

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 15698 of 2018 (O&M)
Date of decision: 25.10.2018

M/s Blue Ice Bar & Restaurant and another

.. Petitioners

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

...

Present: Mr. Sanjay Vashisth, Advocate for the petitioners.
Mr. Ankur Mittal, Additional Advocate General, Haryana.
Mr. Fateh Saini, Advocate for respondent No. 4.

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Rajesh Bindal J.

1. This order shall dispose of a bunch of petitions bearing CWP Nos. 15698, 15988, 18100 and 18111 of 2018, as common questions of law and facts are involved. However, the facts have been extracted from CWP No. 15698 of 2018.

2. The petitioners, who were granted L-4/L-5 licenses for the year 2016-17 and 2017-18, have filed the present petition with a grievance that the same are not being renewed for the year 2018-19.

3. Learned counsel for the petitioners submitted that the petitioners were running restaurants at Bhiwani. They were granted L-4/L-5 licenses for the year 2016-17. The same were renewed for the year 2017-18. However, after the Haryana Excise Policy 2018-19 was notified, the licenses were not renewed, though there is an enabling provision for renewal. The reason assigned is that the petitioners did not have average monthly sale of ₹ 2,00,000/- of non alcoholic items in the restaurants.

4. The contention raised is that first of all, the aforesaid ground is contrary to the facts on record, as the average sale of non alcoholic items of the petitioners was more than ₹ 2,00,000/- per month. It was further submitted that clause (h) in para 9.8.3, which has been added in the excise policy for the year 2018-19, is *ultra vires*, which provides for the aforesaid condition. In fact, this condition has indirectly been given retrospective effect as the same is also being applied in the cases for renewal of licenses of the old licensees. Once there is a provision for renewal of the license, no fresh condition could be prescribed as the right of renewal is only with the old licensee and not with the new one. In fact, the idea for putting such a condition in the policy was just to exclude the licensees, like the petitioners. The aforesaid condition is being violated more than followed, as in number of cases, the licenses have been renewed in violation of the aforesaid condition. It was further submitted that the aforesaid condition in the policy is tailor-made, as entire data of the turnover of the licensees from sale of non alcoholic items was available with the department, hence, the same is arbitrary. The idea is only to oust the petitioners from business so that there is no competition and the department is able to create monopoly in favour of some licensees. The condition in the policy could not be changed without

notice to the petitioners.

5. In response, learned counsel for the State submitted that L-4/L-5 licenses are meant to be issued to the restaurants for opening a bar. There is no separate licence only for bar. Annual license fee for different districts has been provided in the policy, which varies from district to district. In fact, these licenses are granted only at the district headquarter. For District Bhiwani, the license fee prescribed is ₹ 9,00,000/- per annum. As per the policy, L-4/L-5 licensees could sell the liquor in retail in small pegs, however, while misusing the licenses, they started selling bottles. That is the reason that there is no sale of non alcoholic items in the restaurants, otherwise, in case alcohol is consumed in pegs in restaurants, there would always be additional sale of non alcoholic items, such as cold drink and food. When misuse of licenses by L-4/L-5 licensees came to the notice of the authorities, condition regarding sale of non alcoholic items was put in the policy for the year 2018-19. There is nothing wrong in that. He further submitted that no license has been renewed, which does not fulfil the conditions laid down in the policy for the year 2018-19. In fact, the petitioners tried to manipulate their record. The monthly turnover of non alcoholic items in their restaurants was a few thousands rupees for first 9-10 months of the year, which was increased to lakhs towards the end of the year. The same was done after the fresh policy had been notified just to show that the petitioners fulfilled the conditions laid down in the policy regarding sale of non alcoholic items, so that renewal of license could be ensured.

6. Rule 13 of the Haryana Liquor License Rules, 1970 (for short, 'the Rules') was quoted in support of the argument that renewal of a license is not a matter of right. It was merely a condition in the policy that an existing licensee can get his license renewed, however, that was subject to fulfilment of the conditions laid down in the policy. It was further submitted that even in the excise policies for the year 2016-17 or 2017-18, under which the licenses had been granted to the petitioners, there was no condition that an existing licensee can get his license renewed, hence, the argument that any of the vested right of the petitioners had been taken away is totally mis-conceived.

7. Heard learned counsel for the parties and perused the paper book.

8. Rule 38(4) of the Rules provides the details regarding licenses in the form of L-4/L-5. The same is extracted below:

“38. The licences shown in this rule are granted subject to the special conditions noted under each in addition to the conditions laid down in rule 37.

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(4) A license in form L.4 and in form L.5 for the retail vend of Indian Made Foreign Liquor in a Restaurant and Bar respectively, for “on” consumption subject to the following conditions:-

(a) The licensee shall sell Indian Made Foreign Liquor in retail for consumption on the remises in glasses except in the case of beer which can be sold in open bottle also;

- (b) The sale price of a peg of 60 milliliters shall not be less than Rs. 11;
- (c) The licensee shall maintain account of receipts and sales in form L.23 and shall at the end of each month prepare and submit to the Excise Inspector a monthly true abstract of receipts and sales in form M.66
- (d) The licensee shall keep the stock of Indian Made Foreign Liquor on the licenced premises and Excise Commissioner, Haryana, may fix the limit of stock that may be kept by the licensee at any given time.
- (e) The licensee shall get their supplies from any L-2 licensee of the district, where such license is granted. In case of costly brands above Rs. 500 per bottle or wines which are not made available to the bar licensee by L-2, the licensee shall be allowed to get their supplies from any other L-2 licensee within the State;
- (f) The Collector shall fix the rates of liquor in case of any dispute;
- (g) The licensee shall be allowed to sell liquor brands like, Royal Stag, Red Knight, Bacardi Rum, Smirnoff Vodka Range and above range including ready to drink beverages.”

9. Clause 9.8.1 of the excise policy for the year 2018-19 dealing with grant of L-4/L-5 licenses is extracted below:

“9.8.1 L-4/L-5 licenses shall be granted to the tourist complexes run by Haryana Tourism Corporation, Hotels and Restaurants of repute situated in the district head quarter cities, except as provided hereunder, having infrastructure and level of facilities required to meet the parameters and conditions prescribed by the District Level Committee constituted for this purpose. The committee shall comprise of three members i.e. the representative of Deputy Commissioner, Deputy Excise and Taxation Commissioner (Excise) and Excise and Taxation Officer (Excise)/ Assistant Excise and Taxation Officer (Excise) of the respective districts shall be constituted which will be headed by Dy. Excise and Taxation Commissioner (Excise). This committee shall assess the eligibility of an applicant for the grant of a Bar License (L-4/L-5) for the first time. The aforesaid committee shall make recommendation to the Excise & Taxation Commissioner for grant of L-4/L-5 license. The application for grant of NOCs shall require to be decided by the department concerned (except Fire Department) within a period of one month of the application/ receipt, failing which it will be deemed to have been granted.

L-4/L-5 license shall also be granted to three star and above categories of star hotels located anywhere in

the State. In addition to it, L-4/L-5 shall also be granted in places where HSIIDC has developed Industrial Model Township (IMT) and Theme/Specialized Parks like IMT Manesar, IMT Bawal, IMT Rohtak, IT Park Manesar, IT Park Panchkula etc. L-4/L-5 may also be granted in emerging licensed residential townships.

L-4/L-5 license may also be granted provisionally to a Hotel located anywhere in the State subject to the condition that the applicant shall procure star classification of 4 star and above from the Ministry of Tourism, Government of India within the financial year of grant, failing which the provisional license shall not be renewed subsequently. The licensee shall apply for the star rating within one month of obtaining the L-4/L-5 license.”

10. Clause 9.8.3 (h) of the excise policy for the year 2018-19, which is sought to be challenged, is also extracted below:

(h) Provided further that a bar licence in the form of L.4/L.5 license, operative in the previous year i.e. 2017-18, shall be eligible for renewal only if they have procured minimum of one case of IMFL/IFL and one case of Beer on an average monthly basis from nearest L-2 vend. Further, they also have minimum average turnover of Rs. 2 Lakh per month arising from sale proceeds of non alcoholic items in the restaurants. The average turnover shall be computed for the period of operation of the bar in the previous year and as reflected in the VAT &

SGST/CGST returns.

Note 1: Any additional point above the points already allowed, shall be allowed on payment of a fee equal to 20% of the annual license fee per point in all the above categories.

Provided that a maximum number of three additional points per license shall be allowed.

Further provided that any additional point in category (d) and (e) above shall be allowed on payment of a fee equal to Rs. 1 lakh for each such point.

Note 2: Provisions for additional point in Open area/Terrace/Balcony:

i) The open space should not be such as is open to passerby which means that it should be surrounded by four walls with a provision for regulated entry/exist. The open space should not have a direct access/opening to the main road.

ii) If the open space happens to be a rooftop/terrace/balcony, it should be so surrounded by a wall/strong immovable fencing of a minimum height of 06 feet, so that a person, whether under the influence of liquor or otherwise, may not fall down accidentally or by mischief.

iii) The act of drinking in the open space, by the persons sitting therein, should not be visible to the passersby so as to create nuisance or inconvenience or a bad feeling. In addition, if the open space is visible from other nearby high places, whether within the same building or in the surroundings, additional measures will be taken to prevent visibility from

such high places. The licensee shall ensure that the persons using the open space do not indulge in any activity such as throwing articles outside which may be a cause of disturbance to the outsider/passersby.

iv) No music or performance shall be allowed in the open space. No person less than the age of 25 years shall be allowed to enter in such open space. These restrictions, however, shall not be applicable to L-12C licensee subject to the condition that the liquor shall not be served to any person less than 25 years of age in these clubs.

v) The open space shall not be allowed at such places that are located in residential area.

vi) No open space shall be allowed in the vicinity of a waterpool of more than 02 feet depth if it happens to be within the same surrounded premises.

vii) Only one such additional point in open area/terrace shall be allowed, subject to the overall limit as provided in Note 1 above.

viii) The provision for open space shall not be in contravention of any laws/Rules applicable in the State.

ix) While recommending case for granting additional point in an open space the map of the open space shall be personally certified by the DETC (Excise) of the district concerned.

Note 3: No liquor shall be served in any open areas including possible etc., except where it is specifically allowed as mentioned in the above paragraph.”

11. It is not in dispute that the petitioners were granted L-4/L-5 licenses for the year 2016-17, which were renewed for the year 2017-18. However, the same were not renewed for the year 2018-19, as the petitioners did not fulfil the conditions laid down in the excise policy for the year 2018-19, as the average monthly sale of non alcoholic items in the restaurants was not ₹ 2,00,000/-. A chart has been produced as Annexure R-1 with the reply of the State showing monthly turnover of sale of non alcoholic items of all L-4/L-5 licensees for District Bhiwani for the year 2017-18.

12. A perusal of the aforesaid chart shows that in the case of petitioner No. 1, the average monthly sale of non alcoholic items from July, 2017 to January, 2018 was ₹ 31,242/-. The same in the case of petitioner No. 2 was ₹ 10,906/-. All of a sudden, the sale of non alcoholic items multiplied 45 times in the month of February, 2018 and then reduced to 25 times in the month of March, 2018 in the case of petitioner No. 1. The sale of non alcoholic items multiplied almost 100 times in the month of February, 2018 and then reduced to 50 times in the month of March, 2018 in the case of petitioner No. 2. For the month of April, 2018, petitioner No. 1 reported sale of non alcoholic items at ₹ 2,02,145/- and thereafter no returns were filed. In the case of petitioner No. 2, from April, 2018 onwards, no sale of non alcoholic items has been shown in his restaurant, as no return has been filed. Similar was the position with regard to seven other licensees. In none of those, as submitted by learned counsel for the State, the licensees were renewed. Only Vatika Bar and Restaurant was granted renewal of license as his turnover of non alcoholic items was regularly in lakhs and finally more than ₹ 2,00,000/- per month. Rather, in the month of April,

2018, average sale was more than ₹ 6,00,000/-.

13. In terms of Rule 13 of the Rules, no licensee has a right to claim renewal thereof as a matter of right. Even a perusal of the conditions in the excise policy for the year 2017-18, there is no condition prescribed that a licensee has a right to get the license renewed. It was merely provided in the excise policy for the year 2018-19. Clause 9.8.3 (h) thereof entitles a bar licensee to get his license renewed, however, it is subject to certain conditions. Once there was no condition in the excise policy for the year 2017-18 for renewal of license without any condition, the contention that any of the vested right of the petitioners has been taken away is totally misconceived. The right to get the license renewed flows only from clause 9.8.3 (h), part of which is being challenged by the petitioners. The condition being challenged by the petitioners regarding monthly average turnover of ₹ 2,00,000/- from sale proceeds of non alcoholic items in the restaurants. We do not find any illegality in the aforesaid condition being imposed for renewal of L-4/L-5 licenses. As the Rules prescribe, these licenses are issued in a restaurant for sale of liquor in pegs for consumption in restaurant, it is not meant for sale of liquor in bottles. Once there is sale of liquor in retail in pegs, that would necessarily mean sale of certain non alcoholic food items, which in the case of the petitioners was negligible except for the months of February and March, 2018, when it was increased exorbitantly. The effort was merely to bring in the case of the petitioners within the conditions laid down in the excise policy to show average monthly sale of non alcoholic items upto ₹ 2,00,000/-. The negligible amount of sale of non alcoholic food items clearly establish the fact that liquor in the restaurants of the petitioners may not being sold in retail and

the feedback of the department may be right on the basis of which condition of sale of food items was added in the policy for the year 2018-19 for grant of L-4/L-5 licensees.

14. For the reasons mentioned above, we do not find any merit in the present petitions. The same are accordingly dismissed.

(Rajesh Bindal)
Judge

(Mahabir Singh Sindhu)
Judge

25.10.2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No