HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10668-2019
Reserved on: 22.02.2023
Pronounced on:13.04.2023

M/s. Shiraaz (M/s. Pratiksha Hotels and Motels Pvt. Ltd.) through Sh. Jatinder Kumar Sangari ....Petitioner

V/s.

State of Haryana and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sunil Kumar Mukhi, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

The petitioner is seeking quashing of the order dated 28.12.2018 (Annexure P-3) whereby the petitioner has been directed to pay the requisite security of Rs.5 lacs and license fee of Rs.2,25,000/- for the period starting from 01.10.2018 to 31.12.2018.

The petitioner is a company incorporated under the Companies Act, 1956 and submitted application for grant of license in the form of L-4/L-5 to M/s. Shiraaz (M/s. Pratiksha Hotels and Motels) under the name and style 'Shooter's Bar" Site No.5 Sector 10 Panchkula for the year 2018-19 (Annexure P-1). L-4/L-5 license was granted for the year and its fee was applicable on quarterly basis as per policy of the State for the year 2018-19 (Annexure P-2). Vide letter dated 28.12.2018 (Annexure P-3), the L-4/L-5 license was granted to the petitioner with direction to deposit the requisite security amount of Rs.5 lacs and the license fee of Rs.2,25,000/- of 3rd quarter i.e. October, November and December, 2018. The petitioner gave a representation on 31.12.2018 (Annexure P-4) stating that the respondents cannot charge license fee for the period when he has not used license for the months of October, November and December, 2018. He again submitted letters dated 07.01.2019 and 29.01.2019 (Annexures P-5 and P-6). The petitioner had availed L-4/L-5 license in earlier years and surrendered the same on 19.09.2017 keeping in view the renovation of the hotel and the bar. Vide letter dated 11.01.2019 (Annexure P-7), he made a request for refund of security of Rs.4 lacs as his request to adjust the refund of Rs. 4 lacs in the new license was declined. The petitioner has placed on record letter dated 18.01.2019 (Annexure P-8) sent by Excise and Taxation Commissioner to the Deputy Excise and Taxation Commissioner, Panchkula asking him to send refund case alongwith all the requisite documents for grant of refund. The petitioner received acknowledgement dated 30.01.2019 (Annexure P-9) with respect to his representation from the office of the CM Grievances Redress and Monitoring System Haryana Chief Minister.

The petitioner received reply vide letter dated 04.02.2019 (Annexure P-10) that as per clause 9.8.6 of the excise policy for the year 2018-19, the petitioner has to pay license fee in full for the quarter in which the license is granted.

The petitioner has filed the present writ petition challenging the order dated 28.12.2018 (Annexure P-3) on the ground that it has been passed against the Excise Policy governing L-4/L-5 license which has been reproduced as under:-

> "9.8.5 The annual license fee for a bar (L-4/L-5/L-12C/L-12G) license shall be paid in four equal quarterly instalments,

payable in the beginning of the first week of each quarter, failing which the license shall be liable to be cancelled and security forfeited.

9.8.6 Any new license obtained in Form L-4/L-5/L-12C/L-12G during the year 2018-19 **shall not be required to pay license fee for the quarter(s) already elapsed,** but it shall be required to pay license fee in full for the quarter in which the license is granted and for the succeeding quarters till the quarter ending 31st March, 2019. In case the licensee surrenders the license with the approval of the DETC (Excise) concerned, before the last quarter, the instalment(s) of the license fee for the remaining quarter(s) shall not be payable."

On notice, written statement dated 23.10.2019 has been filed by the Deputy Excise and Taxation Commissioner (Excise), Panchkula on behalf of respondents No. 1 to 3. The stand taken by the respondents in the written statement is that the petitioner has been granted license on 28.12.2018 and as per clause 9.8.6 of the Excise Policy for the year 2018-19, the full quarter fee for the license has to be charged for quarter in which license is granted. The petitioner neither deposited security of Rs. 5 lacs, license fee for L-4/L-5 license granted to him nor he surrendered his license and, therefore, security of Rs.5 lacs and the license fee for 3rd and 4th quarters of 2018-19 is outstanding towards the petitioner and a recovery notice for the outstanding amount of the security of Rs.5 lacs and license fee of Rs.4,50,000/- (@Rs.2,25,000/- per quarter) has been issued to the petitioner on 22.10.2019 (Annexure R-1). With regard to adjustment of the security amount of old license towards security of the new license, it is stated that it cannot be done as neither there is such precedent nor any provision in the Excise Policy of the year 2018-19. Vide order No. 3255/X-III dated 10.10.2019, the refund of security amount of Rs.4 lacs was sanctioned after completing necessary requirement such as VAT No Due Certificate and original copy of the affidavit. However, the same will be released after payment of the outstanding amount of security of Rs.5 lacs and license fee of Rs.4,50,000/- for 3rd and 4th quarters of 2018-19. In this backdrop, notice dated 22.10.2019 for recovery of outstanding dues has been issued to the petitioner (Annexure R-1).

Learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court passed in ***Ram Chand vs. Union of India 1994 SCC(1) 44.***

Learned counsel for the State, on the other hand, referred to the judgment of this Court passed in ***CWP-6271-2007 titled as Balraj Antil vs. State of Haryana and others***, decided on 05.11.2007 whereby Section 44 of the Punjab Excise Act, 1914, was examined which related to surrender of license and as per the said section if a person has been granted license, he cannot surrender the same except on the expiration of the one month's notice in writing given by him to the Collector. Even if he has not received license but if his tender/bid has been accepted he is bound to follow provisions of Section 44 to give one month notice to surrender the license as he is bound by the terms and conditions of liquor license policy. She has further referred to the judgment passed by Hon'ble the Supreme Court in ***State of Haryana and others vs. Lal Chand and others 1984(1) Scale 690*** on the proposition that the petitioner is liable to pay difference of the amount he agreed to pay at the time of first auction and re-auction and he is bound to pay as per the statutory contract which is outside the purview of Article 229(1) of the Constitution.

The judgment of ***Ram Chand's case (supra)*** as referred to by learned counsel for the petitioner will not be applicable in the facts of the present case as that case dealt with the provisions of the Land Acquisition Act. On the other hand, the judgments passed by the Division Bench of this Court in the case of CWP-6271-2007 titled as ***Balraj Antil*** vs. ***State of Haryana and others***, CWP-3889-1987 titled as ***Ajay Uberoi vs. State of Haryana and others*** and by Hon'ble Supreme Court in ***State of Haryana and others vs. Lal Chand and others, 1984 AIR (Supreme Court) 1326*** are very clear that license of liquor vend can be cancelled on the ground of non-payment of license fee despite the demand being raised and show cause notice served. It is a valid ground to forfeit the security and to re-auction the liquor vend. In para No. 7 and 8 of the judgment of ***Ajay Uberoi's case (supra)***, it was observed as under:-

> "7. In the present case also, first of all, the petitioner was called to make payment of the outstanding license fee and in failure thereof, to face the consequence of cancellation. Hence, no notice was required to be served on the petitioner. However, as observed earlier, notice was sent which was duly served but no reply was filed by the petitioner. Hence, action of the respondents cannot be said to be illegal. The petitioner has to blame himself for not sending the reply.
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> 8. Now, we deal with the second question. Admittedly, the petitioner was paying license fee, which he has paid till July, 1984 and thereafter, he did not pay any license fee despite the

demand being raised. Hence, in view of Rule 36(26) of the 1970 Rules, first of all, vends were sealed and thereafter, finding contravention of Section 36(b) of the Punjab Excise Act, 1914 (hereinafter referred to as the 1914 Act), show cause notice was issued on 12.11.1984, which was duly served to the petitioner. Hence, as per the terms of auction and as per the prevalent law, amount of security deposited by the petitioner was rightly forfeited and vends were directed to be re-auctioned. The petitioner was having full knowledge of the re-auction. The petitioner himself moved an application before respondent No.3 on 4.10.1984 praying for staying the re-auction of these vends, which was duly rejected by respondent No.3. Section 60 of the 1914 Act empowers the respondents to make recoveries as the arrears of land revenue. In view of the above, we find that non-payment of license fee by the petitioner is a valid ground to forfeit security and to re-auction the liquor vend and to recover the difference of license fee from the petitioner."

By applying the ratio of the aforesaid judgment to the facts of the present case, the L-4/L-5 license was granted to the petitioner vide letter dated 28.12.2018 (Annexure P-3) with direction to deposit the requisite security amount of Rs.5 lacs and the license fee of Rs.2,25,000/- of 3rd quarter i.e. October, November and December, 2018. The petitioner availed L-4/L-5 license in earlier years and surrendered the same on 19.09.2017 keeping in view the renovation of the hotel and the bar. Vide order dated 28.12.2018 (Annexure P-3), the petitioner was directed to pay requisite security of Rs. 5 lacs and the fee of Rs.2,25,000/- for the period starting from 01.10.2018 to 31.12.2018, the time when the hotel was in renovation. The petitioner had been granted license on 28.12.2018 and at the time of grant of license on 28.12.2018, the petitioner neither deposited security of Rs.5 lacs, license fee of Rs.2,25,000/- and nor it surrendered the license. Therefore security of Rs.5 lacs and the license fee for 3rd and 4th quarters of 2018-2019 stood outstanding towards the petitioner and a recovery notice for the outstanding amount of security of Rs. 5 lacs and license fee of Rs.4,50,000/- (@ Rs.2,25,000/- per quarter) was issued on 22.10.2019 (Annexure R-1). Further, as per the respondents, refund of security amount of Rs. 4 lacs was sanctioned vide order No. 3255/X-III on 10.10.2019 and the same will be released after completing necessary requirements and payment of outstanding amount of security of Rs. 5 lacs and the license fee of Rs.4,50,000/- for 3rd and 4th quarters of 2018-19 as per recovery notice dated 22.10.2019 (Annexure R-1).

As per the judgments referred to above, that once the license was granted, the petitioner was bound by the terms and conditions of license. Under clause 9.8.6 of the Excise Policy for the year 2018-19 that if the new license was granted during the year 2018-19 license fee was not required to be paid for the quarter(s) already elapsed but it shall be required to pay license fee in full for the quarter in which the license is granted and for the succeeding quarters till the quarter ending 31.03.2019. It was only in the case of surrender with the approval of DETC (Excise) concerned, before the last quarter, the installment(s) of license fee for the remaining quarter(s) shall not be payable. Hence, it is not the case of the petitioner that after getting license for the year 2018-19, it made application for surrender and Rs.5 lacs towards security and Rs.4,50,000/- (@ Rs.2,25,000/- per quarter) towards license fee are being charged for 3rd and 4th quarters. The petitioner was directed to deposit security of Rs. 5 lacs and Rs.4,50,000 (Rs.2,25,000/- per quarter) for 3rd and 4th quarters of 2018-19 when the license had been granted.

Hence, no case to interfere in the order dated 28.12.2018 (Annexure P-3) is made out.

Writ petition is dismissed.

(RITU BAHRI)
JUDGE

13.04.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No