IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10053-2021 (O&M)
Date of Decision:-02.08.2021.

Naresh Kumar and others

.....Petitioners

Versus

State of Haryana and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL

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Present: Mr. D.K. Bhatti, Advocate for the petitioners.

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VIKAS BAHL, J.

Six petitioners have filed the present petition challenging the various clauses of the Excise Policy of 2019-20 (Annexure P-7) issued by respondent No.2, whereby, it has been provided that no rebate/reduction/refund of the license fee shall be allowed on account of closure of liquor outlets in any area for any reason whatsoever. In the unamended writ petition, specific challenge was laid to clause 2.14.6 of the said policy. However, in the amended writ petition it has been clarified that even clauses 2.14.5 and 12.11 of the said Excise Policy are also being challenged. Further, challenge has been made in the writ petition for quashing the order dated 15.10.2020 (Annexure P-24), *vide* which respondent No.2 has rejected the claim of the petitioners and other similarly situated persons for reduction of license fee for the period from 27.03.2020 to 31.03.2020 by placing reliance upon clauses 2.14.6 and 12.11 of the Excise Policy of 2019-20.

The case of the petitioners is that they are L1, L2, L13 and L14 license holders in various Districts in the State of Haryana. It is further the case of the petitioners that the respondents have been issuing Excise Policy on yearly basis for controlling and managing the liquor trade in the State of Haryana and it is the said Excise Policies which govern the liquor business in the State of Haryana for the concerned financial year. Reference has been made to the licenses (Annexures P-1 to P-6 along with the writ petition), which have been issued subject to the provisions of the Punjab Excise Act, 1914 (hereinafter referred to as 'the Act of 1914'), Rules and **Policies framed thereunder.** A further reference has been made to the Excise Policy (Annexure P-7 with the writ petition), moreso, clauses 2.14.5, 2.14.6 and 12.11. The said clauses are reproduced as hereinbelow:-

> ***2.14.5. COMPENSATION***
>
> *No compensation of any kind or relief in license fee on account of natural calamity such as fire, floods, drought, earthquake etc. or on account of riots or as a result of preventive closure ordered by the District Magistrate or as a result of any remission by a court*

order beyond the specific relief given, shall be admissible to the licensee.

Explanation: For the purpose of this sub-clause, the executive instructions of the Financial Commissioner embodied in paragraph 3.19(e) of the Punjab Excise Manual Volume-III, relating to concession to license holders, shall not be applicable.

2.14.6. *The closure of any liquor outlet in any area on account of any reason, whatsoever, shall not entitle the licensee to any rebate/reduction/refund of the license fee.*

"12.11COMPENSATION:

No compensation of any kind or relief in license fee on account of natural calamity such as fire, floods, drought, earthquake etc. or on account of riots or as a result of preventive closure ordered by the District Magistrate or as a result of any remission by a court order beyond the specific relief given, shall be admissible to the licensee."

In paragraph 6 of the writ petition, it has been specifically stated that in pursuance of the issuance of the said Excise Policy for the year 2019-20, the respondents had issued a public notice on 09.03.2019 inviting tenders for allotment of licenses for different zones for general public for the year 2019-20. The public notice has been annexed as Annexure P-8 along with the writ petition. The relevant portion of the said public notice is reproduced hereinbelow:-

"PUBLIC NOTICE
GOVERNMENT OF HARYANA
EXCISE & TAXATION DEPARTMENT

NOTICE FOR INVITING e-TENDERS FOR ALLOTMENT OF ZONES OF RETAIL LIQUOR LICENSES OF LIQUOR VENDS OF SEVEN (07) DISTRICTS FROM THE GENERAL PUBLIC FOR THE YEAR 2019-20 IN THE STATE OF HARYANA."

3. The e-Tenders shall be received and the Zones of vends shall be allotted in the manner ***prescribed in the Excise Policy for the year 2019-20*** *and the Punjab Excise Act, 1914 (as applicable to the State of Haryana), the rules framed thereunder.*

It is further the case of the petitioners that on account of the COVID-19 pandemic, various orders were passed by the Government restricting the movement of people and closure of business for controlling the spread of the disease. It was stated that from 27.03.2020 to 31.03.2020, there was lock-down and, thus, the petitioners could not carry on their business. The petitioners made several representations to the authorities seeking pro-rata reduction in license fee and also for waiving off imposition of penalty on shortlifting of quota. It is the case of the petitioners that they along with other persons had approached this Court by filing ***CWP-12582-2020*** on which the following order was passed:-

> *1. The Petitioners have a two-fold grievance. One, is the non-disposal of the representations dated 28th March, 2020 and 5th April, 2020 by the Respondents seeking "various reliefs, including refund of the license fee to the Licensees for the period when the Lockdown was operational i.e. 22nd March, 2020 to 31st March, 2020". The second grievance is against the Show Cause Notices ('SCNs') issued to the Petitioners for recovering penalties as a result of short lifting of the quota pursuant to the licenses issued to them.*
>
> *2. As far as the SCNs are concerned, it is obvious the Petitioners would have to reply to those SCNs after which the appropriate authority will pass orders on such SCNs. It is therefore premature for the Petitioners at this stage to seek any relief in relation thereto. The only direction that can be issued is that the Petitioners should reply to those SCNs, if not already done, not later than 31st August, 2020 and if the replies are so filed, the concerned authorities will pass reasoned orders on the SCNs not later than 20th September, 2020. If those orders are adverse to the Petitioners, they can obviously seek remedies that are available to them in accordance with law.*

3. As far as the other relief concerning refund of license fee for the lockdown period, a direction is issued to the Respondents to dispose of the representations on this aspect by a reasoned order, not later than 15th September, 2020, which order would be communicated to the Petitioners not later than 18th September, 2020. If aggrieved by such orders, it will be open to the Petitioners to seek appropriate remedies in accordance with law.

4. The petition is disposed of in the above terms."

Then, in pursuance of the said order, the Excise and Taxation Commissioner, Haryana, Panchkula, *vide* impugned order dated 15.10.2020 (Annexure P-24 along with the writ petition), rejected the claim of the petitioners with respect to reduction/refund of license fee for the alleged period of lock-down. A perusal of the said order would show that personal hearing was granted to the petitioners and in view of clauses 2.14.6 and 12.11 of the Excise Policy 2019-20, the case of the petitioners was rejected. *Vide* a separate order passed by the Deputy Excise and Taxation Commissioner, Ambala, (Annexure P-25 along with the writ petition), the other issue of penalty on shortlifting of quota was also decided against the petitioner. It has been stated in para 13 of the writ petition that a statutory appeal against the order Annexure P-25 has been instituted. Thus, the primary issue which is to be considered in the present writ petition is with respect to the validity of the clauses of the Excise Policy and the legality of the order dated 15.10.2020 (Annexure P-24 with the writ petition).

Learned counsel for the petitioners has submitted that the impugned clauses of the Excise Policy are illegal, against law and arbitrary and, thus, deserve to be set aside. It has further been argued that under the Act of 1914, there is no provision/rule/regulation to empower the State to deny any grant of compensation/remission in case of closure of a liquor vend due to spread of infectious disease. Reliance has been placed upon Rule 37 (41) of the Haryana Liquor License Rules, 1970 to contend that COVID-19 is a pandemic, as declared by the World Health Organization but the same does not come within the definition of natural calamity and, thus, COVID-19 would not be covered under sub-Rule 41 of Rule 37 so as to deny compensation to the petitioners. Rule 37 (41) is reproduced hereinbelow:-

> *"37. Every License under these rules is granted subject to the conditions set forth in this rule.*
>
> *Xx xx xx xx*
>
> *41) No compensation of any kind or relief in license fee shall be admissible to any licensee on account of natural calamities such as fire, floods, drought, earthquake or riots etc.*
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> *Explanation:- For the purpose of this sub-rule, the executive instructions of the Financial Commissioner*

embedded in paragraph 3.19(e) of the Punjab Excise Manual, Volume-III, relating to concession to license holders, shall not be applicable."

Reliance has also been placed by the learned counsel for the petitioners on Section 41 of the Act of 1914 to raise an argument that the impugned clause 12.4.6 is in the teeth of Section 41 of the Act of 1914. Section 41 of the Act of 1914 is reproduced hereinbelow:-

"41. Powers to withdraw licenses:-

(1) Whenever the authority which granted a license, permit or pass under this Act considers that such license, permit or pass should be withdrawn for any cause other than those specified in Section 36, it may [on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days] withdraw the license either:-

a) On the expiration of fifteen days' notice in writing of its intention to do so; or

b) Forthwith without notice.

(2) Compensation in the case of withdrawal:- *If any license, permit or pass be withdrawn under clause (b) of sub-section (1), in addition to the sum remitted as aforesaid there shall be paid to the licensee such sum (if* *any) by way of compensation as the Financial Commissioner may direct;*

(3) Refund of fee of deposit:- *When a license, permit or pass is withdrawn under this section, any fee paid in advance or deposit made by the licencee in respect thereof shall be refunded to him after deducting the amount (if any) due to the State Government."*

As a last submission, the learned counsel has argued that the petitioners are the persons interested within the meaning of Sections 65 and 66 of the Disaster Management Act, 2005, (hereinafter referred to as 'the Act of 2005') and, thus, the petitioners were entitled to compensation as per Section 66 of the Act of 2005. Section 65 and relevant portion of Section 66 is reproduced hereinbelow:-

"65. Power of requisition of resources, provisions, vehicles, etc., for rescue operations, etc.—*(1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that—*

(a) any resources with any authority or person are needed for the purpose of prompt response;

(b) any premises are needed or likely to be needed for the purpose of rescue operations; or

(c) any vehicle is needed or is likely to be needed for the purposes of transport of' resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction, such authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) Whenever any resource, premises or vehicle is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that sub-section.

(3) In this section,— (a) "resources" includes men and material resources; (b) "services" includes facilities; (c) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof; (d) "vehicle" means any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise.

66. Payment of compensation.— *(1) Whenever any Committee, Authority or officer referred to in sub-section (1) of* *section 65, in pursuance of that section requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—*

(i) the rent payable in respect of the premises, or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the thirty days to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central

Government or the State Government, as the case may be, to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 65 immediately before the requisition, or where no person was in such actual possession, the owner of such premises."

We have considered the submissions of the learned counsel for the petitioners and have also perused the amended as well as the unamended writ petition and find that the present writ petition has no merit and deserves to be dismissed for the following reasons:-

A perusal of the averments made in the writ petition itself would show that even as per the case of the petitioners, it has specifically been mentioned that the respondents have been issuing Excise Policies on yearly basis for controlling and managing the liquor trade in the State of Haryana. It has further been stated in the writ petition that the Excise Policies issued by the respondents govern the liquor business in the State of Haryana and it is in pursuance of the said Excise Policy for the year 2019-20 that the respondents had issued a public notice on 09.03.2019 inviting the tenders in question, which were allotted to the petitioners. Paragraphs 4 and 6 of the writ petition are reproduced hereinbelow:-

> "*4. That the respondents have been* ***issuing Excise Policies on yearly basis*** *for controlling and managing the liquor trade in the State of Haryana. In the* ***said Excise Policies****, the respondents enlist various excise arrangements including number of vends in a particular zone, annual quota of IMFL (Indian-made Foreign Liquor) and Country Liquor, the reserve price for the same and location of the vends etc. Further, the Respondents* ***while issuing Excise policies*** *also depict the general conditions of obtaining a license, the minimum price of liquor to be sold, price of liquor to be purchased from distillery, taxes to be imposed, Excise duty and permit fee to be levied etc. The* ***Excise Policies*** *issued by the respondents in itself govern the liquor business in the State of Haryana for the concerned financial year. Copy of the Excise Policy for the year 2019-20 issued by Respondent No.2 is annexed herewith as* ***Annexure P-7****.*
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> *6. That pursuant to the issuance of the said Excise Policy for the year 2019-2020, Respondents issued a Public Notice on 09.03.2019 inviting-Tenders for allotment of licensees for different zones from general public for the year 2019-2020. As per the schedule given in the said Notice, State of Haryana was*

divided into seven districts namely Fatehabad, Gurugram-East, Gurugram-West, Karnal, Panipat, Rewari and Sirsa. The said notice clearly specified the schedule of placing e-bids and its evaluation thereof and the dates for allotment of the liquor vends which is apt to be extracted herein below.

1.	*Starting date and time for placing e-tenders*	*From 12th April 2019 (9:00 am)*
2.	*Closing date and time for placing e-tenders*	*Till 12th April 2019 (5:00 pm)*
3.	*Evaluation of e-tenders*	*12th April, 2019 (6:00 pm)*

*Copy of the Public Notice dated 09.03.2019 is annexed herewith and marked as **Annexure P/8**."*

Even a perusal of the licenses which have been issued in favour of the petitioners would show that the same would be subject to the provisions of the Act of 1914 and the **policies framed thereunder.** One such license was issued in favour of petitioner No.1 having been annexed as Annexure P-1, is reproduced hereinbelow.

"FORM-1

LICENSE FOR WHOLESALE OUTLET OF

FOREIGN LIQUOR (IMFL) TO TRADE ONLY

District Name: Karnal *License No./Code 36*

This license authorizing wholesale outlet of foreign liquor to *trade only in the premises depicted in the enclosed site plan for the year 2019-20 is hereby granted to* ***M/s Naresh & Co. Situated at 119/6 KM Stone Karnal towards Delhi GT Road near Chetak Pressure Cooker, Karnal.***

HOUR OF SALE:- *As prescribed in the Rules.*

This license is granted subject to the provisions of the Punjab Excise Act, 1914, rules and ***policy framed*** *there under and instructions issued from time to time.*

Sd/-xx
Collector-cum-
Addl. Excise & Taxation Commissioner (HQ),
Haryana"

It is, thus, apparent that the petitioners were aware about the Policy and its clauses, moreso, clauses 2.14.5, 2.14.6 and 12.11 and in fact as per their version, the said Policy governed the liquor business in the State of Haryana and the petitioners were in fact bound by the said Policy. The petitioners never chose to challenge the clauses of the Policies before participating in the tender process. In fact, the petitioners being fully aware, participated and were successful in the tender process and after the lapse of the period mentioned in the Policy, seek to challenge the clauses of the Policy. The petitioners in our considered view are estopped from raising the present challenge to the impugned clauses of the Policy. In the advertisement, a specific reference to the Excise Policy for the year 2019-20 was made and after having carried out their business in accordance with the terms of the Excise Policy, it did not lie in the mouth of the petitioners to challenge some of its terms after the period of the Policy had lapsed. In case, the petitioners had any grievance with respect to any terms of the Excise Policy (Annexure P-7), then the petitioners should have challenged the same before participating in the process. There could be a large number of persons who may have become disinclined in participating in the tender process after having read the terms and conditions including the impugned terms and conditions of the Excise Policy and, thus, to consider quashing the said clauses at the instance of the petitioners would apart from being violative of the principle of estoppel, would also be unfair to the said persons and would in fact lead to changing the terms and conditions of the Policy after its period had lapsed. Reference in this regard be made to a judgment of the Division Bench of the Hon'ble Kerala High Court reported as ***1985 AIR (Kerala) 111*** in which it was held as under:-

> *"The business of conducting liquor comes under this category. In these cases, no right inheres in any individual to carry on trade in noxious or dangerous goods. The State may completely prohibit the trade or impose severe restrictions on the business. Only those persons who are willing to abide by the tringent conditions are given the right to carry on trade. When, in those cases, they enter into a contract, and obtain the right to carry on business, they cannot thereafter turn round and challenge*

the provisions of the Act or the terms of the contract. They owe their right to trade in this business to the Act and the rules. They have no contractual rights independent of the statute. Article 226 cannot be invoked as an escape rule to wriggle out of contracts in respect of the liquor trade. The petitioners are estopped also by their conduct from claiming any relief under Article 226 of the Constitution when, with open eyes, aware of the terms of the contract, they participated in the auction, and one of them even negotiated for a contract, and both obtained contracts in their favour for reduced amounts, and have thus gained advantage under the very terms of the contract. They cannot be allowed to retain the advantage of the contract without at the same time being bound by the obligations arising therefrom."

Thus, on the said short ground alone, the present writ petition deserves to be dismissed.

Moreover, a perusal of the said Policy moreso, the impugned clauses i.e. 2.14.5 and 2.14.6 and 12.11 would show that the petitioners' claim for refund of license fee/proportionate decrease of license fee/compensation etc. is absolutely baseless. It has been specifically provided in clause 12.11 that no compensation of any kind or relief in license fee on account of natural calamity or on account of riots or as a result of preventive closure shall be admissible to the licensee. Even where certain natural calamities have been mentioned such as fire, floods, droughts, earthquake, the word 'etc.' has also been used. It is, thus, apparent that the natural calamities enumerated, are not exhaustive. Moreover, the aspect of 'preventive closure' is also covered under the said clause 12.11. A further perusal of clauses 2.14.5 and 2.14.6 would make it clear that closure of any liquor outlet in any area on account of **any reason whatsoever,** shall not entitle the licensee to any rebate/reduction/refund of the license fee. The said clauses clearly show that the petitioners have no right to claim any rebate/reduction/refund of the license fee or any compensation on account of the alleged closure of their shops from 27.03.2020 to 31.03.2020. The petitioners are bound by the said clauses and are estopped from challenging the same.

The reliance sought to be placed by learned counsel for the petitioners on Section 41 of the Act of 1914 is completely misplaced. A perusal of the said Section, which has been reproduced hereinabove, would show that the said provision would apply only in a case where the authority which had granted a license/permit etc. considers that such license/permit etc. should be withdrawn. In the present case, it is not even the case of the petitioners that the authority had passed any order with respect to withdrawal of the license. In fact, the petitioners had the license for the entire period during which the Excise Policy of 2019-20 was in force. Thus, the said provision is inapplicable in the present case. Even the reliance sought to be placed upon Rule 37 (41) of the Haryana Liquor license Rules, 1970, which have been reproduced hereinabove, does not in any way, further the case of the petitioners. Rule 37 (41) would in our considered opinion, be wide enough to cover a calamity/pandemic like COVID-19. As has been observed hereinabove, the natural calamities which have been enumerated are not exhaustive, as the word 'etc' has been mentioned at the end of Rule 41. A situation where a large number of persons have died due to the widespread of a deadly disease which was being transmitted even by mere contact of two persons would surely be a much higher calamity/disaster than fire, riots which have been specifically enumerated. Moreover, even the Excise Policy of 2019-20, which the petitioners are estopped from challenging clearly provides that the closure of any liquor outlet in any area on account of any reason whatsoever, shall not entitle the licensee to any rebate/reduction/refund of the license fee. The said clauses of the Excise Policy in fact supplement the Rules and are in no manner in derogation to the said Rules. Moreover, the learned counsel for the petitioners has not been able to show any provision under the Act of 1914, Haryana Liquor Rules or in the Excise Policy or in any agreement/contract, the petitioner might have entered into with the respondent-authorities, that the petitioners would be exempted from the licensee fee in a situation where they had to close the shops for a period of four days. The petitioners had participated in the tender process with their eyes open and were fully aware of the various clauses. Thus, they cannot now turn around and raise arguments contrary to the clauses itself. Moreover, the petitioners have challenged the said clauses after much delay.

This Court in a judgment dated 06.04.2020 titled as ***"Vishal Singla Vs. State of Haryana and others***, ***(CM-4252-CWP-2021 in/and CWP-17625-2020),*** where a similar plea to reduce the license fee in view of less sale on account of COVID-19 pandemic was made, has held that there is no fundamental right to trade in liquor and the matters of economic and financial policy ought to be left to be decided by the Government itself. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"Case has been heard through video conferencing on account of COVID-19 Pandemic.*
>
> *Petitioner-Vishal Singla was declared successful bidder for three zones i.e. Zone Nos.17, 22 & 41 and was given license to run L-2 and L-14 liquor vends for the year 2020-2021. The present writ petition has been filed by the petitioner seeking mandamus directing the respondents for rescheduling of installments of license fee including those for the months of October-November, 2020, to reduce the license fee in view of less sale due to COVID-19 Pandemic, to waive interest and penalties, if any on late deposit of license fee and not to cancel the allotment of liquor vends and to given concession/relief to*

the petitioner on the basis of letter dated 15.10.2020 (Annexure P-15).

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The petitioner has sought indulgence of this Court under Article 226/227 of the Constitution of India on the following two issues as reflected by this Court vide order dated 19.1.2021:-

(i) Discrimination in the Policy dated 15.10.2020 (Annexure P-15) regarding charging of license fee of first and second quarter, one time fee for additional points and rebate in license fee of third and fourth quarter for the

year 2020-2021.

(ii) The demand of license fee by the Government for the period from 12.11.2020 to 19.11.2020, when the liquor vends remained closed.

The counsel for the petitioner inter alia contended that due to COVID-19 Pandemic, the entire sale expectancy suffered, as there was a complete lock-down till May, 2020 and thereafter the liquor vends were opened in a phased manner. In regard to sale of liquor to L-4 and L-5 license holders (hotel and restaurant industry), the same remained closed till September, 2020. So there was no supplies of liquor to L-4 and

L-5 license holders till September, 2020, whereas L-2 and L-14 license holders started operations in a phased manner from May, 2020 onwards and could not supply liquor to L-4 and L-5 license holders till September, 2020. It was further contended that 'Ahatas' (Anumat Kakshs) attached to the liquor vends also remained closed till October, 2020 as a result of which the petitioner suffered huge financial loses. The counsel for the petitioner further contended that L-4 and L-5 license holders are end users being consumption points for L-2 and L-14 license holders. As there was no sale of liquor till September, 2020 by L-4 and L-5 license holders, it directly effected the sales of L-2 and L-14 license holders. However, the Government while formulating Policy dated 15.10.2020 (Annexure P-15) gave benefit/concession of the aforesaid extra ordinary circumstances to L-4 and L-5 license holders but ignored L-2 and L-14 license holders. The aforesaid policy is arbitrary and irrational. The same being discriminatory and unfair, smacks of favoritism. The aforesaid policy is also violative of Article 14 of the Constitution of India and thus is unsustainable.

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In regard to issue No.2, the counsel for the petitioner contended that the Government also took vindictive action by closing the *liquor vends from 12.11.2020 to 19.11.2020, as a result of which the petitioner further suffered heavy financial losses. This being the position, the Government could not demand license fee regarding liquor vends for the period from 12.11.2020 to 19.11.2020, from the petitioner.*

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The State counsel brought to the notice of this Court that the petitioner being holder of L-2 and L-14 licenses is not covered under Policy (Annexure P-15) whereby certain concessions were given to the L-4 and L-5 license holders.

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The State counsel while referring to ***Joshi Technologies International INC.*** *vs.* ***Union of India and Others (2015) 7 SCC 728****, submitted that the present writ petition is not maintainable which has been filed by the petitioners to avoid his contractual obligation. The occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract, which the parties had accepted. It is not permissible that a licensee can workout the license if he finds it profitable to do so and otherwise he can* *challenge the same if he finds it commercially inexpedient to conduct his business.*

It was next argued by the State counsel that Annexure P-15 is a policy decision, which falls within the domain of the State Government. The petitioner has no right to invoke the writ jurisdiction under Article 226/227 of the Constitution of India to challenge the same. It is was further contended that even otherwise the petitioner has failed to prove any discrimination, bias, arbitrariness or favoritism as has been pleaded in the writ petition. The State counsel urged that the writ petition deserves to be dismissed.

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Also it is the settled legal position that there is no fundamental right to trade in liquor. In this context reference be made to ***Khoday Distilleries Ltd. and Others vs. State of Karnataka and Others, (1995) 1 SCC 574****. Besides this, the Hon'ble Supreme Court in* ***M/s Ugar Sugar Works Ltd.*** *vs.* ***Delhi Administration, 2001(3) SCC 635,*** *has held that the State has the authority to regulate the sale, purchase and consumption of liquor. The Hon'ble Apex Court further held that no direction can be given or expected from the Court regarding 'correctness' of an executive policy unless while* *implementing such policies, there is infringement or violation of any constitutional or statutory provision.*

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Furthermore, the matters of economic and financial policies, ought to be left to be decided by the Government itself. The Court cannot strike down a policy decision taken by the State in the form of letter Annexure P-15. This Court can interfere in such like matters only if the policy decision is patently arbitrary, discriminatory or mala-fide. However, no such illegality or irrationality or discrimination is brought on record by the petitioner.

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In the light of the above, there is no justifiable reason warranting interference with impugned policy (Annexure P-15) or the action of the Government to seal the liquor vends of the petitioner, for the period from 12.11.2020 to 19.11.2020.

Accordingly, this writ petition stands dismissed."

The terms and conditions as mentioned in the Excise Policy are matters of policy which are best decided by the Government itself. The petitioners, after being aware of the said policy, had participated in the process. It is not the case of the petitioners that any person who is similarly placed as the petitioners has been granted any benefit for the period of those four days during the time the Excise Policy of 2019-20 was in force. Moreover, no *mala fide* has been alleged in the present case. Thus, it cannot even remotely be stated that the Excise Policy was discriminatory, *mala fide* or patently arbitrary. The impugned order dated 15.10.2020 has been passed keeping in view the said terms of the policy and after granting hearing to the petitioners and, thus, deserves to be upheld.

With respect to the argument of the learned counsel for the petitioners to the effect that the petitioners were persons interested and were entitled to compensation as per Section 66 of the Act of 2005, it is stated that no such plea had been raised in the amended or unamended writ petition nor any such plea was raised before the authorities in the earlier round of litigation which resulted in the passing of the impugned order. No such plea was even raised in the representation which was submitted before the authorities. However, the said plea has been raised only in the application for amendment of the writ petition. Although, the petitioners cannot be permitted to raise such a plea on account of lack of pleadings and also on account of the same having not been raised before the authorities. However, we deem it appropriate to deal with the said plea also. A perusal of Sections 65 and 66 would clearly show that the petitioners would not fall in any category as mentioned in Section 65. Moreover, it is only in a case where the authority as referred to in Section 65 'requisitions' any premises that the question of payment of any compensation would arise. It is not even the case of the petitioners that any premises or any vehicle of the petitioners has been **requisitioned** by the authorities. Moreover, no application, as envisaged under Section 66, has been moved by the petitioners to the Central Government and it seems that the present argument has been raised only for the sake of argument.

That before we part with the present judgment, it would also be relevant to mention that in one of the prayers made in the writ petition reference has been made for not charging of penalty for less quota lifted. In this regard, it is suffice to note that in a separate order (which has been annexed as Annexure P-25), it has been observed that the said penalty deserves to be imposed on the petitioners in view of clause 3.3.2 and also on account of the fact that the quarter of the year had commenced on 01.01.2020 and, therefore, the petitioners had enough time for lifting their quota for the quarter. However, since as per paragraph 13 of the writ petition, the petitioners have stated that they have filed statutory appeal against the said order (Annexure P-25) and a perusal of the prayer clause would show that the said order (Annexure P-25) has not been challenged in the present writ petition or in the amended writ petition, thus, we leave it to the petitioners to agitate the said aspect before the appropriate authority. However, the writ petition as regards to the challenge to the clauses of the Excise Policy (Annexure P-7) as well as challenge to the order dated 15.10.2020 (Annexure P-24), being meritless, is dismissed.

Since the main writ petition has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

August 02, 2021.
sandeep

Whether speaking/reasoned:- Yes

Whether Reportable:- Yes