IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4252-CWP-2021 in/and
CWP-17625-2020 (O&M)
Date of Decision:-6.4.2021

Vishal Singla

… Petitioner

Versus

State of Haryana and others

... Respondents

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

Present:- Mr. N.S. Boparai, Advocate
for the petitioner.

Mr.Ankur Mittal, Addl. A.G. Haryana.

KARAMJIT SINGH, J.

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).

The petition was contested by the respondents, who filed short reply in the shape of affidavit of Mr. Ashutosh Rajan, Joint Excise and Taxation Commissioner-cum-Collector (Excise), Haryana.

The petitioner filed rejoinder to the aforesaid affidavit, controverting the contents of the same.

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 interalia 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. The counsel for the petitioner in support of his arguments, placed reliance on **Asia Foundation and Construction Ltd.** vs. **Traflgar House Construction (I) Ltd. 1997(1) SCC 738**, wherein the Hon'ble Apex Court while allowing the appeal held as follows:-

> "11. This being the position, in our considered opinion, High Court was not justified in interfering with the award by going into different clauses of the bid document and then coming to the conclusion that the terms provided for modification or corrections even after a specified date and further coming to the conclusion that respondent no.1 being

the lowest bidder there was no reason for the Port Trust to award the contract in favour of the appellant. We cannot lose sight of the fact of escalation of cost in such project on account of delay and the time involved and further in a coordinated project like this, if one component is not worked out the entire project gets delayed and the enormous cost on that score if re-bidding is done. The High Court has totally lost sight of this fact while directing the rebidding. In our considered opinion direction of re-bidding in the facts and circumstances of the present case instead of being in the public interest would be grossly detrimental to the public interest.

12. In the premises, as aforesaid, we set aside the impugned judgment of the Orissa High Court and direction that the contract awarded in favour of the appellant Paradip Port Trust be affirmed and the appellant may execute the work expeditiously. We further make it clear that the appellant will not be entitled to claim any escalation of the bid amount on the ground of any delay in issuing the work order on account of the pendency of the present litigation. This appeal is, therefore, allowed. But in the circumstance without any order as to costs."

The counsel for the petitioner also referred to **Directorate of Education and Others** vs. **Educomp Datamatics Ltd. and Others, 2004(4) SCC 19**, wherein it was held that the Court can scrutinise the award of contracts by the Government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favoritism within its inherent limitations.

The counsel for the petitioner further brought to the notice of this Court, judgment delivered by the Hon'ble Supreme Court in **Jagdish Mandal** vs. **State of Orissa and Others, 2007(14) SCC 517**, wherein the Hon'ble Apex Court held that the Court can interfere in tender or contractual matters in exercise of power of judicial review if the process adopted or decision made by the authority is *mala-fide* or intended to favour someone or the process adopted or the decision made is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached.

The counsel for the petitioner also relied upon **The Haryana State Agricultural Marketing Board and Others** vs. **Sadhu Ram and Others, 2008(16) SCC 405**, wherein it was observed that Court can judicially review the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favoritism.

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.

On the other hand the State counsel while refuting the arguments raised by the counsel for the petitioner, submitted that due to

COVID-19 Pandemic the Haryana Excise Policy for 2020-2021 started from 6.5.2020 and has been extended upto 19.5.2021 i.e. for 379 days, with no extra license fee for 14 additional days. Besides this Haryana Government had not charged any license fee for the period from 1.4.2020 to 5.5.2020, during which the liquor vends remained closed due to lock-down. It was further contended that even for '*Ahatas'* (*Anumat Kakshs*) the license fee was exempted to the extent of 40%.

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. The counsel for the State further argued that the petitioner started making default in payment of license fee right from June 2000 onwards. As per the amended current Excise Policy, the monthly installments are to be paid by 15th day of each month by the license holders. In the month of September, 2020, the petitioner failed to pay license fee of ₹22,43,909/- and even in the month of October, 2020 he defaulted in paying the license fee and resultantly his liquor vends were sealed on 12.11.2020, as per the current Excise Policy, in order to safeguard the revenue of the State. The State counsel further contended that the petitioner cannot take benefit of his own wrongs and as such he is liable to pay license fee even for the period from 12.11.2020 to 19.11.2020 during which his liquor vends were sealed by the Government. The State counsel further argued that as on 17.3.2021 amount of ₹3,76,12,242/- was standing due against the petitioner which includes license fee and penalty for short-lifting of quota.

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.

We have considered rival submissions addressed by the counsel for the parties and gone through the synopses submitted by both the parties.

Basically the present writ petition has been filed by the petitioner challenging Policy dated 15.10.2020 (Annexure P-15), framed by the State Government whereby certain benefits were given to license holders in view of the fact that COVID-19 Pandemic, affected the liquor business to the large extent. Annexure P-15 which is in the form of letter, reads as follows:-

"From

Excise & Taxation Commissioner,
Haryana

To

All Deputy Excise and Taxation Commissioner
(Excise) in the State of Haryana

No.3355/X-III
Panchkula, dated the 15.10.2020

Subject: Regarding charging of license fee of 1st and 2nd quarter, one time fee for additional points and rebate in license fee of 3rd and 4th quarter for the year 2020-21.

Memo:-

Kindly refer to the subject cited above.

The matter has been reviewed and it has been decided to allow the following benefits to the licensees keeping in view that the COVID-19 pandemic has impacted the business to the large extent:-

1. License fee of 1st and 2nd quarters from all annual licensees except L-2/L-14A/L-1/L-13 licensees is chargeable after calculating the days of opening proportionately on per day basis.

2. One time fee for additional point and time extension fee from the annual licensees except L-2/L-14A/L-1/L-13 licensees is chargeable after calculating the days of opening proportionately on per day basis.

3. 20% rebate in license fee of 3rd and 4th quarters can be given to the annual licensees except L-2/L-14A/L-1/L-13

licensees, who have deposited their license fee of 3rd and 4th quarter by 20.09.2020.

Besides the above, license fee for Anumat Kaksh may be charged as per the provisions of Excise Policy 2020-21 and Amended Excise Policy 2020-21.

You are directed to take action accordingly.

Sd/-
Asst. Excise and Taxation Officer (Excise)
for Excise and Taxation Commissioner
Haryana, Panchkula"

The petitioner has challenged Annexure P-15 on the ground that while ignoring L-2 and L-14 license holders, the State Government gave benefits to the other categories of license holders, which resulted in unequal classification between the various categories of license holders and such classification is without any rationale and is arbitrary, discriminatory and unjustified.

In this case the State filed short reply by way of affidavit of Joint Excise and Taxation Commissioner-cum-Collector (Excise) Haryana, in which it was specifically stated that in wake of COVID-19 Pandemic, the Excise Policy was amended and number of incentive were given to the licensees which are reproduced below:-

(i) The validity period of L-2 and L-14 and other concomitant licenses was extended to 379 days instead of the usual 365 days. It means that the licensees got 14 extra days for sale by paying license fee for 365 days only.

(ii) As per the original Excise Policy, the second installment of security of 11% was to be taken within 7 days of starting of the year i.e. by 7th April. After Amendment, it was divided into two parts of 5% each and was taken after 10 and 15 days of the start of the year.

(iii) The 1st installment of licensee fee for the month of June was also allowed to be paid in a relaxed manner i.e. in two parts, 5% by 5th June, 2020 and 3.3% by 15th June, 2020. The License fee payment schedule was also relaxed. Nearly 6 months have passed since excise year started on 6th May, 2020. Only 61.5% of Annual License fee has become due as per the Amended Excise Policy 2020-21. After 6 months operations, 70.2% of the License fee would have fallen due as per original Excise Policy 2020-21. Reliefs as explained in this sub-para and sub-para 5(ii) above are deferments as already provided by the Government after amended the Excise Policy. As a matter of fact, the Government had envisaged and gauged the situation in advance and has extended relief of the deferment of license fee and security amount already.

(iv) In case any vend or vends of any zone are closed or are subsequently closed on account of falling under COVID Containment zone, its license fee quota shall be proportionately waived off in proportion of days of closure. It means full waiver of license fee was allowed for the period for which the vend remained in COVID containment zone.

(v) In case the Govt. decides to announce lockdown either in whole State or in certain pockets, resulting into closure of retail vend(s) in such cases, the licensee fee and quota for such period shall be proportionately exempted by ETC Haryana. Similarly, licensee fee and quota of vends falling in containment zone shall be waived off.

(vi) Mandatory quota lifting norm of first quarter was relaxed to further safeguard the interests of the Licensees.

In the light of the above, we are of the view that financial losses suffered by L-2 and L-14 license holders, due to unprecedented situation of COVID-19 pandemic were also kept in mind by the authorities while amending the Haryana Excise Policy. No license fee was charged regarding L-1/L-13/L-2/L-14 license holders for the lock-down period during which the liquor vends remained closed. Similar relief was given to the liquor vends falling in containment zone. The Haryana Excise Policy for the year 2020-21 started w.e.f. 06.05.2020. As per Clause 2(d)(ix), the petitioner had option to either start or refuse to start operations of his allotted zones as per the amended Excise Policy. However, he accepted the terms of the contract and started his business. The seven other allottees, who did not start operations were allowed to exist and fresh allotment was made. No doubt apart from the aforesaid benefits given to all the categories of license holders, some additional concessions were given to L-4 and L-5 license holders (hotel and restaurant industry) vide Annexure P-15. Restaurants and hotels were the worst sufferers as they were opened much after the opening of liquor vends. This being the position, we are of the view that there was no arbitrariness, discrimination or unreasonableness in the impugned action taken by the Government on account of unforeseen circumstances caused due to spread of COVID-19 Pandemic. The aforesaid measures taken by the

State Government with the aim to tide over the license holders from financial crises, appears to be fair and proper.

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. In the instant case the petitioner has failed to bring to the notice of this Court any such unconstitutionality. Rather it appears on the record that the Haryana Government amended its Liquor Policy for the year 2020-2021 to provide succor to all the licensees, who suffered unforeseen financial losses due to imposition of lock-down in the entire State.

It is trite that Article 14 of the Constitution applies even to the matters of Government policy and if the policy or any action of the Government, even in contractual matters fails to satisfy the test of 'reasonableness', it would be unconstitutional. However in the present petition, the petitioner has failed to establish that Annexure P-15 was vitiated by arbitrariness, unfairness and irrationality. 'Level playing field' is an important concept while construing Article 19(1)(g) of the Constitution as has been held in **Reliance Energy Ltd. and Another** vs. **Maharashtra**

State Road Development Corporation Ltd. (2007)8 SCC 1. We are of the view that the Haryana Government by amending its Liquor Policy for the year 2020-21 provided 'level playing field' to all the stake holders, so as to sub-serve the larger interest of all the license holders including L-2 and L-14 licensees.

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.

We have gone through the judgments referred by counsel for the petitioner, but are of the view that the same are not of any help to the petitioner to establish his case.

As per the respondents, the petitioner is defaulter since beginning of the current Excise Policy. As on 17.03.2021 amount of ₹3,76,12,242/- was outstanding against the petitioner. The petitioner failed to deposit monthly license fee as per the schedule provided in the amended Excise Policy for 2020-21. Due to the same reason, his liquor vends were sealed and remained closed from 12.11.2020 to 19.11.2020. The aforesaid action of the Government could not be termed as arbitrary or vindictive. The said action was taken by the Government as per law, in order to safeguard the revenue of the State. So no fault could be found in the aforesaid executive action.

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.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

06.04.2021
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No