IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14489 of 2017 (O&M)
Date of decision: 13.7.2017

M/s Garg Wine

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sharad Aggarwal, Advocate for the petitioner.

...

Rajesh Bindal J.

The petitioner, who was successful bidder for four zones for sale of liquor, has filed the present petition impugning the order dated 8.6.2017 (Annexure P-19), vide which the representation filed by him to permit him to open liquor vends at a distance of 220 meters from National/ State Highways in lieu of 500 meters, was rejected.

Learned counsel for the petitioner submitted that Excise Policy in the State of Haryana for the year 2017-18 was issued by the State. E-tenders for allotment of licences for various zones, as prescribed in the policy, were invited. The petitioner was successful applicant for four zones bearing Zone Code Nos. ZAMB01, ZAMB06, ZAMB09 and ZAMB10 in District Ambala. In the policy issued by the State, certain restrictions were prescribed regarding location of liquor vends. Para No. 1.2.2 of the policy provided that no licence for sale of liquor shall be granted to a shop visible from a National or State Highway; directly accessible from a National or State Highway or situated within a distance of 500 meters of the outer edge of the National or State Highway or of a service lane along the highway. It was specifically mentioned in the policy that the aforesaid provision has been made in compliance of the directions issued by Hon'ble the Supreme Court in Civil Appeal Nos. 12164-12166 of 2016—The State of Tamil Nadu Rep. By its Secretary Home, Prohibition & Excise Dept. & Ors. v. K. Balu and another, (hereinafter described as 'K. Balu's 1st case') decided on 15.12.2016. In para No. 24 (vi) of the aforesaid judgment, a specific direction was given that all States and Union Territories are to strictly enforce the directions given by Hon'ble the Supreme Court in the aforesaid judgment. The matter again came up for consideration before Hon'ble the Supreme Court in the applications filed by various parties bearing IA Nos. 4-6, 7-9, 10-12, 13-15, 16-18, 19-21, 22-24, 25-27, 28-30, 31-33, 34-36, 37-39 and 40-42 of 2017--The State of Tamil Nadu Rep. By its Secretary Home, Prohibition & Excise Dept. & Ors. v. K. Balu and another, decided on 31.3.2017 (hereinafter described as 'K. Balu's 2nd case'), wherein restriction of opening of a liquor vend within 500 meters of the National/State Highway was reduced to 220 meters for the areas comprised in local bodies with population upto 20,000 people. Hon'ble the Supreme Court in the aforesaid order specifically directed that a para shall be inserted after direction (v) in para 24. The effect of the aforesaid order was that distance for opening of liquor vend for the areas having population upto 20,000 stands reduced to 220 meters from the date of judgment. It has been specifically mentioned in the policy that the restrictions of location on scheduled roads have been incorporated in the policy to give effect to the directions issued by Hon'ble the Supreme Court in K. Balu's 1st case (supra). Once the distance had been reduced by Hon'ble the Supreme Court, the same would automatically apply in the case of the petitioner and he should be permitted to open liquor vend at a distance of 220 meters at Kala Amb, where the population is less than 20,000. In fact, the petitioner is suffering huge loss there for the reason that Kala Amb is located at the border of Haryana with Himachal Pradesh and in Himachal Pradesh, liquor vends on State Highways are permitted at a distance of 220 meters.

After hearing learned counsel for the petitioner, we do not find any merit in the submissions made. The issue regarding location of liquor vends came up for consideration before Hon'ble the Supreme Court in the backdrop of alarming statistics of road accidents on the Highways. It claimed human lives and caused disabilities and injuries. Examining the issue in detail and invoking its jurisdiction under Article 142 of the Constitution of India, Hon'ble the Supreme Court in K. Balu's 1st case (supra) issued following directions:

> 24. We accordingly hereby direct and order as follows:
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> (i) All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;
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> (ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;
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> (iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term

of the licence expires but no later than 1 April, 2017;

(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 meters of the outer edge of the national or state highway or of a service lane along the highway;

(vi) All States and Union territories are mandated to strictly enforce the above directions. The Chief Secretaries and Director General of Police shall within one month chalk out a plan for enforcement in consultation with the state revenue and home departments. Responsibility shall be assigned *inter alia* to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article142 of the Constitution."

As the aforesaid directions were to be applied for the next licensing period effective from 1.4.2017, the State, while issuing Excise Policy for the year 2017-18, added the restrictions directed by Hon'ble the Supreme Court in para No. 1.2.2 thereof, which is extracted below:

1.2.2 RESTRICTION OF LOCATION ON SCHEDULED ROADS ETC.

No license for sale of liquor shall be granted to a shop that is:

(i) Visible from a National or State Highway;

(ii) Directly accessible from a National or State highway and

(iii) Situated within a distance of 500 meters of the outer edge of the National or State Highway or of a service lane along the highway.

The above provisions are in compliance of and to give effect to the directions of the Supreme Court in Civil Appeal No. 12168 of 2016."

The allotment of vends was through the process of e-tendering. The maximum number of retail outlets of country liquor and IMFL was fixed at 3,500 for the year 2017-18. The vends were to be allotted zone-wise. Number of vends permitted to be opened in a particular zone was defined. The petitioner was successful allottee for four zones bearing Zone Code Nos. ZAMB01, ZAMB06, ZAMB09 and ZAMB10. The list of successful applicants was uploaded on the website on 21.2.2017 (Annexure P-4). The applicants, who were successful allottees had participated in the bidding process knowing fully well the conditions laid down in the policy that they will not be allowed to open a vend within 500 meters of the National/ State Highway. Ever since the licence was granted to the petitioner for four zones/groups, the petitioner had been operating by opening its liquor vends at the locations strictly as prescribed in the excise policy. Certain applications were filed before Hon'ble the Supreme Court in K. Balu's 2nd case (supra) primarily either for extension of time or for modification or for re-calling the judgment. The same were considered by Hon'ble the Supreme Court and vide order dated 31.3.2017, the applications were disposed of. Besides other directions/clarifications, one of the clarification given was that in the areas comprised in local bodies with population upto 20,000, the distance for location of liquor vend on National/State Highway shall stand reduced to 220 meters from 500 meters. Following para was directed to be inserted after direction (v) in para 24 of the judgment in K. Balu's 1st case (supra):

> "In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 metres shall stand reduced to 220 metres."

After the aforesaid order was passed by Hon'ble the Supreme Court, the petitioner filed application dated 20.4.2017 before the competent authority to permit him to open liquor vend at a distance of 220 meters from National/State Highway in the area of Kala Amb. While the application was still pending, the petitioner preferred CWP No. 12393 of 2017—M/s Garg Wine v. State of Haryana and others apprehending that his application may be rejected referring to the order dated 15.12.2016 in K. Balu's 1st case (supra) without referring to the subsequent order passed by Hon'ble the Supreme Court in K. Balu's 2nd case (supra). The writ petition was disposed of on 31.5.2017 directing the authorities to decide the application by 5.6.2017. Thereafter, Deputy Excise and Taxation Commissioner (Excise), Ambala rejected the representation filed by the petitioner vide order dated 8.6.23017. This order has been impugned in the present petition.

While rejecting the representation made by the petitioner, the Deputy Excise and Taxation Commissioner (Excise) recorded the following reasons:

> "1. The petitioner had participated in the auction after

understanding all the terms and conditions of the Excise policy for the current year 2017-18 wherein in para 1.2.2 it ahs been specifically mentioned that no license for sale of liquor shall be granted to a shop that is situated within a distance of 500 meters of the outer edge of the National or State Highway or of a service lane along with the Highway. The petitioner is also well aware that the reserve price of all the vends in the Ambala district was fixed at a lower side keeping in view the restriction of 500 meters in the light of the directions of the Hon'ble Supreme Court given in its judgment dated 15.12.2016 in Civil Appeal Nos. 12164-12166 of 2016 (supra). Total reserve price of all the liquor vends in the district in the year 2016-17 was fixed at Rs. 102.42 Crore which was reduced to Rs. 98.34 Crore in the current year (2017-18). Similarly all the liquor vends of the district were auctioned for Rs. 111.58 Crore in the year 2016-17 but the said amount is get reduced to Rs. 107.55 Crore in the current year only because of the effect of the implementation of the judgment of the Hon'ble Court referred as above. The petitioner was declared a successful bidder in the said auction through e-tendering in accordance with the terms and condition of the Excise Policy of the State. No relaxation, as requested by the petitioner in his representations, in respect of establishment of vends on National High Way/State High way is provided in the current Excise Policy of the State.

2. After the above referred modification order dated 31.3.2017 was passed by the Hon'ble Supreme Court of India, the whole matter was discussed in the meeting chaired by the Hon'ble Chief Minister of Haryana. After long deliberations it was thought appropriate not to modify the current Excise Policy 2017-18 of the State in respect of establishment of vends and no relaxation was provided to the licensees of the State in respect of establishment of Liquor vends at a distance of 220 meters instead of 500 meters in those areas where local bodies comprise of population of 20,000 people or less. In the given circumstances no relaxation as requested by the petitioner can be provided to him against the provisions of the current Excise Policy and against the decision of the State Govt. in the matter.

3. The relaxation in establishment of vends provided by the States of Punjab, Himachal Pradesh and Uttar Pradesh is in accordance with their Excise Policies keeping in to consideration the terms and conditions provided therein. The petitioner cannot claim any relaxation on the basis of the Excise Policies followed by the other States because the terms and conditions of the Excise Policies of the different states are different. In the present case the petitioner was well aware, before participating in auction of the liquor vends, of the terms

and conditions of establishment of liquor vends enshrined in para 1.2.2 of the current Excise Policy of the State where it has been specifically mentioned that no license for sale of liquor shall be granted to a shop that is situated within a distance of 500 meters of the outer edge of the national or State Highway or of a service lane along with the Highway. The reserve price of the liquor vends in the district was also reduced accordingly keeping in to consideration the provisions of Para 1.2.2 of the Excise Policy. No relaxation, as requested by the petitioner in respect of opening of vends at a distance of 220 meters from National High Way/ State High way in lieu of 500 meters and re-auction and reduction of the Quota and license fees of such vends can be allowed to him as the same is not allowable as per provisions of the current Excise Policy of the State. Also in the light of the decision of the State Govt. to not to modify the Excise Policy of the State for the year 2017-18 in respect of establishment of vends on National High Way/State High Way, the request of the petitioner to provide relaxation in establishment of the vend cannot be accepted.

4. Besides it, it is also relevant to point out that neither the State of Haryana nor the petitioner was a party in the Review petitions filed in this matter in the Hon'ble Supreme Court."

In our opinion, there is no error in the order passed. The contention sought to be raised by he petitioner that restrictions regarding location having been incorporated in the policy to comply with the directions given by Hon'ble the Supreme Court in K. Balu's 1st case (supra) and those restrictions having been modified later on, the modified restrictions would automatically apply and the petitioner would be entitled to the benefit thereof regarding location of his vends at a distance of 220 meters, as against 500 meters earlier provided in the policy, is merely to be noticed and rejected. The judgment in K. Balu's 1st case (supra) was delivered by Hon'ble the Supreme Court on 15.12.2016. The Excise Policy for the year 2017-18 was notified by the State thereafter specifically incorporating all the restrictions, as pointed out in the judgment of Hon'ble the Supreme Court. The petitioner very well knew about those restrictions. He participated in the tendering process and was a successful bidder. The benefit of an order subsequently passed by Hon'ble the Supreme Court reducing the distance for certain specified areas cannot be claimed by the petitioner, as that would amount to change in the terms of policy, which will have large ramifications as the petitioner is not the only licensee, who has been permitted to open vends in the towns with population of 20,000. Even the State was also conscious of the likely effect on the business of the licensee on account of location of vends beyond 500 meters on National/State Highways and as a consequence, reserve price for the liquor vends in District Ambala was reduced from ₹ 102.42 crores fixed for the year 2016-17 to ₹ 98.34 crores for the year 2017-18. Auction price of the aforesaid vends for the year 2016-17 was ₹ 111.58 crores, which was reduced to ₹ 107.55 crores of the current year. Even invitation of fresh offers for the liquor vends located in the town with population upto 20,000 may not be possible at this stage for the reason that vends have not been allotted individually, rather, these are in groups.

For the reasons mentioned above, we do not find any merit in the present petition. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

13.7.2017
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No