IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.7979 of 2020
Date of Decision: 17.08.2020

Unique Wine Contractor ....Petitioner

Versus

State of Haryana and others .....Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. R.S.Kundu, Advocate,
for the petitioner.

Mr. Raman Sharma, Additional Advocate General, Haryana,
for respondent Nos.1 to 3.

Mr. Puneet Gupta, Advocate,
for respondent No.4.

KARAMJIT SINGH, J.

This writ petition has been filed by the petitioner under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned Excise Arrangement (Annexure P-3), wherein, specific condition has been imposed that liquor vend/sub-vend in village Dabwali will not be allowed upto 1.5 kilometers towards the outer edge of M.C limit of city Dabwali, it being violative of Clause 1.31 of provision of Command Area of Zone Haryana Excise Policy 2020-21 pertaining to Circle 06 P.S Sadar Dabwali, Village Dabwali Rural with further direction to the respondents not to disturb/shift the liquor vend of petitioner from the place, where it is working for the last about five years, by imposing the above-said condition, which is also violative of Haryana Excise Policy (Annexure P-2) of the year 2020-21 with further direction to the respondents to delete the

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aforesaid condition from the liquor vend licence of the petitioner (Annexure P-1/A) dated 21.05.2020.

The pleaded case of the petitioner is that he, being the successful bidder, was granted licence to run liquor vend in the area of Rural Dabwali under Zone Code ZRS48 for the year 2020-21. The copy of the liquor vend licence is Annexure P-1/A. After the issuance of the said licence, petitioner opened the liquor vend in Khewat No.1217, Khata No.1679, Khasra No.1120, Pocket No.81, Killa Nos.16 and 25/1, situated within rural area of Mandi Dabwali, where the liquor vend was in operation even in the previous year 2019-20. In the said licence specific condition was imposed that liquor vend/sub-vend in Village Dabwali will not be allowed upto 1.5 Kilometer towards outer edge of M.C limit of City Dabwali within revenue limit of the village Dabwali. The said condition imposed by the Excise and Taxation Department is violative of the Haryana Excise Policy for the year 2020-21. Clauses 1.3 and 1.3.1 of the said Haryana Excise Policy relating to Command Area of a Zone provides that the licencee shall have freedom in rural areas to locate his vend(s) at any place within the command area of the Zone, subject to approval of the DETC (Excise). The copy of the Haryana Excise Policy is Annexure P-2. There cannot be any zoning of command area in violation of the Excise Policy. The aforesaid condition imposed by respondent No.3-DETC (Excise), while making the arrangement of the command area of the zone, pertaining to Circle 06, P.S Sadar Dabwali, Zone Village Dabwali (Rural), is totally illegal. Hence, this writ petition.

On notice of motion, respondent Nos.1 to 3 filed reply, contesting the claim of the petitioner. In the written reply, it was admitted that the liquor

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vend in question was allotted to the petitioner for the year 2020-21. It was pleaded that as per the excise arrangement, the aforesaid liquor vend in village Dabwali can be opened and run beyond 1.5 Kilometer area from the outer edge of M.C limit of City Dabwali. The Retail Zone Licence (Annexure P-1/A) was issued to the petitioner in this behalf. Respondent No.3-DETC (Excise) was competent authority to determine the command area of the zone, under Clause 1.3.1 of the Haryana Excise Policy for the year 2020-21. It was denied that the excise arrangement (Annexure P-3) was violative of the Haryana Exicse Policy. On the basis of licence (Annexure P-1/A), the petitioner tried to open and run one liquor vend in the area comprised of Khewat No.1217, Khata No.1679, Khasra No.1120, Rectangle No.81, Killa Nos.16 and 25/1 situated in Mandi Dabwali. The said area was not beyond 1.5 Kilometer from the outer edge of municipal limit of City Dabwali. Due to this reason, the petitioner was rightly prevented from opening and running the liquor vend in the said site. The petitioner could not take any benefit of the fact that during the preceding year, the liquor vend was being run at the same site. It was pleaded that the writ petition deserves to be dismissed.

Petitioner filed replication, wherein, it was reiterated that the liquor vend in question is situated in the revenue estate of village Dabwali. It was also reiterated that the condition imposed in the licence is violative of the Haryana Excise Policy for the year 2020-21.

We have heard learned counsel for the parties and also gone through the record of the case.

Learned counsel for the petitioner, while referring to the Haryana Excise Policy (Annexure P-2), contended that, as per Clause 1.3.1, the vends in

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rural areas shall be grouped into Zones, for the purpose of allotment. The command area of the Zone shall be the geographical area specified for the Zone in the excise arrangement. It was further contended that as per said clause, the licensee of liquor vend in the rural areas shall have freedom to locate his vend (s) at any place within the command area of the Zone, subject to approval of the DETC (Excise). However, in the present case, respondent No.3 while making the arrangement of the command area of the Zone, has imposed condition that vend/sub-vend in Village Dabwali will not be allowed upto 1.5 Kilometer towards outer edge of municipal limit of City Dabwali, within revenue limit of the village Dabwali. The condition so imposed is not inconsonance with the Excise Policy of the State for the year 2020-21, as there could not be any Zoning of command area in violation of the Haryana Excise Policy.

Learned counsel for the petitioner further contended that vide its order dated 16.07.2020, the Court had directed Deputy Commissioner, Sirsa, to submit a report whether the liquor vend in question has been set-up within the framework of the policy and further to clarify whether the area wherein vend in question falls, is within the rural area or the municipal limits. Learned counsel for the petitioner further contended that the report submitted by the Deputy Commissioner, Sirsa, dated 24.07.2020, is totally false and is not supported by any document except for report submitted by a Committee constituted by the aforesaid officer. The said Committee also gave false report to the effect that the vend in question is situated within the municipal limits of M.C Dabwali, on the basis of Government notification dated 30.11.2006. The notarised copy of the said notification has been produced on behalf of respondent Nos.1 to 3. It

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is further contended that after going through the said notification, it cannot be made out if the site in question comes under the municipal limits of M.C Dabwali.

Learned counsel for the petitioner further contended that repondent No.4-Satish Kumar filed civil suit against the petitioner and Excise and Taxation Department, Haryana, regarding liquor vend in question and in their written statement, the department clearly stated that the liquor vend in question is running within the rural area of Mandi Dabwali. This fact clearly shows that the report submitted by the Deputy Commissioner, Sirsa, is totally false.

Learned counsel for the petitioner further contended that the site of disputed vend falls in the revenue estate of Village Dabwali, which is a rural area. The respondents have no right to restrain the petitioner from running his liquor vend in the site in dispute. While concluding his arguments, learned counsel for the petitioner prayed that the writ petition be allowed.

On the other hand, learned State counsel for respondent Nos.1 to 3 contended that State of Haryana framed Haryana Excise Policy for the year 2020-21 for allotment of liquor vends in the area of Haryana. The copy of the excise arrangement made by the Excise and Taxation Department, Haryana, on the basis of said Excise Policy, is Annexure P-3. The said excise arrangement specifically provides that the liquor vend/sub-vend in Village Dabwali will not be allowed upto 1.5 Kilometer towards outer edge of Municipal limit of City Dabwali. The petitioner gave highest bid, being fully aware of the above-said excise arrangement for the year 2020-21 regarding liquor vend of Village Dabwali. He, being successful bidder, was issued licence for running liquor

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vend in Village Dabwali. Even, in the said licence, the aforesaid condition was specifically mentioned. The said condition was imposed by the Excise and Taxation Department, Haryana, as per the terms and conditions of the Excise Policy for the year 2020-21. Learned State counsel further contended that the Deputy Commissioner, Sirsa, gave its report that the liquor vend in question has been set-up within the municipal limits of Mandi Dabwali, whereas, the petitioner was successful allottee of rural vend. The said report was submitted by the Deputy Commissioner, Sirsa, on the basis of the report submitted by the Committee (Annexure R-1). The said report of the Committee was based on notification dated 30.11.2006, whose notarised copy has been placed on record. The Index Plan of the Controlled Area, Dabwali town showing extended municipal limits is also produced by respondent Nos.1 to 3, in support of their contentions. The State counsel pleaded that the writ petition, being false and frivolous, deserves to be dismissed.

We have considered the submissions made by the learned counsel for the parties.

It is not disputed that the State Government framed Excise Policy for the year 2020-21, which is Annexure P-2. As per Clause 1.3.1 of the said policy, the vends in rural areas shall be grouped into Zones. The command area of the Zone shall be the geographical area specified for the Zones in the excise arrangement. DETC (Excise) will be the competent authority to determine such command area as part of the excise arrangement.

On the basis of Excise Policy (Annexure P-2), the department prepared excise arrangement (Annexure P-3), in which, it was specifically provided that liquor vend/sub-vend in Village Dabwali will not be allowed

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upto 1.5 Kilometer towards outer edge of M.C Limit of City Dabwali (Locations will be allowed strictly in accordance with the provisions of Excise Policy for the year 2020-21/ Haryana Liquor Licence Rules 1970 and the provisions of Punjab Excise Act, as may be applicable). The petitioner being successful bidder was issued liquor vend licence (Annexure P1/A) with the aforesaid condition.

The petitioner was fully aware of the impugned condition in excise arrangement (Annexure P-3) when he participated in the auction for allotment of liquor vend in question. We are of the view that if a person being knowing fully well of the terms and conditions of excise arrangement (Annexure P-3), at the time of the auction, he cannot lateron challenge the condition contained in it, after his bid was accepted. The principle of estoppel prevents it from challenging the excise arrangement (Annexure P-3), after the issuance of liquor vend licence to it.

The petitioner cannot take any benefit of copy of written statement (Annexure P-4) as the same is not bearing any date, month and year. In the said written statement, there is mention of report dated 04.06.2019, meaning thereby, that the same is not relating to Excise Policy for the year 2020-21.

In compliance of order dated 16.07.2020, Deputy Commissioner, Sirsa, submitted his report by way of affidavit. The said report is based on the basis of the report (Annexure R-1) submitted by the Committee comprised of DETC (Excise), Sirsa, District Town Planner, Sirsa, and Sub-Divisional Officer (Civil), Dabwali. The said report is based on notification dated 30.11.2006, whose notarised copy is available on the record. The Index Plan of Control Area, Dabwali Town showing extended Municipal limits has also been

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produced by respondent Nos.1 to 3, in support of their defence. As per the report of the Deputy Commissioner, Sirsa, the liquor vend in question has been set up within the Municipal limit of Mandi Dabwali. There was no reason for the Deputy Commissioner, Sirsa, to give false report regarding location of the liquor vend in question. So, it is clear that the liquor vend in dispute was set up by the petitioner in the area of Dabwali Urban. The location of the said liquor vend is not in accordance with the command area determined by DETC (Excise), as has been detailed in excise arrangement (Annexure P-3). So, the petitioner has no right to run the liquor vend in question on the site in dispute.

Consequently, we are of the view that no ground is made out to interfere in the matter. Accordingly, this writ petition is dismissed, being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

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Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No

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