IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 23666 of 2015
Date of Decision: 31.05.2017

Anit Kumar

…..Petitioner

versus

State of Haryana and others

…..Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL, JUDGE

Present : Mr. Chetan Mittal, Senior Advocate with
Mr. Vivek Singla, Advocate, for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana, for the respondent.

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S.J.VAZIFDAR, CHIEF JUSTICE

The petitioner has sought a writ of certiorari to quash two recovery notices both dated 01.01.2015 in the sum of ₹ 1,08,68,602/- and ₹ 44,10,054/- respectively issued by respondent No.3-Collector-cum-Excise and Taxation Commissioner, Haryana and a notice dated 24.12.2014 issued by respondent No.4-Deputy Excise and Taxation Commissioner, Sonepat, requiring the petitioner to deposit ₹ 1,52,78,656/-. The petitioner has also sought a writ of certiorari to quash an order dated 01.10.2015 dismissing his representation against the demands and a recovery notice dated 05.10.2015 calling upon him to pay a sum of ₹ 1,90,98,320/-.

2. The petitioner was allotted L-2 licences for Groups-14 and 16 each of which comprised of three vends. The licences were in respect of

Indian Made Foreign Liquor (IMFL) and were issued under the excise policy for the year 2013-14.

3. Civil Writ Petition No.25777 of 2012 was filed as a Public Interest Litigation (PIL) by Arrive Safe Society v. National Highway Authority of India and others. An order dated 18.03.2014 was passed in that PIL which adversely affected vends on National and State Highways.

Under the excise policy a licensee was bound at the option of the State to renew the license for the following excise year failing which the State was entitled to allot the vend to any other party at the risk and cost of the licensee.

4. As the licensees were prejudiced for no fault of theirs, the excise policy for the next year i.e. 2014-15 was amended by introducing clause 2-B which reads as under:-

> "2B Since the existing liquor vends located along the National Highways/State Highways have to be shifted, the licensees may be allowed to change their location in their allotted area (for urban vends) and within the command area of the concerned vend or within the command area of that group of vends (for rural vends). In case the licensee does not shift to new location and prefers to close down the vend, the Department will have the right to allot such vend for the year 2014-15 within the command area in case of rural vend and allotted area in case of urban vend of the concerned vend and conforming to the locational restriction as per para 1.2.5 of the excise policy. However, this fresh allotment will not be at the risk and cost of the concerned licensee. The reserve price of affected vend would be equal to the proportionate license fee of that vend for the year 2013-14……… (emphasis supplied).

5. Clause 2-B gave the licensees an option to shift to a new location at a reduced price of 5% or to surrender the vends without any liability. On the basis of this amendment the Deputy Excise and Taxation Commissioner (DETC)-respondent No.4 addressed letters dated 21.03.2014 in respect of each of the groups. The DETC informed the petitioner that the amendments to the excise policy for the year 2013-14 had been made as per the directions of this Court in Civil Writ Petition No.25777 of 2012 which would come into force w.e.f. 01.04.2014. By virtue of the amendments no liquor vend was to be located alongwith the National/State Highways including the service lane along such highways and that the vends shall not be accessible or visible from National Highways/State Highways. Further, by virtue of the amendment, the existing liquor vends located along the National/State Highways had to be shifted and licensees had been allowed to change their location in their allotted areas (for urban vends) and within the command area of that group of vends (for rural vends) and license fee for such vends would be charged at the same rate as was done for the year 2013-14. The letter directed the petitioner to get the licensees renewed upto 24.03.2014 for the changed location if he intended to shift his affected vend to a new location conforming to the location restrictions stipulated in clause 1.2.5(b) of the excise policy for the year 2013-14 failing which it would be presumed that he is not interested in operating the affected vends at the changed location and the affected vend would in that event be allotted afresh for 2014-15 by the department as per the excise policy. The words “as per the excise policy” obviously include clause-2B. In other words upon surrender of such vends the authorities were entitled to reallot them but not at the risk and cost of the previous licencees such as the petitioner.

6. The petitioner by his letter dated 24.03.2014 addressed to the DETC referred to the license granted in his favour in respect of Group-16 and stated that out of the three vends, two fell on the National/State Highways and requested for renewal of the licenses for the year 2014-15 only in respect of the third vend. A similar letter was also written by the petitioner in respect of Group-14. These letters are of singular importance as they constitute the petitioner's decision to surrender the vends in exercise of the option given by clause-2B of the excise policy.

7. The State of Haryana filed a petition for Special Leave to Appeal to the Supreme Court challenging the judgment and order dated 18.03.2014 passed by this Court. The Supreme Court by an order dated 02.04.2014 directed the parties to maintain status-quo regarding the directions of this Court relating to paragraph 1.2.5 (b) of the excise policy. The Supreme Court by an order dated 02.04.2014 directed status-quo to be maintained insofar as the direction relating to clause-B of paragraph 1.2.5 of the excise policy of the State of Haryana was concerned.

8. The respondents issued a public notice dated 05.04.2014 stating that in view of the orders of the Supreme Court dated 02.04.2014 retail liquor vends which were located at the State Highways during the year 2013-14 were to be no longer considered as affected vends and that the licensees during the year 2013-14 including of the L-2 category were given an opportunity to get their licenses renewed for the year 2014-15 by applying for renewal upto 08.04.2014 (at 5% more than the license fee for 2013-14) failing which the security deposit of the licensee would stand forfeited and the vends would be reallotted as per the prescribed procedure at the risk and costs of the licensee.

9. The petitioner was understandably in a predicament on account of the difference between clause-2B of the excise policy on the one hand and the public notice dated 05.04.2014 on the other. Moreover, the petitioner had by his said letters dated 24.03.2013 exercised the option under clause-2B and reiterated by the DETC's letters dated 21.03.2014 by not having the license renewed in respect of the said vends for the year 2014-15. The public notice dated 05.04.2014 was entirely different from clause-2B of the excise policy. As we noted earlier clause-2B granted the licensees an option to surrender the vends without any liability whereas the public notice dated 05.04.2014 compelled the licensees to apply for the renewal thereof failing which it was stated that the security would be forfeited and the vends would be reallotted at the licensees risk and cost. Faced with this predicament, the petitioner on 07.04.2014 submitted an application for renewal of the licence in respect of the vends that he had surrendered.

10. We are clearly of the view that the petitioner made the applications for renewal only in view of the public notice dated 05.04.2017 and without prejudice to his rights that he was not bound to do so. This is clearly established by the following facts:-

(A) Around 10th April-2014, the petitioner addressed a letter (Annexure P-8) to the DETC stating that on reading the notice dated 05.04.2014 he had submitted the said renewal application on 07.04.2014 "so that my security may not be forfeited". The letter refers to a stay granted by this Court on 09.04.2014 and to the provision that the liquor vends were to be opened in the evening of 10.04.2014. The petitioner expressly stated that he had filed a case and had not opened the liquor vends; that he did not have any old stock and had not been issued any permits either; that he had kept the liquor vends closed totally and did not want to run the same in future either and that on 10.04.2014 he had orally informed the Excise Inspector that the vends were closed and that the Inspector found the vends to be closed.

(B) On 09.04.2014 the petitioner and several others had filed petitions in this Court challenging the notice dated 05.04.2014. The petition filed by the petitioner is CWP No. 7615 of 2014.

It is important to note that this writ petition was filed on 23.04.2014 i.e. soon after the public notice dated 05.04.2014.

11. The said letter addressed in April-2014 (Annexure P-8) read with the fact that the petitioner had challenged the public notice dated 05.04.2014 establishes that the petitioner did not make the application for renewal on 07.04.2014 voluntarily and unconditionally. He did so as he found himself in a predicament brought about by the respondents namely the amendment to the excise policy by introducing clause-2B on the one hand and the public notice dated 05.04.2014 on the other. The petitioner had proceeded on the basis of clause-2B by opting to renew both the licenses in respect of only one vend in each of the groups. He was aggrieved by the public notice dated 05.04.2014 but with a view to safeguard his interests made an application for renewal on 07.04.2014 "so that my security may not be forfeited". In other words he made an application to safeguard his interest against forfeiture of the security in the event of the public notice dated 05.04.2014 being upheld. That the petitioner did not make an application for renewal voluntarily and unconditionally is also clear from the fact that he filed the writ petition challenging the notice dated 05.04.2014.

12. This is fortified by the respondents' conduct. Firstly, the DETC by a letter dated 24.04.2014 addressed to the Excise & Taxation Commissioner stated that as per the Excise Inspectors report dated

13.04.2014 and Assistant Excise and Taxation Officer's report dated 18.04.2014 the petitioner had not run the four liquor vends. The letter referred to the petitioner's letters dated 23.04.2014 and the petitioner having filed the said writ petition challenging the public notice dated 05.04.2014. What is important is that the letter concludes by requesting the Excise and Taxation Commissioner to consider the said four vends as having been surrendered.

Secondly on 13.05.2014 the respondents published a list of vends put to auction on account of their having been treated as surrendered by the Department. The list included the petitioner's said vends. The fact that the respondents invited tenders in respect of the said four vends establishes clearly that if the respondents had not considered the petitioner as having surrendered the vends, they would never have included them in the list of pending affected vends.

13. The Supreme Court passed an order dated 30.06.2014 in the said Special Leave to Appeal which insofar as it is relevant reads as under:-

> "It is directed that those interveners/licensees who have already wound up their liquor vends on 31.03.2014 and who have not applied for renewal for 2014-15 shall not be liable to pay 5% of the license fee and other penal demands for their security deposit shall be forfeited. In other words, the concerned authorities of the State of Haryana shall not enforce the notice dated 05.04.2014 (Annexures A-5 of IA-3) in respect of those interveners/licensees who had already wound up their liquor vends on 31.03.2014 and had not applied for renewal for 2014-15.
>
> List the matter alongwith SLP(C) Nos. 14911-14913 of 2013 and 8267 of 2014."

14. As noted earlier, the petitioner had filed Civil Writ Petition No. 7615 of 2014 challenging the public notice dated 05.04.2014. In view of the order of the Supreme Court dated 30.06.2014 this writ petition was disposed of by an order and judgment dated 09.07.2014. Paragraphs-7 and 8 of the judgment are as under:-

> "7. According to the learned counsel, in view of the aforesaid order, the public notice dated 05.04.2014 (Annexure P-4) has become inoperative.
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> 8. Accordingly, a specific query was put to the learned Advocate General, Haryana as to the stand of the State regarding the enforcement of public notice dated 05.04.2014. It was candidly admitted by the learned Advocate General, Haryana that in view of the order dated 30.06.2014 of the Apex Court, the same was not being enforced on all those licensees, who have approached the Apex Court or have already wound-up their liquor vends on 31.03.2014 and who have not applied for renewal of liquor vends for the year 2014-15……………………(emphasis supplied)"

The petitioner was granted liberty to approach the Court or to take recourse to the remedies as available to him in accordance with law in case any grievance subsisted, after any order was passed in the SLP.

15. The petitioner by his letter 21.07.2014 requested for the refund of the earnest money deposited by him in respect of the two licenses.

The Excise and Taxation Commissioner by a letter dated 07.08.2014 directed the Deputy Excise & Taxation Commissioner to act as per the order of the Supreme Court dated 30.06.2014 and the order of this Court dated 09.07.2014.

The Taxation Inspector by his report dated 30.09.2014 stated that the security amount deposited be adjusted in the monthly installments of October and November, 2014.

16. The petitioner's grievance is that despite these facts the DETC by the impugned notice dated 24.12.2014 stated that the petitioner had failed

to deposit the license fee in respect of Groups 14 and 16 of an aggregate amount of about 1.50 crores and directed him to do so within three days.

The petitioner by his reply referred to some of the above facts including that the Department had itself adjusted the security deposit in respect of these vends against the amounts due towards the other groups which the petitioner continued to operate. The petitioner, therefore, denied his liability.

The Collector-cum-Excise and Taxation Commissioner by the impugned notices both dated 01.01.2015 alleged that the petitioner had failed to deposit the license fee for the period April to December, 2014 and that he had thereby contravened the provisions of Rule 36(21) of the Haryana Liquor License Rules, 1970 and conditions No.6.4 and 6.5 of the Excise Policy rendering his license liable to be cancelled and his security liable to be forfeited.

The petitioner challenged the impugned notices dated 01.01.2015 by filing civil writ petition No.110 of 2015 which was disposed of by an order and judgment dated 24.08.2015 without expressing any opinion on the merits of the case and by directing the petitioner to file a reply to the impugned notices and directing respondent No.3 to pass a speaking order after affording him an opportunity of being heard.

17. By the impugned order dated 01.10.2015 the respondents rejected the petitioner's representation. The order sets out the facts and quotes parapgraph-8 of the order dated 09.07.2014 passed by this Court in Civil Writ Petition No. 7615 of 2014 which we quoted earlier. The Collector-cum-Additional Excise and Taxation Commissioner held that the purport of this order is that those licensees who had applied for renewal pursuant to the public notice dated 05.04.2014 were not to escape the rigours

of the notice dated 05.04.2014 and that the notice dated 05.04.2014 was not to be enforced only against those licensees who had not applied for renewal. The petitioner having applied for renewal on 07.04.2014 was not entitled to the benefit of the order dated 09.07.2014. It was further observed that the petitioner having applied for renewal was bound by the provisions of the Act and the Rules and the policy and should have run the unaffected vends after payment of the license fee that there was no justification for the petitioner not running the vends during the year 2014-15 when there was no change of location and that the petitioner found running of the liquor vends unviable due to the changed location in the year 2014-15 and therefore, sought a renewal. The petitioner was held liable to pay the amounts due in respect of the said licenses.

18. Ultimately the DETC by the impugned notice dated 05.10.2015 raised the impugned demand against the petitioner for an amount of ₹ 1.90 crores towards license fee for the said vends.

19. The nature of the surrender by the petitioner of the two vends in respect of each of the groups-14 and 16 requires consideration. The order of this Court dated 09.07.2014 in Civil Writ Petition No. 7615 of 2014 and the order of the Supreme Court dated 30.06.2014 also require consideration in determining this issue. The order dated 30.06.2014 which we quoted earlier stated in paragraph-2 "it is directed that those interveners/licensees who have already wound up their liquor vends on 31.03.2014 and who have not applied for renewal for 2014-15 shall not be liable to pay 5% of the license fee and other penal demands". It was clarified that the authorities shall not enforce the notice dated 05.04.2014 in respect of those interveners/licensees who had already wound up their liquor vends on 31.03.2014. By 31.03.2014 the petitioner had wound up the said vends. By

his said letter dated 24.03.2014 the petitioner sought renewal of his vends leaving the said vends as they fell on the National/State Highways. Thus the petitioner did exercise the option of not renewing the said vends granted by clause-2B of the excise policy and reiterated in the DETC's letter dated 21.03.2014.

20. Had the matter ended there, there is no doubt that the impugned demands would be unsustainable. The respondents, however, contend that thereafter the petitioner had sought renewal of the licenses even in respect of those vends as is admitted in the undated letter at Annexure P-8.

21. It is true as recorded in the undated letter at Annexure P-8 that the petitioner had submitted his renewal application on 07.04.2014. We have already explained in detail that circumstances in which the petitioner did so. To reiterate what is relevant, however, is that the petitioner had already exercised the option of surrendering the vends in view of clause-2B of the excise policy which was introduced as an amendment. Clause-2B was in view of the orders in the proceedings as a result of which the liquor vends located at National Highways/State Highways had to be shifted. Clause-2B permitted the licensees to change their locations in their allotted areas. It also provided that in case the licensee does not shift to the new location and prefers to close down the vend, the department would have the right to allot the vend as per the policy to any other party. The clause concluded by expressly stating that fresh allotment will not be at the risk and cost of the concerned licensee. Clause-2B was not conditioned upon further orders in the Court proceedings.

22. This was followed by the DETC's letter dated 21.03.2014 calling upon the petitioner to exercise his option failing which it was stated the vends would be allotted as per the policy which would include clause-

2B. The petitioner surrendered the vends in exercise of the option conferred upon him by clause-2B. The petitioner's option to surrender the vend would have continued. There is nothing to indicate that the petitioner would have revoked this option. It is the respondents who thereafter by the public notice dated 05.04.2014 sought to alter the situation in view of the order dated 02.04.2014 passed by the Supreme Court in the said Special Leave to Appeal, as a result of which the liquor vends which were located on the State Highways during the year 2013-14 were no longer considered as affected vends. The public notice stated that the licensees of the vends located on State Highways had not applied for renewal. The licensees were given an opportunity to get their licenses for the year 2014-15 renewed by 08.04.2014, failing which the respondents threatened to forfeit the security deposit and to reallocate the vends at the risk and cost of the licensees. This was clearly contrary to clause-2B of the excise policy. It is of vital importance to note that the petitioner challenged the notice dated 05.04.2014 by filing Civil Writ Petition No. 7615 of 2014 on 23.04.2014. The petitioner, however, was understandably in a predicament. On the one hand he exercised the option conferred upon him by clause-2B of the excise policy by surrendering the said vends. The matter really ended there. The re-allocation of the vends under clause-2B was not to be at the petitioner's risk and cost. But on the other hand he was faced with fresh instructions contained in the public notice dated 05.04.2014 virtually compelling him to seek renewal for if he did not do so he ran the risk of having his security forfeited and the vend reallocated at his risk and cost. It is in this back ground that the petitioner's application for renewal of the licensees for the said vends must be construed. The petitioner did so under protest and in order to safeguard his interest and without prejudice to his rights and contentions as is clear from the letter at Annexure P-8. He stated in that letter that he submitted his application for renewal on 07.04.2014 after reading the public notice dated 05.04.2014 so that his security may not be forfeited. The letter reiterated that he had informed the Excise Inspector on 10.04.2014 that the vends were closed and that the Inspector had himself found to be so. The respondents themselves considered the petitioner as having surrendered the vends as is evident from the DETC's said letter dated 24.04.2014 to the ETC and the petitioner's said vends being included in the list dated 13.05.2014 of vends put in auction on account of their having been treated as surrendered by the Department.

23. In these circumstances it would be unfair in the extreme to contend that the petitioner having opted to renew the licenses for the said vends is not entitled to the benefit of the order dated 09.07.2014. At the cost of repetition the petitioner did not seek renewal of the licenses in respect of the said vends for the excise year 2014-15 voluntarily. He did so under compulsion and without prejudice to his rights and contentions. The petitioner would, therefore, be entitled to the benefit of the statement made by the Advocate General, Haryana and recorded in paragraph-8 of the judgment dated 09.07.2014.

24. In these circumstances, the impugned notices are quashed and set aside. The petition is allowed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

31st May, 2017
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No