

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5404-2017 (O&M)
DATE OF DECISION:28.03.2017

ARUN KAUSHAK AND ORS.

... Petitioners

Versus

THE 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. Vivek Singla, Advocate
for the petitioner(s).

Mr. Lokesh Sinhal, Additional Advocate General, Haryana.

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

The petitioners have challenged Clause 2.2 of the Excise Policy of Haryana State for the next excise year 2017-18 which reads as under:-

“2.2 UNIT OF ALLOTMENT (ZONE):

The allotment of retail outlets of country liquor and IMFL shall be allotted in units of Zones. A Zone may comprise of a maximum number of six (06) retail vends. The licensee shall have the flexibility to decide the type of vend i.e. CL only or IMFL only or both CL and IMFL, as well as the location of these vends within the command area of Zone, subject to the overall limit of six (06) retail vends, and the licensee may also decide the proportionate quota for each individual vend for CL/IMFL as the case maybe.”

2. The petitioners *inter alia* carry on business as retailers in different types of liquor. They contend that Clause 2.2 suffers from several infirmities. It is contended that the policy insofar as it divides the area into zones is illegal, arbitrary, contrary to the aims and objects of the respondents

in relation to the liquor trade so far as retailers are concerned and is contrary to the Haryana Liquor Licence Rules, 1970. It is also contended that the allotment of retail outlets (referred to in trade as vends) of liquor in units of zones leads to cartelization, promotes the dominance of the liquor mafia and facilitates smuggling.

3. Mr. Vivek Singla, the learned counsel appearing on behalf of the petitioners relied upon the following part of the preface to the Policy:-

“xxxx... Therefore, a fine balance has to be struck between the diverse interests of all the stakeholders. It is also to be simultaneously ensured that the Excise Policy has to be attractive enough for wholehearted participation of the private sector players like the manufacturers and wholesalers and retailers.

The Excise Policy should also aim at achieving and strengthening the long term objectives of breaking the cartels and unethical dominance of liquor mafia, broad-basing the trade by facilitating more competition, simplifying/unifying the structure of wholesale supply of liquor by giving wholesale licenses to retail licensees, establishing a transparent system of allotment of retail outlets, imposing complete check on manufacture/sale of spurious liquor, thwarting attempts of evasion of Excise levies, plugging the leakage/pilferage, optimization of revenue, creating ambience for legitimate and responsible drinking and providing good quality liquor at reasonable price to those who drink.

Maximization of government revenue to generate resources that can be utilized to finance developmental projects is always accorded a high priority on the agenda by the policy planners. However, when it comes to framing an Excise policy, social considerations

*and ramifications also assume paramount importance.
.....xxxx.”*

Mr. Singla contends that Clause 2.2 is contrary to each of the objectives mentioned in the preface to the Policy. In the current excise year i.e. 01.04.2016 to 31.03.2017 and in the years prior thereto, vends were divided into groups. Each group consisted of a certain number of vends and sub-vends. As an illustration, Mr. Singla referred to Sector 14 in District Sonapat. The entire sector comprised of 26 vends and 32 sub-vends aggregating in effect, therefore, to 58 vends. Under the new Excise Policy for the next excise year i.e. 01.04.2017 to 31.03.2018 for the corresponding area, there are to be only six vends and two sub-vends. He contended that a similar situation will exist in respect of other districts as well.

4. Mr. Singla has possibly chosen the most striking example but we will assume that to be the case in respect of all other locations as well. It would make no difference. In support of the contention that this situation brought about by Clause 2.2 promotes dominance of the liquor mafia and cartelization, his argument is this. A party is to bid for the entire zone and not a part thereof. In the current year, a bidder could bid for vends in an area which was only a part of a zone. Under the previous excise year, a bidder with less means could bid for a smaller number of vends which commanded a lower price, whereas under the zone system for the next year, only a bidder with large financial resources could participate in the bidding process for it involves a larger area. Thus, for instance, in Sector 14, District Sonapat, the reserve price was ₹ 13 crores and the highest bid was ₹ 21.95 crores. In the current year, the price for smaller groups of vends within the zone, the reserve price would have been much less. Mr. Singla contends therefore that on the

one hand only large bidders can bid for the larger area and on the other, the State Exchequer is poorer, as with multiple bids for the current year, the aggregate amount received for the same area was about ₹ 26 crores.

5. The argument regarding Clause 2.2 encouraging the dominance of a few is not well founded. There were, in fact, four bidders for six zones. Against the reserve price of ₹ 13 crores, the respondents received a bid of ₹ 21.95 crores. The respondents had their own constraints on account of various factors. Firstly, for instance, the respondents in the next excise year will be met with space constraints as no liquor vend can be opened within 500 meters on both sides of a National or State Highway or in violation of Clause 1.2.1 of the next Excise Policy which prescribes a minimum distance from an educational institution, a bus stand or a place of worship. Some of these restrictions were on account of the judgment of the Supreme Court in the case of ***K. Bala Raju in Civil Appeal No.12168 of 2016*** dated ***16.12.2016***. Moreover, there has been resistance from the public and public bodies to liquor vends in certain localities. 602 Panchayat Resolutions were received for not opening liquor vends in their villages. The State, therefore, apprehends that opening liquor vends in certain areas may lead to a law and order problem as well.

6. Thus, the mere fact that the amount received for the next year is less than the amount received for this excise year would not be determinative of the case. It is possible that even if the current system was followed for the next year, the price would be less on account of the same constraints.

7. Enlarging a group or unit of allotment of retail liquor vends necessitates a larger expenditure on the part of bidders. This by itself is not an indication of an intention to restrict the competition in the hands of a few.

Mala-fides have not been substantiated. There is nothing to indicate that the Policy was for the benefit of a particular bidder or bidders. Policy is essentially a matter for the State and not for the Courts. The Court's interference is warranted only if the policy is arbitrary or contrary to the provisions of law. Merely because a particular bidder is unable to bid even the reserve price, it would make no difference. Even if, the present system were to continue, there would be persons (other than the petitioners) unable to afford even the amount that the petitioners can afford. That would not make the present Policy illegal either. A line has to be drawn somewhere. The State has drawn it. We are unable to find anything that indicates that either the process or even the decision is faulty.

8. Nor do we see how the policy for the next year can encourage cartelization. Cartelization would not be unique to the next years' Policy. There could be cartelization at every level. There is nothing in Clause 2.2 that either facilitates or encourages cartelization by itself.

9. Mr. Singla then submitted that the Excise Policy for next year would encourage smuggling. There have been allegations of smuggling in the State even under the present system. The argument is that this only increases smuggling activities in the liquor trade. Even assuming that fewer vends in an area could lead to an increase in smuggling activity, it is for the State to uphold the rule of law including preventing smuggling. Clause 12.21 of the Policy itself sets out some of the steps taken in this regard. Clause 12.21 reads as under:-

“12.21 ENFORCEMENT WING OF THE DEPARTMENT

An Enforcement Wing may be created within the department, at the Head Office as well as in all the

District Excise Offices. This may comprise of one officer of the rank of DIG at the Head Office, aided by four DSPs, and a team of four to six police officials at the level of SI/ASI alongwith necessary supporting staff at the District level. The police officers and officials shall be taken on deputation with the department. The DIG and his team at the Head Office shall report to the ETC and the team of police officials at the district level shall report to the DETC (Excise).

The enforcement wing shall be responsible for checking and curbing illegal sale, transportation, possession and manufacturing of all types of liquor and intoxicants in the State of Haryana, as per the provisions of the Punjab Excise Act, 1914 and Rules framed thereunder as well as NDPS Act, 1985 and its Rules.”

10. There is yet another facet to the submission that the revenue received under the Policy for the next year will be less than the revenue received in the current year. The State is not concerned with the revenue received in a particular zone. The State is concerned with the revenue generated by the Policy as a whole. In other words, the State is concerned with the total revenue received for the entire State of Haryana and not merely the revenue received in respect of any particular part thereof. Thus assuming that for the corresponding area under the current Policy, a higher amount was received than what has been received for the next year, it would make no difference. There are for the next year 16 zones. The bids for 12 zones have been finalized. No bids have been received for 4 zones as yet. The aggregate revenue received for the current Excise Policy was ₹ 188 crores. For the next excise year for 12 zones that have been finalized, the State of Haryana has already received ₹ 175 crores. Four zones are yet to be finalized. The target,

therefore, has almost been met. As we noted earlier, in view of the constraints for the next year, there is no guarantee that even if the existing Excise Policy is to be applied for the next excise year, the State of Haryana would receive the same amount.

11. Mr. Singla had submitted that by dividing the units into zones, bidders would be discouraged. On facts, at least, that does not appear to be so. Mr. Lokesh Sinhal, learned counsel appearing on behalf of the respondents stated that in fact, bids have been received in respect of zones that had a higher reserve price and no bids have been received for the zones with lower reserve prices. For instance, the reserve price of the four zones yet to be finalized are ₹ 6.87 crores, ₹ 3.37 crores ₹ 8.06 crores and ₹ 9.08 crores. Some of the bids that have been finalized in respect of the 12 zones are much higher than these amounts.

12. The submissions raised on behalf of the petitioners thus far are therefore rejected.

13. Mr. Singla raised a question of law as well. He submitted that Clause 2.2 is contrary to Rule 36(A) of the Haryana Liquor Licence Rules, 1970 which insofar as it is relevant reads as under:-

“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, -

(1) Number of liquor vends in districts which shall be divided into groups and shall be sold by tender system. Tenders shall be invited after fixing the reserve price of each group, which shall be based on the revenue of last year i.e. license fee and taking into account decrease in revenue due to reduction and Taxation commissioner

(Excise) of the district. The groups shall be constituted in such a manner so as to maximize the State revenue. The reserve price could be revised by the Excise Commissioner for any group, if the situation so warrants.”

Mr. Singla submitted that Clause 2.2 is contrary to Rule 36(A). According to him, Clause 36(A) does not entitle the respondents to club the liquor vends in a district into zones. Under Rule 36(A), the respondents are entitled to club the liquor vends in districts only into groups. He emphasized the word ‘groups’ in sub-rule (I) of Rule 36(A).

14. The term ‘groups’ in Section 36(A)(I) is not defined. We must look to the lexical definition of the word ‘groups’. A group is a number of things put together as a unit. Rule 36(A)(I) does not compel the respondents to divide the number of liquor vends in any particular manner. It does not compel the respondents to offer the vends only in certain areas and not others and in certain numbers and not others. The Rule does not specify the number of vends that must constitute a group.

15. Mr. Singla then relied upon Rule 36(i) which reads as under:-

“36. Procedure for grant of licenses by auction:- [(1) *Subject to such condition, as the Excise Commissioner may make in the number and location of excise vends each year before annual auction, the Collector shall,-*

(i) determine the minimum licence fee for each group of vends or vend on the recommendation of the Deputy Excise and Taxation Commissioner incharge of the Excise district having regard to the estimated sales and other incidental factors pertaining to each vend or group of vends, as the case may be. The minimum license fee so determined and fixed for each vend or group of vends shall be announced at the time of auction. As a matter of general policy, the

vends will be auctioned in groups each comprising maximum of 10 country liquor vends. However, the size of group can be increased with the permission of Excise Commissioner prior to auction or during auction. Further where grouping is not feasible, the vends may be auctioned singly. The groups shall be constituted in such a manner so as to maximize the State revenue.

[The Foreign Liquor vends (L-2) will be clubbed with the country liquor vends falling in a group. However L-2 vends clubbed with each country liquor vends or group of vends shall be announced at the time of auction and given to the highest successful bidder of the country liquor vend or group of vends at a fixed price to be announced at the time of auction. However, the minimum license fee of L-2 vends of a district would be 15% higher than the license fee of L-2 vends of that district for the year 1998-99 and this license fee could be further apportioned group/vend wise, if necessary. In case the successful bidders for country liquor vends in an area do not show interest in taking the Foreign Liquor (L-2) vends in that area or if it is in the interest of State revenue, Foreign liquor (L-2) vends shall be auctioned separately, singly or in group of 10 or less vends.]

[Provided that in urban area the licensee shall be permitted to sell Indian made Foreign Liquor on L-14-A vends and country liquor on L-2 vends].

The Deputy Excise and Taxation Commissioner incharge of the Excise district concerned will define clearly the area of each vend or group of vends. Further in case a vend has to be closed down because of Court order or local resistance or for any other reasons beyond the control of license will have the option to shift the vend with the prior permission of Collector within his area on the same terms and conditions. The closure of one or more vends in that area for the aforesaid reasons for any period will not

entitle him to any rebate/reduction in the license fee for that vend or group of vends. In case the licensee refuses to run group of vends/vend, then the same will be put to re-auction by relocating closed vends/vend at the alternative sites/site and given to the highest bidder at the risk and cost of the original licensee].”

16. Rule 36(i) does not support Mr. Singla’s contention. The only restriction therein is to the maximum number of vends in a particular group viz. 10. The only restriction is that as a matter of general Policy, country liquor vends would be auctioned in groups comprising a maximum of 10 vends. Even that is not final. The size of the group can be increased with the permission of the Excise Commissioner prior to the auction or during the auction. The term ‘group’ is not further limited or circumscribed either as to the number or location.

17. In the circumstances, the writ petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

28.03.2017
SwarnjitS

Whether speaking/reasoned	Yes
Whether reportable	Yes