

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

CWP No.12533 of 2016 (O&M)

Date of Decision: 31.10.2018

WWICS Resorts (P) Limited

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM:-HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate,
for the petitioner.

Ms. Anu Pal, DAG, Punjab.

MAHESH GROVER, J.(ORAL)

The grievance of the petitioner at present is that the L-12-C licence has not been renewed. On an earlier occasion dispute arose regarding the very continuance of the project of the appellant of running a club. Writ Court had in preliminary proceedings passed an order adverse to the petitioner with certain directions. One of them is as below:-

i) A direction is issued to the Commissioner of Excise and Taxation Department, Government of Punjab to cancel L-12-C license issued in favour of the FHR and to seize the Indian and/or foreign made liquor found in the premises of the FHR.

The petitioner had then agitated the matter before the Hon'ble Supreme Court while vide decision dated 21.05.2014, disposed of the appeal in the following terms:-

“We have also examined the two decisions of this Court in the first and second cases of M.C.Mehta cited on behalf of the State of Punjab and we find that the aforesaid decisions have been rendered in the case of Aravali Hills in the State of Haryana and it was held therein that as the State Forest Department had been treating and showing the areas as 'forest' in fact and in law, the area was forest and non-forest activities could not be allowed in such areas without the prior permission of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. In these two decisions, this Court has not enquired into the basis of inclusion of the areas in forest by the State Forest Department nor has this Court considered as to whether a land becomes 'forest land' by mere inclusion of the same under the notification under Section 3 of the PLP Act, 1900. In the present case, on the other hand, the State Government has in its affidavit stated before this Court that the basis of inclusion of the entire land of village Karoran, District Ropar, in forest areas in the records of the Forest Department of Government of Punjab was that the land was closed under the PLP Act, 1900 and we have found this basis as not correct in law.

We, therefore, set aside the finding of the High Court that the entire land in village Karoran, District Ropar, is 'forest land' for the purpose of Section 2 of the Forest (conservation) Act, 1980 and remand the matter to the High Court for fresh hearing and fresh order in accordance with law.

Consequently, all directions in the impugned order which flow out of the aforesaid finding of the High Court that the land was 'forest land' for the purpose of Section 2 of the Forest (Conservation) Act, 1980 are set aside. We, however, make it clear that we have not set aside the directions for investigation by the CBI in the impugned order.”

Since all the directions except the one mandating the investigation by CBI were set aside, the direction of this Court in cancellation of L-12-C licence also stood erased. The petitioner then made an application to the Excise Authority for renewal of licence.

This Court on 30.06.2016 passed a detailed order restoring the licence provisionally which directions were to enure to the petitioner till the disposal of the RSA Nos.4328 of 2002 and 4345 of 2002. This order was complied with and a licence was granted to the petitioner on 04.07.2016. The aforesaid directions of this Court passed on 30.06.2016 were challenged in SLP and the Hon'ble Supreme Court passed the following order:

“Heard. Mr. Sachar Anand, learned counsel for the petitioner-State and Mr. Puneet Bali, learned senior counsel for the respondent.

It is submitted by Mr. Bali, learned senior counsel that the licence has already been granted to the respondent and the respondent is operating.

In view of the aforesaid, we do not intend to interfere with the impugned order. However, the High Court is requested to dispose of the main matter within three weeks hence, without being influenced

by the observations made at the interim stage or our non-interference because of the subsequent events.

The special leave petition is, accordingly, disposed of.”

During the subsistence of the proceedings, a statement was made by learned counsel representing the State of Punjab to persuade the Court to pass an order on 06.02.2017. The relevant object is extracted hereunder:-

“Mr. Vinod S. Bhardwaj, learned counsel appearing on behalf of the respondents states that the application(s) filed by the petitioners for the grant of a L-12-C liquor license will be considered latest by 21.02.2017. He further states that the authorities intend affording the petitioners an opportunity of being heard before deciding whether or not to grant the license. The petitioner shall in the first instance appear before the respondent No.1 at 11:00 a.m. on 08.02.2017 and thereafter, as may be directed by respondent No.1. The petitioner shall not apply for any adjournment. The decision whether or not to grant the license shall be taken latest by 21.02.2017.”

The petitioner in compliance to that order had appeared before respondent No.1 (Additional Chief Secretary to Government of Punjab, Department of Excise and Taxation) who passed a detailed order and disposed of the matter by making the following observations:-

“As directed by the Hon'ble High Court, DETC-cum-Collector, Roop Nagar Division, Roop Nagar is directed to decide the case by 21.02.2017 in

the light of the foregoing factual position in respect of various Court cases and the comments as received from various Departments.”

The Deputy Excise and Taxation Commissioner on the very same day passed an order rejecting the plea of the petitioner. This order is on record as Annexure P-32.

We have heard learned counsel for the parties at some length and are of the opinion that the orders passed by the Additional Chief Secretary and one passed by the Deputy Excise and Taxation Commissioner-cum-Collector are unsustainable for the simple reasons that vide order dated 06.02.2017, the petitioner was asked to appear before respondent No.1 in the first instance where after respondent No.1 was required to direct the petitioner to appear before the authority as directed. It is relevant to point out that according to the Rules, the competent authority to take a decision in this regard is the Collector. For the purpose of reference, relevant rule is extracted hereunder:

Punjab Liquor Licence Rules 1956 Rule 1

Form	Nature	Mode of grant	Authority empowered to grant	Authority empowered to renew
L-12-C	License for the retail vend of foreign liquor including beer, wine and ready to drink beverages at club or in the lawns attached to that club	Fixed fee and assessed fee	Collector	Collector

The Additional Chief Secretary (respondent No.1) was probably conscious of the fact and it is for this reason that he asked

the Collector to decide the matter but in the process he did extreme damage to the fairness of the process which is reflected from the fact that virtually entire issue has been decided by him leaving hardly any room for competent authority to have an impartial and unbiased assessment of the claim of the petitioner. The very fact that orders were passed in the same day by both the authorities is reflective of a predetermined mind. The fact that the Collector has referred to the content of the order of respondent No.1 in more than one paragraph is indicative of fact that there was no dispassionate appraisal of the petitioner's claim.

To our mind, this has resulted in substantial erosion of law and in fact respondent No.1 (Additional Chief Secretary) being the Appellate Authority literally preceded the authority of the Collector by taking upon himself the job of deciding the issue and reducing the authority of Collector to a mere rubber stamp.

We are, thus, of the opinion that these two orders cannot sustain scrutiny of law. The order dated 21.02.2017 passed by respondent No.2 (Annexure P-31) and order dated 21.02.2017 passed by respondent No.3 (Annexure P-32) are, therefore, set aside and the matter is remitted back now directly to the DTEC-cum-Collector to decide the issue afresh without being influenced by the earlier order passed by the Additional Chief Secretary. Since these orders are being set aside, resultantly the order of the Division Bench dated 30.06.2016 would become operative as the same was not disturbed by the Hon'ble Supreme Court while answering the SLP against the said order.

We have been informed and the relevant material also shows that in compliance of the directions of this Court dated 30.06.2016 the licence was renewed with a stipulation that it shall enure till the decision of the RSA, but the petitioner is still required to seek a renewal every year.

We, therefore, direct that the petitioner would not be required to seek a clearance of the renewal every year unless the respondents establish a violation and in that eventuality they would be free to proceed in accordance with law. The petitioner would ensure compliance of the order dated 30.06.2016.

Disposed of.

(MAHESH GROVER)
JUDGE

31.10.2018
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No