013-14, amended the policy (Annexure P-3) for the year 2014-15 by inserting Clause 2B with regard to the establishment of the liquor vends on the Highways and ordered for shifting of such liquor vends. The said amended policy for the year 2014-15 after approval of the Cabinet was placed on record in CWP No. 25777 of 2013. This Court with modification accepted the said policy vide order dated 18.3.2014 (Annexure P-4) by observing that the respondent-State had framed a new policy. In pursuance to the amended excise policy, respondent No.2 issued a notice dated 20.3.2014 (Annexure P-5) to all the liquor vend owners on the Highways terming them to be affected vends for submission of application for renewal of their licenses for the year 2014-15 with the condition that the license fee would be charged as was charged for the year 2013-14 without increase of 5%. The petitioner, who was having four liquor vends on the National Highways No.1 and 72 as contained in Group Nos. 13 and 16, applied for renewal of the license for the year 2014-15 which were renewed for the year 2014-15 vide Annexure P-6. The liquor vend owners having their liquor vends on the Highways did not opt for the renewal of licenses and as such about 21 liquor vends located in District Ambala were declared affected and were to be re-allotted at the reserve price equal to the proportionate license fee of that vend for the year 2013-14 as per Clause 2B(i) of the Amended Policy. Respondent No.3 issued a public notice dated 21.5.2014 (Annexure P-7) inviting tenders for allotment of the said affected vends on instructions of respondent No.2. Respondent No.3 issued notices dated 25.6.2014, 26.6.2014, 2.7.2014 and 28.8.2014 (Annexure P-8 Colly) for allotment of remaining vends by reducing the reserve price of the affected liquor vends from 20%% to 60% of the

license fee for the year 2013-14 under Clause 2.30 of the Amended Excise Policy for the year 2014-15. Accordingly, the respondents allotted the affected liquor vends on Highways at reduced license fee. As per chart, Annexure P-9, respondent No.3 had made allotment of 21 liquor vends in violation of the amended excise policy. The petitioner filed CWP No. 24366 of 2014 seeking a direction to the respondent to treat him at par with the other allottees. This Court vide order dated 14.9.2015 (Annexure P-10) directed the petitioner to file a detailed and comprehensive representation before respondent No.2 who shall decide the same in accordance with law. In pursuance thereto, the petitioner filed a representation dated 5.10.2015 (Annexure P-11) before respondent No.2. Respondent No.2 vide order dated 9.11.2015 (Annexure P-12) rejected the representation of the petitioner. Hence, the present writ petitions. The averments made in the writ petitions were controverted by the respondents by filing written statements. Besides supporting the orders passed by respondents No.2 and 3 in all the three petitions, a prayer for dismissal of the writ petitions was made.

4. We have heard learned counsel for the parties.

5. The Commissioner, Excise and Taxation, Panchkula, Haryana-respondent No.2 vide order dated 9.11.2015 (Annexure P-12) impugned in CWP Nos. 26572 of 2015 and 2902 of 2016 had rejected the representations of the petitioners therein dated 5/6.10.2015 (Annexure P-11) by recording as under:-

“After examining the facts of these cases in detail and going through the averments made in the representation(s) and after considering the arguments of both the parties, I am of the considered view that

these representations deserve dismissal. Therefore, all the representations filed by the applicant(s) are rejected being devoid of any merits.”

Similarly, the Deputy Excise and Taxation Commissioner, Ambala-respondent No.3 vide order dated 17.11.2015 (Annexure P-16) impugned in CWP No. 480 of 2016 rejected the representation of the petitioner therein dated 5.10.2015 (Annexure P-15).

6. Each case was required to be dealt with on the basis of factual matrix involved therein. A perusal of the above order shows that it is neither speaking nor has been passed after appreciating the material/evidence on record of that case. Further, it was noticed that after examining the facts of the cases in detail and going through the averments made in the representation(s) and after considering the arguments of both the parties, these representations deserve dismissal. Once respondents No.2 and 3 had held that the representations deserve dismissal, the arguments of the parties were required to be specifically dealt with by respondent No.2 and 3 by passing a speaking order after affording an opportunity of hearing to the petitioner(s).

7. In view of the above, the writ petitions are allowed and the orders dated 9.11.2015 (Annexure P-12) impugned in CWP Nos. 26572 of 2015 and 2902 of 2016 passed by the Commissioner, Excise and Taxation, Panchkula, Haryana-respondent No.2 and dated 17.11.2015 (Annexure P-16) impugned in CWP No. 480 of 2016 passed by the Deputy Excise and Taxation Commissioner, Ambala-respondent No.3 are set aside. The matters are remitted to the Excise and Taxation Commissioner, Panchkula, Haryana to re-decide the same afresh by passing a speaking order after affording an opportunity of hearing to the

parties in accordance with law. Needless to say that anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy. .

8. Writ petitions stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

April 26, 2016
gbs

(RAJ RAHUL GARG)
JUDGE