

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-25686-2014

DATE OF DECISION:20.02.2017

OM PARKASH SHARMA

... Petitioner

V.

STATE OF HARYANA AND ORS.

... Respondents

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

Present: Mr. S.K. Yadav, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

S.J. VAZIFDAR, C.J. (ORAL)

The petitioner seeks a writ of certiorari to quash a notice dated 24.11.2014 and an order directing the respondents to refrain from recovering the amounts demanded on the basis thereof. The petitioner has also sought an order for the refund of the personal security deposited by him.

2. On 09.03.2014, the respondents invited bids for various liquor vends in district Faridabad, Haryana. The petitioner bid for and was allotted three liquor vends in Group-15. L-14A licensees are entitled to trade as retailers in country liquor. The petitioner's bid was accepted at ₹ 2.22 crores in respect of the three vends. Under the terms of the licence, the petitioner was liable to pay an amount of about ₹ 18.48 lacs per month payable on or before the twentieth day of each month. Interest was payable for delayed payment. The petitioner had also deposited an amount of about ₹ 46.60 lacs towards security and additional security deposit of which refund is now sought. The licence was valid for one year for the period 01.04.2013 to 31.03.2014.

3. The petitioner alleges that almost from inception, liquor was being sold illegally by various persons which adversely affected his business. He made representations to and requested the authorities concerned to take action in respect thereof. Several representations were addressed, the first of which is dated 05.06.2013 and the last is dated 05.09.2013. It is not necessary to even refer to the allegations as they are not relevant for the purpose of this writ petition.

4. The petitioner defaulted in paying the monthly installments as a result whereof on 17.09.2013, the respondents sealed the liquor vends. On 09.10.2013, the respondents cancelled the petitioner's L-14A licence. It is important to note that on 17.10.2013, the Excise and Taxation Commissioner, Haryana addressed a letter to the Deputy Excise and Taxation, Commissioner, Faridabad allowing him to initiate the process of re-allotting the liquor vends under Clause 2.31 of the Excise Policy 2013-14 and 2014-15 at the petitioner's risk and cost. Clause 2.31 of the Excise policy reads as under:-

“2.31 PROCESS OF RE-ALLOTMENT OF GROUPS/VENDS:

In case of re-allotment, the process shall begin with inviting tenders on the reserve price computed from original license fee or the balanced license fee of the Group/Vend by reducing it in the successive slabs of 10% of original licence fee or the balanced license fee of Group/Vend till it is allotted in the manner prescribed for fresh allotment in the currency of the year. The re-allotment shall be done at the risk and cost of original allottee. In case of a bid higher than the original bid, no benefit is to be given to the original allottee.

Note:-In the case of re-allotment of the Group/Vend, there will be no reduction in the original quota or balanced quota, as the case may be, of that Group/Vend.”

5. On 28.10.2013, the petitioner filed an appeal against the order dated 09.10.2013 sealing the vends. By an order dated 12.12.2013, the Excise and Taxation Commissioner set aside the order dated 17.10.2013 and remanded the case to the Collector to be decided afresh. On 27.12.2013, the Collector passed a fresh order upon remand reiterating the decision to seal the vends and to cancel the licence.

6. It is not necessary to deal with the question as to whether the sealing of the vends and the cancellation of the license was wrongful or not as the petitioner does not wish to challenge the same any longer. The petitioner, however, challenges the manner in which the vends were re-allotted/re-auctioned. The petitioner contends that the manner in which it was done has led to the realization of a lower amount exposing him thereby to a higher liability.

7. As noted earlier the vends were sealed on 17.10.2013 and the licence was cancelled on 09.10.2013. The petitioner filed an appeal and the proceedings in respect thereof took their course. What is important, however, is that the respondents were not restrained, at any stage, from re-allotting/re-auctioning the vends as they were entitled to under Clause 2.31. In fact, by a letter dated 17.10.2013, the Deputy Excise and Taxation Commissioner, Faridabad was allowed by the Excise and Taxation, Commissioner, Haryana to do so. The Excise Policy and in particular Clause 2.31 thereof, is fair to the allottees who may have committed a breach making themselves liable for the cancellation of their licence and the closure of their vends. The policy required the respondents to re-allot the vends at the risk and cost of the licensee but at the same time providing a mechanism for the mitigation of their liability. Thus, from 09.10.2013, the respondents' right to have the vends re-auctioned was never stayed.

8. The respondents undertook the exercise of re-allotting/re-auctioning the vends only on and after 27.12.2013. In fact, the first publication of a notice inviting tenders for the balance period at the petitioner's risk and cost was issued on 31.12.2013. The last one was issued on 24.01.2014. The dates of publication and the dates of auction for the re-allotment are as follows:-

<i>"Sr. No.</i>	<i>"Date of Publication</i>	<i>Re-allotment date</i>
<i>1</i>	<i>31-12-13</i>	<i>1-1-2014</i>
<i>2</i>	<i>5-01-14</i>	<i>6-1-2014</i>
<i>3</i>	<i>7-01-14</i>	<i>8-1-14</i>
<i>4</i>	<i>8-01-14</i>	<i>9-1-2014</i>
<i>5</i>	<i>10-01-14</i>	<i>10-1-14</i>
<i>6</i>	<i>12-01-14</i>	<i>13-01-14</i>
<i>7</i>	<i>14-01-14</i>	<i>14-1-14</i>
<i>8</i>	<i>15-01-14</i>	<i>15-1-14</i>
<i>9</i>	<i>18-01-14</i>	<i>20-1-14</i>
<i>10</i>	<i>21-01-14</i>	<i>22-1-14</i>
<i>11</i>	<i>22-01-14</i>	<i>23-1-14</i>
<i>12</i>	<i>24-01-14</i>	<i>28-1-14"</i>

9. The first eleven publications must be contrasted with the twelfth and last one. The first eleven publications invited bids on the very next day and on three occasions namely 10th January, 14th January and 15th January on the same day. In another case namely 18th January, 2014, the publication was on a Saturday and the bids were called two days later on 20.01.2014, which was a Monday. In contrast when on 24.01.2014, a notice was given for an auction to be held four days later, two bidders appeared. By then, however, the price was reduced to 90% of the reserve price.

10. The question is whether the respondents could be held to have discharged their duty in the process of the re-auction. Rule 36-A(10) of the Haryana Liquor Licence Rules, 1970 reads as follows:-

“36-A. Procedure for grant of licenses by tender.- Subject to such conditions as the Excise Commissioner may make in the number and location of excise vends each year before annual tender, the Collector shall determine,-

(10) The Collector shall give timely notice of the date and place for inviting tenders and shall fix date(s) and place and time of opening tenders subject to the approval of the Financial Commissioner.”

11. Firstly, Clause 2.31 of the Excise Policy for the relevant year stipulated that in case of re-allotment, the process of re-allotment would begin by inviting tenders in the manner mentioned therein and the same would continue till the vend is allotted in the manner prescribed for fresh allotment in the currency of the year. Rule 36-A describes the manner of fresh allotment by virtue of Clause 2.31. Rule 36-A is also liable to be followed in the case of re-allotment. Under the sub-rule, the Collector is bound to give timely notice of the date and place for inviting tenders. The word ‘shall’ indicates that the provision is mandatory. The ambit of the words ‘timely notice’ in sub-rule 10 of Rule 36-A falls for consideration. In our view, the words ‘timely notice’ would imply notice of a reasonable period. The purpose of sub-rule (10) of Rule 36-A is to obtain the best possible price. This is also the purpose of Clause 2.31. That would enure to the benefit of the State as well as the licensee including a defaulting licensee. A reasonable notice is necessary to obtain a competitive price. It can hardly be suggested that a notice of a few minutes or even of a few hours is sufficient. It would be necessary for prospective bidders to consider the

What is a reasonable period must depend on the facts of each case. We are, however, unable to hold that a day's notice is sufficient. As we noted earlier in some cases, the notice was for the same day. It was virtually impossible for bidders to submit a reasonable or an informed bid and accordingly, for the respondents to obtain a reasonable price. The notices right up to 24.01.2014 therefore, cannot be considered to be timely notices for they gave the prospective bidders less than 24 hours to consider whether or not to submit a bid.

12. Our view is supported by the judgment of the Supreme Court in State of Haryana and others v. Jage Ram and others 1983 (4) SCC 556. Clause 36 of the Punjab Liquor Licence Rules, 1956 fell for consideration in that case. These rules were applicable at that time to the State of Haryana as well. Paragraphs 8, 10 and 11 of the judgment read as under:-

“8. It seems to us impossible to accept the findings of the High Court. We will not enter into the controversy whether the rules governing reauction of vends, of which respondents allege breach, are directory or mandatory in character. Even assuming for the purpose of argument that they are directory, we are unable to hold that they have been substantially complied with. Rule 36(24) of the Punjab Liquor Licence Rules, 1956 as amended by the Notification dated March 31, 1967 says that when a licence is cancelled, it may be resold by public auction or by private contract in accordance with the procedure laid down in the other clauses of Rule 36. Clause (3) of Rule 36 runs thus:

“36. (3) The Collector will give timely notice of the date and place of the auction:

- (a) the conditions to which the auction will be subject;*
- (b) the number and situation of the shops to be licensed for the sale of (country liquor);*

- (c) the prices, if any, fixed for the retail vend of country spirit or;*
- (d) the occasions, if any, on which the shops will be closed; and*
- (e) any other information which may be of use to intending bidders.”*

No notice as required by this sub-rule was given to the public at all. Neither the time nor the date of the reauction, nor the location or description of the vend which was to be put to reauction, nor the conditions of the reauction were ever published by the Excise Authorities prior to the reauction. What was done by the concerned authorities was to send telegrams to Excise Officers of five districts with a request that they should give publicity to the reauction. The officers of those five districts seem to have sat cool over those telegrams because there is no evidence showing that they took any steps for publishing the reauction. A curious feature of this case is that the Excise Authorities claim to have sent letters to five private licensees informing them that the reauction was fixed for May 23, 1967 at 10 a.m. These letters are at Annexure R-8 and are dated May 20, 1967. May 20 fell on a Saturday and the reauction was fixed for May 23 which was the following Tuesday. In the normal course, these letters would have been received by the addressees on Monday, that is, a day or less prior to the date of the reauction which was to be held the next morning at 10 o'clock. In these circumstances, it is difficult to hold that any publicity as such was given to the reauction. When a rule requires 'publicity' to be given to an auction-sale, what is necessarily implied is that due steps must be taken to give sufficiently advance intimation of the intended sale and its material terms to the members of the public or, at least, to that section of the public which normally engages in the kind of business which is the subject-matter of the aution-sale. Even the five special invitees would have found it difficult to come prepared to take part in the resale which was held on May 23. They were not invited to a wedding feast. They were invited to attend the resale of a liquor vend and it is well known that a

certain amount has to be paid by the successful bidder on the fall of the hammer. We are also unable to appreciate that the Excise Authorities of the Government of Haryana should have picked and chosen some five particular persons as recipients of the notice of reauction. How their names transpired and what is their particular status, respectability and standing in the liquor trade, are matters on which no light is thrown. There is no material before us on which to doubt the integrity of the authorities who were connected with the reauction. But their conduct must be above suspicion.

10. Since the reauction was not held in accordance with the rules, either in their letter or in their spirit, and since, especially, due publicity was not given to the reauction, it is impossible to uphold the reauction and mulct the respondents in the resultant shortfall. We are of the opinion that Rule 36(3) of the rules was not even substantially complied with. It is reasonable to assume that since due publicity was not given to the reauction, adequate bids were not received, resulting in prejudice to the respondents.

11. Accordingly, we set aside the finding of the High Court that the relevant rules governing reauction of vends were complied with substantially. Since the reauction did not conform to the rules and the respondents were prejudiced thereby, they cannot be held liable to make good the difference between the amount which was payable by them and the amount which was fetched at the reauction.”

The opening part of Rule 36(3) also used the same expression ‘timely notice’. The ratio of the judgment, therefore, applies equally to the case before us.

13. Ms. Mamta Singla Talwar, the learned Deputy Advocate General, Haryana, sought to distinguish the judgment on the basis that in that case, public notice inviting bids for the tenders was not even given and letters were sent only to select five private licensees informing them about the re-auction.

The above paragraphs read as a whole, however, indicate that the judgment was indeed on that basis but also on account of the inadequate time for which the publicity of the re-auction was given. The judgment is not based only on the fact that select five persons were informed about the re-auction. This is evident also from the fact that the Supreme Court referred to the date of the notice namely 20.05.1967 and the date on which the re-auction was fixed namely 23.05.1967 and noted that the date of the notice and the next day were a Saturday and Sunday. If the period of notice was considered irrelevant, it would have been unnecessary for the Supreme Court to mention these dates.

14. In our view, however, it would not be just or equitable to merely set aside absolutely the demand raised by the respondents for the difference between the price at which the vends were allotted to the petitioner and the price realized upon re-allotment. The petitioner ought not to be permitted to take advantage of any lapse on the part of the respondents. We do not read the judgment of the Supreme Court as permitting a defaulting party to take such advantage. That issue was neither raised before nor decided by the Supreme Court. In our view, the ends of justice require that the petitioner should be made liable for the difference of the price at which the vends were allotted to him and the price realizable upon re-auction, in the event of the same having been duly held by the issuance of timely notices of auction. As we noted earlier, by the letter dated 17.10.2013, the Excise and Taxation Commissioner permitted the Deputy Excise Commissioner to re-allot the vends in accordance with Clause 2.31. A notice inviting tenders for the re-allotment ought to have been given within about three days thereafter i.e. by 20.10.2013. A reasonable time would depend upon the facts and circumstances of each case. We will presume the reasonable time to be four days as was done in the last notice issued on

24.01.2016. Thus, if notice of the re-auction had been given on 21.10.2013 and the auction was held on 25.10.2013, the amount realizable upon the re-auction would have been the price as on that day namely 25.10.2013. In other words, the petitioner must be made liable to pay the difference in the price bid by him originally on 09.03.2013 and the price which would have been realized on or about 25.10.2013. From the record, it is not possible for us to determine the price, which may have been realized on or about 25.10.2013. We would, therefore, direct the Excise and Taxation Commissioner to determine that price and hold that the petitioner would be liable for the difference between the price at which the petitioner was allotted the vends and the price which may have been realized on or about 25.10.2013.

17. Mr. Yadav's submission that he would be entitled to the adjustment of the security deposit is well founded. Sub-rule 36 of Rule 37 of the Haryana Liquor Licence Rules, 1970 reads as under:-

“(36) Imposition of additional fee and cancellation and revocation of licenses.-

If a license becomes liable to cancellation under any law for time being in force, or these rules, the competent authority may either—

- (i) cancel the license and make such arrangements as he may think fit for carrying on the business for which the license was granted, and any fee paid or deposit made in respect thereof shall be forfeited to Government but if any loss has to be made good, the deposit shall be taken into account in calculating the amount of that loss; or*
- (ii) permit the license to retain the licensee on payment of such further fee as he may deem fit to accept.”*

18. Clause(i) of sub-rule 36 clearly states that if any loss has to be made good, the deposit shall be taken into account in calculating the amount of that loss, meaning thereby that the amount deposited by the licensee towards security deposit/additional security deposit, is liable to be adjusted against the demand for loss. The Excise and Taxation Commissioner shall, therefore, after determining the loss, if any, utilize the security/additional security towards adjustment thereof. In the event of there been any excess security deposit, the same shall be dealt with in accordance with law. The interest shall be chargeable as per law.

19. The petition accordingly stands disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

20.02.2017.

SwarnjitS

Whether speaking/reasoned
Whether reportable

Yes / No
Yes