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

103

CWP No.26699 of 2021 (O&M)
DATE OF DECISION : 23rd DECEMBER, 2021

M/s Vandana Enterprises

…. Petitioner

Versus

Chandigarh Industrial and Tourism Development Corporation Limited and another

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Supriya Garg, Advocate,
for the petitioner.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari, praying for setting aside order No.1W/SA-I/12073 dated 23.11.2021 (Annexure P-8) passed by respondent No.2, whereby the request of the petitioner for issuing 'No Objection Certificate' for taking L-2D license from Excise & Taxation Department, has been rejected, with a further prayer to issue a writ in the nature of mandamus directing the respondents to issue a 'No Objection Certificate' to the petitioner for obtaining L-2D license for the premises of Convenience Store at CITCO Petrol Station, Sector-38 West, Chandigarh.

The facts involved in the case are that the petitioner was allotted space of 725 Sq.ft. by the respondent-corporation by way of license for running the Modern Super Market at Petrol Station, Sector-38

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West, Chandigarh for a period of five years vide letter dated 19.04.2021. The petitioner has been running the Grocery Store at the said place under the license/allotment issued by the respondent-corporation. Now the excise policy issued by the Chandigarh Administration has permitted opening of the wine shops at the places, including the petrol stations. Therefore, the petitioner had applied for getting NOC from the respondent-corporation for getting license of a wine shop under the L-2D license. However, the respondent-corporation has declined the same. Hence, the present petition.

Arguing the case, learned counsel for the petitioner has submitted that when the petitioner was allotted the space in question, then, the description of the permissible business at the place, as given in the notice inviting bids, was described as under:-

> ***"Description:-***
>
> *Allotment of Shop on License basis at CITCO's Petrol Station, Sector 38 (West), Chandigarh for carrying out the business of Convenience Store on license basis.*
>
> *The Convenience Store includes business to sell Grocery Items, Confectionary, Eatery Item, Automobile Parts etc. or any other business is allowed (except business activity relating to Gas, Kerosene, Petrol & Lubricants etc.)"*

Accordingly, it is submitted by the counsel for the petitioner that since the petitioner had applied for and had got the license in the above described terms, therefore, all kind of business is allowed at the said space except those specifically excluded by the notice inviting

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tenders. Since, the license which the petitioner intends to get for the shop is not in the excluded category, therefore, the petitioner is entitled to run the business of wine shop under L-2D category at the said place. Hence, the permission declined to the petitioner is illegal. Learned counsel for the petitioner has further submitted that the policy issued by the Chandigarh Administration specifically makes mention of granting license at the premises of petrol stations. Therefore, the respondents do not have any valid cause to deny NOC to the petitioner.

Having heard the counsel for the petitioner and having perused the case file, this Court does not find any substance in the argument raised by the counsel for the petitioner. It is not in dispute that the place where the petitioner has been allotted space is not an ordinary market place. This is a specifically carved out space for running a petrol station. Even, the name of the store is 'Convenience Store', which is to be run with defined articles, which are meant for use by common person, who is visiting the petrol station. Although the description of the property given in the notice inviting bids mentioned the words 'any other business', however, this term is preceded by specified types of businesses which are followed by the term 'etc.' and 'or'. Therefore, the word 'any other business' used in the description has necessarily, to be interpreted as referable to the items; which are preceding in the main description of the permissible business at this place. The words 'any other business' has to be interpreted mean 'ejusdem generis', to include only similar or allied business as to the specifically mentioned businesses. The counsel for the petitioner has laid extra emphasis on the 'exclusion clause' given in the description of notice inviting bids to argue that since wine business is not

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excluded by that clause, therefore, the petitioner is entitled to carry on wine trade on that premises. However, a perusal of the exclusion clause shows that it is not all inclusive or exhaustive in nature. This is only to exclude the specific business types which could be in competition with the business of petrol pump itself. Hence, this restrictive exclusion clause cannot be interpreted to bound down the respondents to grant permission for any other business not included in this exclusion clause. The respondents can still apply their mind to decide as to whether any particular business is to be allowed the premises or not. By any means, opening of a wine shop at the premises not specifically allotted for the said purpose cannot be claimed as a matter of right. Moreover, as per the Clause 2 (d) of the notice inviting bids the 'license' has been defined as the terms and conditions as included in the final allotment letter. But the allotment letter issued to the petitioner does not specifically talk of granting permission for 'any other business', as was mentioned in the description of the property. Rather it restricts the petitioner to carry out only the authorized trade for which shop was let out. For any change specific permission is required. To grant or not to grant would, obviously, be for the respondents to decide and not for the petitioner to claim as a matter of right. Hence the petitioner cannot claim anything beyond the terms of his license. In any case, the petitioner is only a licencee on the premises. Therefore, the petitioner cannot force the respondent-corporation to grant NOC for any specific business, which is not specifically mentioned in the item which could be stored at the place allotted to the petitioner. Hence, this Court does not find any substance in the argument raised by learned counsel for the petitioner.

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Although, learned counsel for the petitioner has referred to the excise policy issued by the Chandigarh Administration to argue that the policy itself permits the opening of the wine shops for the specified categories at petrol stations, therefore, the petitioner should have been permitted by the respondent to get L-2D license, however, even this argument of the counsel for the petitioner is liable to be noted only to be rejected. The Excise Department is a separate entity, which has nothing to do with the respondent-corporation. To maximize the revenue, the excise policy may have permitted opening of particular kind of shops at the petrol station, however, it is for the respondent-corporation to decide; as to whether it want to permit anybody to sell liquor, under any kind of license, at their owned or operated petrol stations. Moreover, the excise law can have certain consequences even for the owner of the premises, if the terms of liquor license are violated by the lessee licencee. There can be circumstances, intentional or unintended, where the violation of the license may invite some penal consequences even qua the owner of the property where the person is operating the vend/shop under the license from the excise authorities. The very fact that the Excise Department insists upon NOC from owner makes it amply clear. The respondent-corporation may not even like to find itself entrapped qua such drastic consequences just for the sake of profits for the petitioner. The petitioner cannot force the respondent-corporation to become a party to any kind of adverse legal consequences, which may arise for any intended or unintended violation or non-compliance of the excise license by the petitioner.

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In view of the above, finding no merits in the present petition, the same is dismissed.

23rd DECEMBER, 2021 **(RAJBIR SEHRAWAT)**
'sandeep' **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*

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