

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-25482-2017

Date of Decision: 8.11.2017

Parvesh Kumar and Co.

...Petitioner

Versus

The State of Haryana and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. Jagmohan Bansal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents not to charge any additional license fee from the petitioner under the garb of memo dated 15.9.2017 (Annexure P-5) or otherwise. Further, a direction has been sought to the respondents to refund/adjust the amount charged by them from the petitioner as license fee for the period when its liquor vends were sealed and also refund the amounts which the petitioner was made to deposit as penalty and license fee.

2. The petitioner is a licensed liquor contractor and is running the liquor vends in Jakhal, District Fatehabad. The respondents invited bids for the auction of liquor vends in the State of Haryana including District

the auction and bidding of the liquor vends, respondent No.4 vide letters dated 9.1.2017 (Annexure P-2) and 21.2.2017 sought the location of the highways situated in Fatehabad District from the Manager, National Highways Authority of India, but no information was received. Similar information was also sought from the Executive Engineer, PWD (B&R), Fatehabad. However, in the letter received from the Executive Engineer, PWD (B&R), Fatehabad, Jakhal was not shown on the National Highway. The petitioner participated in e-auction of liquor vends in Jakhal, District Fatehabad and was awarded license to open six liquor vends at Jakhal (Zone code ZFTB15) for a total sum of ₹ 5,44,444,44/- (which included an amount of about ₹ 1.14 crores, i.e. 21% as security). The petitioner was issued license, Annexure P-3, for the period from 25.4.2017 to 31.3.2018 and the amount of license fee was payable in monthly installments. Thereafter, the petitioner started its business on 25.4.2017 and opened six liquor vends at Jakhar by communicating the site plans of the shops to respondent No.4. The permits dated 16.6.2017 (Annexure P-4 Colly) were issued to the petitioner who carried out retail sale of liquor from the said shops. All of sudden, three of the vends of the petitioner were sealed by the respondents on 28.6.2017 as the same situated on the National Highway and were opened in violation of the judgment dated 15.12.2016 passed by the Supreme Court in Civil Appeal Nos. 12164-166 of 2016. Subsequently, a letter dated 2.5.2017 was sent by the Executive Engineer, PWD (B&R), Fatehabad to respondent No.4 informing that the road passing through Jakhal was a National Highway. The Supreme Court vide order dated 11.7.2017 passed in SLP (Civil) No. 10243 of 2017 clarified that the judgment dated 15.12.2016 whereby the restriction of 500 meters for

establishing the liquor vends from Highways was imposed, does not prohibit licensed establishments within municipal areas. Following the aforesaid decision, State of Haryana decided to allow the liquor vends at the Highways for the stretches which passed in municipal areas. Thereafter, the opening of liquor vends was permitted in Jakhal also. Respondent No.2 issued a memo dated 15.9.2017 (Annexure P-5) for removing restriction of 500 meters on location of vend/sub vend along side the National Highways/State Highways in municipal areas on payment of additional fee fixed @ 30% of average of the license fee of one vend in the zone. After sealing of the three vends of the petitioner on 28.6.2016, a show cause notice was issued to the petitioner who appeared before respondent No.3 and filed its reply. Respondent No.3 vide orders dated 20.9.2017 (Annexure P-6 Colly) cancelled the license of the petitioner and forfeited the security which was to be revoked on payment of penalty of ₹ 10,000/-. Further, the liberty was given to the petitioner to operate its vend at a location after getting the site plan approved from respondent No.4 subject to payment of additional fee. After the receipt of memo dated 15.9.2017 (Annexure P-5) and the orders dated 20.9.2017 (Annexure P-6 Colly), the petitioner made a representation dated 22.9.2017 (Annexure P-7) to respondent No.2 for the cancellation of penalty and additional license fee, but no response has been received till date. However, the petitioner deposited the total penalty of ₹ 30,000/- on 26.9.2017 in terms of the order dated 20.9.2017 passed by respondent No.3. The petitioner also deposited 30% additional license fee of ₹ 2,26,855/- for each of the vends vide challans dated 4.10.2017 (Annexure P-8 Colly). The petitioners are running the vends on the old locations only as per the permits dated 6.10.2017 (Annexure P-9 Colly)

issued by the respondents. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a representation dated 22.9.2017 (Annexure P-7) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 22.9.2017 (Annexure P-7), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

November 8, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No