IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.13281 of 2020 (O&M)
Date of decision: 05th January, 2021.

M/s Garg Wine
...Petitioner
Versus

State of Haryana and Others
…Respondents

(***Heard through Video-Conferencing)***

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arjun Shukla, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

* * * * *

MEENAKSHI I. MEHTA, J.

By way of this petition, the petitioner-firm has sought the indulgence of this Court for issuance of a writ in the nature of mandamus directing the respondents to treat it (petitioner) at par with the other licensees who have been allowed to surrender their licenses without any cost or risk and to allow it to surrender its license for the Excise Zones ZAMB03, ZAMB05 and ZAMB08. A further prayer for directing the respondents not to charge the license fee beyond the quota lifted by the petitioner, in view of the low sale volumes and its claim for surrender of the above-said licenses, has also been made.

2. Bereft of unnecessary details, the averments as put-forth by the petitioner in this petition, are that it is a proprietorship firm owned by Mr. Vijay Garg. After issuing the Excise Policy for the year 2020-21, the respondents issued public notice for inviting the e-tenders for allotment of the licenses for the zones of retail vends of country liquor and IMFL for the said year in the State of Haryana. It (petitioner) deposited a sum of Rs.3.05 crore as earnest money and another sum of Rs.14 lac as participation fee in the corpus created in compliance of the said policy. After submitting bids for several excise zones, it was declared successful for five zones on 13.03.2020 and for two more zones in the second round of bidding on 20.03.2020 and out of these total 07 zones, 04 are urban and 03 are rural zones. The excise year was to commence from the month of April, 2020 but due to the out-break of Pandemic Covid-19, the Government imposed the lock-down and keeping in view the scenario arising therefrom, the petitioner requested the respondents, vide e-mail dated 23.03.2020, to cancel its bids by invoking the special powers as envisaged in Clause 2.12 of the Excise Policy but the respondents started pressurizing it to withdraw the said e-mail or otherwise, to face the rigour of Clause 2.17 of the said Policy which provides that in the case of surrender/cancellation of the license, the re-allotment of zone was to be done at the risk and cost of the original allottee and they also informed it that the Government had decided not to charge the license fee for the lock-

down period. In view of these circumstances and also under the fear of forfeiture of the sum of more than Rs.4 crores, as was already lying deposited with the respondents as earnest money, security deposit and refunds of the earlier excise years, it withdrew the said e-mail.

3. The petitioner has also averred that on 05.05.2020, the respondents, in pursuance of the guidelines issued by the Government of India, made some amendments in the said Excise Policy whereby the liquor vends were allowed to open from 06.05.2020 morning at 7:00 a.m. Vide the said amendments, several benefits, which were the integral part of the Policy, were withdrawn and the bars, restaurants, clubs, marriage-halls etc. were closed and the timings of the liquor vends were also restricted which has adversely affected the sale of the liquor at the vends. Moreover, in the amended Policy, no provision was made regarding the 'Exit Clause' and hence, it (petitioner) started its limited operations from the above-stipulated day after arranging for the stock of the liquor, salesmen etc. but after 10-15 days, it realised the substantial dip in its sales which was to the extent of 50%-70% in the urban area and 25%-40% in the rural area. The reserve price for the left-over/unallotted excise zones was also considerably reduced. In such circumstances, the petitioner again moved a representation dated 27.07.2020 to the respondents with a request to allow it to have an exit from the clauses of the Policy. Thereafter, it, along-with some other licensees, preferred Civil Writ Petition No.9904 of 2020 before this Court

for challenging the levy of Covid-Cess on the liquor and in the written-reply as filed by the respondent-State therein, it has been mentioned that some licensees were allowed to withdraw/exit from the policy without any cost meaning thereby that the respondents have discriminated against it while treating its prayer for surrender/cancellation of the licenses of the said excise zones. Thus, the respondents have acted illegally in granting unjustified concession to said licensees.

4. Respondents No.1 to 5, in their joint written-statement, have contested the claim of the petitioner, inter-alia, on the grounds that in fact, the petitioner itself had withdrawn its above-said e-mail dated 23.03.2020 on the very next day. As per the amended Excise Policy, certain concessions were to be given to the licensees and accordingly, they were provided 14 days' time to establish their liquor vends for the year 2020-21 and no license fee was charged from them, including the petitioner, for this period and the lifting of the mandatory basic Quota of liquor was also reduced by 7% in the first quarter and 5% in the last quarter and the period for payment of the remaining 10% security amount, which was payable by 7th April, was also extended up to 20.05.2020. The petitioner started the operation of the vends in its liquor zones voluntarily after considering all the pros and cons of the provisions as contained in Clause 2(d)(ix) of the amended Excise Policy which are as under:-

"*(ix) The operation of license(s) by the allottee(s) by way of* *seeking stock transfer or seeking permit(s) or conducting sales of liquor from the business premises of the license shall be considered as acceptance of provisions of the amended Excise Policy."*

Thus, the petitioner accepted the amended Excise Policy and hence, it cannot be treated at par with the 07 licensees who refused to operate their liquor zones and in case, the petitioner now opts to surrender the liquor zones allotted to it, it cannot be allowed to do so without applying the provisions as contained in para 2.17 of the Excise Policy. The Group of Ministers (GOM) has recommended for granting the relief to the tune of Rs.10,68,858/-to the petitioner and the said recommendation has been referred to the Finance Department for the requisite approval which has directed for reconciliation of the unsold stock of the licensees and the stock of the distilleries as well as the stock lifted by the licensees. The petitioner has lifted 23.6% Quota of the country liquor and 18.75% Quota of IMFL against the basic mandatory Quota of 25% and as per the concession granted in the amended Excise Policy, no penalty is to be levied against it on account of the short lifting of Quota. Moreover, due to substantial rise in the volume of sales, the petitioner has lifted 98.9% of the Quota of country liquor and 82.98% of the Quota of IMFL against the basic mandatory Quota due up to 19.09.2020 and thus, no penalty is payable by it. The petitioner was also eligible and free to participate in the e-bidding in respect of the left-over zones at the reduced reserve price. Since the petitioner itself has opted to run the liquor vends after accepting the provisions of the amended Excise Policy, therefore, it cannot allege discrimination vis-à-vis the licensees who did not opt to do so and this writ petition be dismissed.

5. In the replication, the petitioner has re-iterated its earlier averments and claim as set-forth in this petition besides controverting the assertions as advanced by respondents No.1 to 5 in their written-statement.

6. We have heard the learned counsel for both the parties in the present petition and have also perused the file thoroughly.

7. Learned counsel for the petitioner has contended that after the allotment of the license for the afore-mentioned 07 zones in its favour, the petitioner-firm, in anticipation of the non-feasibility of the operation of the liquor vends in the wake of the outbreak of Pandemic Covid-19, had sent an e-mail to the respondents on 23.03.2020 with a request to cancel the bids submitted by it but the respondents threatened it with the applicability of Clause 2.17 of the Policy which provides for re-allotment of the licenses at the risk and cost of the original allottee in the case of the cancellation or surrender of the license and therefore, the petitioner had to withdraw its above-said request on the very next day, i.e on 24.03.2020. He has also contended that in the written-reply submitted by the respondents in CWP No.9904 of 2020 as preferred by the petitioner as well as other licensees for challenging the levy of the Covid-Cess on liquor, the respondents have

mentioned that 07 licensees did not operate their zones and these zones had been re-auctioned afresh without any risk and cost of the original licensees and it being so, the petitioner is also entitled to surrender the license in respect of the afore-referred 03 excise zones without any cost and risk. He has further contended that the sale of liquor has substantially decreased due to the outbreak of the said Pandemic and hence, the petitioner should not be charged the licence fee beyond the Quota lifted by it.

8. Per contra, learned State counsel has argued that the petitioner had voluntarily withdrawn its e-mail dated 23.03.2020 on the very next day after understanding the pros and cons of the entire matter as it has been participating in the bidding process for the licenses in the previous years also and there was no occasion for the respondents to threat or coerce it for doing so. She has also argued that after the amendments in the Excise Policy as carried out by the State Government in view of the changed scenario arising due to Pandemic Covid-19, the petitioner voluntarily lifted the stock of liquor to run its liquor vends as per the licenses allotted in its favour and it also availed the concessions as envisaged under the amended provisions of the said Policy and given by the State Government to the allottees/licensees and in view of the above-said Clause 2(d)(ix) of the amended Policy, it is explicit that the petitioner had accepted the said Policy whereas the said 07 licensees had refused to operate their liquor zones and consequently, the fresh auction of those zones was conducted without their risk and cost and

thus, the petitioner is not placed similarly to the said 07 licensees. Lastly, she has argued that the petitioner-firm has already lifted the substantial part of the basic mandatory Quota of liquor for the first quarter and therefore, it is not going to be imposed any penalty for short lifting of the basic mandatory Quota of liquor and hence it is not entitled to the concession of paying the license fee as per the quota of the liquor actually lifted by it.

9. Before adverting to the discussion on the contentions/arguments as raised by learned counsel for both the parties in this petition, we deem it expedient and appropriate to give a short resume of the facts which remain undisputed between the parties. Admittedly, the petitioner-firm had participated in the e-bidding for the allotment of the licenses for the zones of the retail vends of liquor for the year 2020-21 in the State of Haryana and it was declared successful for 05 excise zones on 13.03.2020 and for 02 more zones on 20.03.2020. The period of the licence was to commence from the month of April, 2020 but on account of the outbreak of Pandemic Covid-19, its operation remained suspended upto 05.05.2020 and the liquor vends were allowed to open w.e.f. 06.05.2020. Vide Annexure P-8, certain amendments were carried out in the original Excise Policy floated for the year 2020-21 so as to provide succour to the stake-holders and to safeguard the Government revenue whereby the validity period of the licenses has been fixed from 06.05.2020 to 19.05.2021.

10. As regards the contention of learned counsel for the petitioner

regarding the petitioner having been threatened or coerced by the respondents to withdraw its e-mail dated 23.03.2020 (Annexure P-6) as sent with a request for the cancellation of the bids submitted by it, a perusal of the said Annexure reveals that below the said e-mail, the text of another e-mail, as sent by the proprietor of the petitioner-firm on 24.03.2020, is also available wherein he has categorically mentioned that on the assurance as given by the Excise Department Head Office through DETC (Excise) Ambala, to the effect that no license fee for the period of lockdown would be charged in the State of Haryana in FY 2020-21, they withdraw their application for cancellation of their bids for the retail zones. A bare reading of the copy of another application, i.e Annexure P-5, moved by the said proprietor to the afore-said Authority also makes it clear that the petitioner had withdrawn the said e-mail seeking the cancellation of its bids, in view of the assurance given by the respondents regarding taking the suitable measures for the smooth functioning of the liquor business in the State. In the amended Policy, the validity period of the liquor licenses for the year 2020-21 has been fixed from 06.05.2020 to 19.05.2021 meaning thereby that the respondents are not charging any license fee from the licensees for the period of the lockdown in the State as assured to the petitioner and also mentioned by its proprietor in said e-mail dated 24.03.2020 (Annexure P-6). In such circumstances, it cannot be inferred at all that the petitioner had withdrawn its said e-mail under any threat or coercion at the hands of the respondents.

11. Then, so far as the contention of learned counsel for the petitioner regarding the respondents having discriminated with the petitioner vis-à-vis the said 07 licensees is concerned, it is again pertinent to mention here that in Para 5 of the preliminary submissions in their joint written-statement, respondents No.1 to 5 have specifically asserted that the petitioner had sought the transfer of the stock of liquor, purchased the liquor from the manufacturers/wholesale godowns and had also sold the same on the strength of the license granted to it. However, in the corresponding para of its replication, the petitioner has not denied the above-discussed assertion. In such circumstances, para 2(d)(ix) of the amended Policy becomes applicable to the case of the petitioner and in view thereof, it is explicit that the petitioner had accepted the amended Policy by operating the excise zones allotted to it whereas in Para 7 of the preliminary submissions in the written statement, it has been categorically asserted that the said 07 licensees had refused to operate the liquor zones and this assertion shows that they had not accepted the amended Excise Policy. To add to it, the petitioner-firm has also availed the concessions as have been granted to the licensees in the State under the amended provisions of the Excise Policy. In these circumstances, the petitioner cannot claim parity with the said 07 licensees and cannot evade the rigour of Clause 2.17 of the said Policy in case it wants to surrender the license of any of the zones allotted to it. Even otherwise, it

is necessary to further point it out here that out of the total 07 licenses allotted to the petitioner-firm, it intends to surrender the licenses for 03 zones only meaning thereby that the petitioner desires to opt for the selective surrender of some of the licenses allotted to it but however, it cannot be allowed to blow hot and cold in the same breath by retaining the licenses for 04 zones and surrendering the same for above-mentioned 03 zones on the ground of low volume of the sale of liquor due to the outbreak of the said Pandemic.

12. As regards the last contention of learned counsel for the petitioner qua granting the relaxation to the petitioner by not charging the license fee beyond the quota of liquor actually lifted by it, again it will not be out of place to highlight it here that the respondents have clearly submitted in Para 6(c) of the preliminary submissions in their written statement that the relaxation has been given to the licensees by reducing the lifting of the mandatory basic Quota of liquor by 7% in the first quarter and 5% in the last quarter and it has also been mentioned in Para 9 therein that for the quarter ending 19.08.2020, the petitioner had lifted 23.6% Quota of the Country Liquor and 18.75% Quota of IMFL against the basic mandatory Quota of 25% and as per the concession given in the amended Excise Policy, no penalty, on account of short lifting of quota, is to be levied against it and after the substantial rise in the volume of the sale of liquor, the petitioner has lifted 98.9% Quota of the Country Liquor and 82.98% of Quota of IMFL

against the basic mandatory Quota due upto 19.09.2020. The above-said facts have not been specifically disputed/rebutted/controverted by the petitioner in the corresponding paras in its replication. Thus, it becomes quite explicit that the petitioner-firm has no occasion to seek the relief as claimed by it qua charging of the license fee on the basis of the quota of liquor lifted by it.

13. As a sequel to the fore-going discussion, it follows that this petition, being sans any merit, deserves dismissal. Accordingly, the same is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I.MEHTA)
JUDGE

05th January, 2021.
seema

Whether speaking/reasoned?	*Yes/No*
Whether Reportable?	*Yes/No*