

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

Civil Revision No.2432 of 2020

Reserved on : 05.11.2020

Pronounced on : 11.11.2020

Vinod Kumar Chahal

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Shivendra Swaroop, AAG, Haryana.

Mr. Rajbir Singh, Advocate for respondent No.3.

(Proceedings have been being conducted through video conferencing, as per instructions.

G.S. Sandhawalia, J.

In the present revision petition filed under Article 227 of the Constitution of India, the petitioner being the defendant No.3 in the civil suit challenges the order dated 02.07.2020 (Annexure P-4) passed by the Additional Civil Judge (Sr. Division), Guhla, which was upheld by the Additional District Judge, Kaithal vide order dated 16.10.2020 (Annexure P-6). The challenge is mainly to the direction issued to the respondent No.2/defendant No.2 that the sub vend of the petitioner was not to be within 2.5 Kms of limits of Municipal Council, Cheeka.

2. Primary arguments as such which counsel for the petitioner has raised that the application under Order 39 Rules 1 & 2 CPC of the plaintiff/respondent No.3 had been dismissed, but directions as such have been issued to decide the application of the petitioner/defendant No.3, regarding the location of the sub vend. It is, thus, contended that the directions as such were not justified, specially since there was no such

condition of 2.5 Kms distance from the revenue limits of Guhla-Cheeka, for opening of the sub-vend. Therefore, the Courts below had exercised jurisdiction not vested in them by law.

3. The said orders as such have been defended by the State and the plaintiff/private respondent No.3 on the ground that even on an earlier occasion in the suit filed by the petitioner, while deciding the application under Order 39 Rules 1 & 2 CPC on 29.05.2020 (Annexure P-10), the same had been dismissed on the same basis itself. The same had not been challenged, however, the suit thereafter had been withdrawn on 17.06.2020 (Annexure P-11), on the ground that the sub vend situated at village Matkalian had been approved. In such circumstances, no action as such was taken by the petitioner to re-locate the sub vend and, therefore, approval had never been granted at the site, where the sub vend is now located, which was away from the village, where the same was allotted. It is further submitted that the condition of 2.5 Kms had been inadvertently left out in two Zones No.ZKTL-26 and 31 of District Kaithal and, therefore, the petitioner was wanting to take advantage of the said inadvertent mistake. It was further submitted that the location of the sub vend had never been approved, since, it was only 200-300 meters away from the MC limits of Guhla-Cheeka and, therefore, directions had been rightly issued by the Courts below.

4. A perusal of the paper-book would go on to show that a notice dated 21.05.2020 (Annexure P-12) had been issued, wherein the petitioner had been put to notice by defendant No.2/respondent No.2 that

he had applied for a sub vend at village Matkalian, vide application dated 14.05.2020. During the site visit at the proposed sub-vend, it had been noticed that the same had been opened near the MC limits of Guhla-Cheeka and far away from the village Phirni. Thus, there was a violation of Clause 1.3.2 and 1.3.5 of the Excise Policy of 2020-2021. It was further noticed that the licence fee of the sub vend had not been deposited nor the resolution of the Gram Panchayat had been taken and, therefore, directions were issued to submit new site plan of sub vend, as per the Excise Policy.

5. The petitioner himself had challenged the said notice by filing suit for declaration and permanent injunction. It was noticed by the Trial Court that the site plan where the sub vend was located had not been placed on record and, therefore, the condition that there was no Phinri in the village was without any basis. It was further held that an application had been moved before the Sarpanch of village Duserpur regarding the consent for opening of sub vend and, therefore, the argument that whether the population of village Matkalian is below 1000, was a matter of evidence and whether the consent of said Gram Panchayat had to be taken. There was violation of the Clause 1.3.5 of the Excise Policy and the plaintiff did not have any right to open any sub vend and same was subject to approval of defendant No.2. It was further noticed that there was an admission that the licence fee for sub vend, which he had deposited Rs.2 lakhs was for sub vend in village Agondh and the petitioner was seeking adjustment for village Matkalian. It was noticed

that the notice talked about the violation of some laws and an opportunity had to be given to submit new site plan of the sub vend and *prima facie* there was no case for grant of interim injunction. As noticed the suit was withdrawn conveniently on 17.06.2020 (Annexure P-11) when the injunction had been declined.

6. Resultantly, the present suit was filed by the plaintiff/respondent No.3 alleging that the present petitioner/defendant No.3 had placed a sub vend near village Matkalian, which was within the 2.5 Kms of the notified limit of MC Guhla-Cheeka. The defendant No.2 had asked the plaintiff to shift his sub vend vide letter dated 15.06.2020, which was null & void and arbitrary. It was submitted that the petitioner was acting in collusion with the officials of the defendant No.2. The defendant No.2 had taken the objections that no new sub vend was to be located in the rural area within 2.5 kms between the command area of sub vend and vend/sub vend of any other licensee. The sub vend was preferably to be located within the Phirni of the village and that he was trying to establish his liquor vend at a distance of less than 2.5 kms from the MC limits of Guhla.

7. The stand of the petitioner was that the liquor vend was being closed, which was 3 kms away from the Phirni of village Kharodi. There was no condition required for establishment of liquor vend at a distance of 2.5 kms away from the revenue limit of MC Guhla, as per the pre-allotment excise arrangement. He was legally entitled for approval of the Matkaliyan sub vend and, therefore, the location as such was justified.

8. In such circumstances, the Civil Judge (Sr. Division), vide the impugned order noticed the stand of the State that the plaintiff vide notice dated 15.06.2020 had been asked to shift its sub vend to 2.5 kms away from the limits of MC Cheeka, since its present position is 2.2 kms away from the MC limits. It was noticed that there was a report as such of the revenue authority against the plaintiff/respondent No.3 and that the sub vend is yet to be approved of the plaintiff and if he was violating the law, he could not seek the protection of law to save his running business. Regarding the petitioner it was noticed that he had filed Civil Suit No.164 of 2020, wherein challenge had been made to the notice dated 21.05.2020 and the injunction application had been dismissed and, thereafter the suit had been withdrawn on 17.06.2020. It was further noticed that the official respondents in the Court had stated that the site plan of the present petitioner had also not been approved and, therefore, he could not open any sub vend in the Excise Zone within 2.5kms of MC Cheeka. Thus, directions were rightly issued to ensure that the sub vend of the present petitioner was not be located/running within 2.5 kms of limits of MC Cheeka.

9. In appeal, the lower Appellate Court noticed the fact of earlier litigation and came to the conclusion that the order dated 02.07.2020 warrants no interference in the facts and circumstances.

10. Rule 16-A of the Haryana Liquor Licence Rule, 1970, which was relied upon by defendant No.2, reads as under:-

“(16-A) [License in form L.14-A and Sub-Vend attached to L-14-A for retail vend of ordinary spiced country spirit for

consumption "off", the premises;] - (a) No new vend or sub vend of country liquor and Indian Made Foreign Liquor shall be located in the Rural Area within 2.5 kilometers between the command area of sub vend and vend/sub vend of any other licence. The sub vend shall be preferably located within the phirni of the village. No sub vend shall be allowed to operate on schedule roads/State Highways/National Highways).

11. Admittedly, a notice as such had been issued on 21.05.2020 (Annexure P-12) raising various objections regarding the location of the petitioner's vend and that there was a violation of above rules and Clause 1.3.2 and 1.3.5 of the Excise Policy. Relevant clauses read as under:-

“1.3.2 MANNER OF GRANT OF SUB-VENTS:

a) Sub-vend may be permitted for each Gram Panchayat with a population more than 1000 (as per 2011 census).

b) Sub-vends for a Gram Panchayat having population less than 1000 (as per 2011 census), may be allowed with the consent of the Gram Panchayat, by the DETC (Excise).

c) One vend and one sub- vend or two sub-vends may be allowed in a Gram Panchayat, if the population of such Gram Panchayat is more than 5000 (as per 2011 census).

The fee per Sub-Vend in rural area shall be Rs.2.00 lakh.

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1.3.5 LOCATION OF SUB-VENTS:

There has to be a minimum distance of 2.5 KMs between the two vends, between the two sub-vends, and between vend/sub-vend of any other licensee in case of rural areas only. The sub-vend shall also be subject to all other provisions of law. The vend/sub-vend is required to be preferably located on the ‘phirni’ but outside the ‘Lal Dora’ of the village. All the provisions with regard to location of vends shall apply to the sub-vends also.

Preference shall be given to the vend over the sub-vend. In other cases, preference shall be given to the sub-vend set up earlier in time.”

12. The reading of Clause 1.3.2, would go on to show that the same is in consonance of Rule 16A as there was a distance of 2.5 kms to be maintained between two vends. The location of the sub vend is required to be preferably located on the Phirni, but outside the *Lal Dora*.

13. The site plan as such has also been placed on record (Annexure P-15), which would go on to show that the sub vend which has now been opened at village Matkalian was approximately 1km away from the Phirni of village. It is the specific stand of the State that it is within 2.5 kms from the MC limits of Guhla-Cheeka and, therefore, merely because the condition was inadvertently not mentioned in the excise arrangement (Annexure P-7) for two Zones i.e. ZKTL-26 and 31, it would not give any vested right as such to the petitioner to set up the site without any approval, in violation of the statutory rules. The petitioner being an allottee of the sub vend has to comply with the terms and conditions and he had already been put to a notice regarding the location of the sub vend.

14. Nothing has been placed on record that after the notice dated 21.05.2020 and after the dismissal of the injunction application, the site plan has been approved for opening of sub vend, where it is now running. Rather, a perusal of letter dated 16.07.2020 (Annexure P-8) would go on to show that the official respondents had asked him to give three copies of the site plan as required for the issuance of the licence at village

Matkalian sub vend, so that the licence of sub contract can be issued at the earliest. No material has been placed on record to show that the said exercise has taken place.

15. Thus, it is apparent that only on the ground that the condition had not been mentioned in the excise arrangement for the petitioner, he is seeking the relief. The orders have been passed by the Courts below on the dismissal of the application of the plaintiff and the earlier suit of the petitioner are justified in the facts and circumstances. The State is acting in pursuance of the terms and conditions of the Excise Policy and asking him to re-locate as per the same. The directions by the Courts below cannot said to be in violation of any statutory provisions and cannot said to be issued without jurisdiction.

16. In such circumstances, the petitioner cannot claim that the directions which had been issued to the official respondents are without any basis. He is equally bound by the Excise Policy being an licensee and once the official respondents are acting within the purview of law and asking him to make alternative arrangement and re-locate his sub vend, the directions which have been issued by the Courts below, are not liable to be interfered with by this Court under Article 227 of the Constitution of India.

17. Resultantly, there is no merit in the present revision petition and the same is dismissed.

NOVEMBER 11, 2020

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No