HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29424-2018
Date of decision: 23.01.2023

M/s. R.G.Liquor ....Petitioner

Vs.

Financial Commissioner, Taxation Punjab and another ....Respondents

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

Present: Mr. D.P.S. Randhawa, Advocate
for the petitioner(s).

Mr. Saurabh Kapoor, Addl.A.G., Punjab.

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Ritu Bahri, J.

The petitioner is seeking quashing of the order dated 08.04.2016 (Annexure P-2) passed by respondent No. 2 i.e. Collector Cum Deputy Excise Taxation Commissioner, Ferozepur Division, Ferozepur District Ferozepur, whereby his license of all the liquor vends had been suspended from 08.04.2016 to 14.04.2016 (seven days only) and order dated Nil (Annexure P-3) passed by Excise and Taxation Commissioner, Punjab whereby penalty of Rs. 2 lacs over and above of previous penalty of Rs.3 lacs has been imposed.

After notice of this petition, reply dated 05.02.2019 was filed by respondent No.2 on behalf of the respondents and on 24.08.2022, this Court had heard arguments and the following order was passed:-

> "During the course of arguments today a factual premise that has gone uncontroverted is that on 05.04.2016 an inspection team of the respondents had checked the Theka (liquor vend) at Badhni Kalan and the following discrepancies

had been noticed :-

1. Sale Stock Register not produced at the spot.
2. Inspection book not produced.
3. The worker of the Theka / liquor vend had sold one carton(Peti) of Royal Stag to one customer at one time for Rs. 3700/-.

In other words, the deviation from the license / permit in favour of the petitioner was to the effect that liquor was being sold to a customer at lesser rates than the fixed rates prescribed under Rule 36A of the Punjab Excise License Rules.

In the facts of the present case, vide order dated 08.04.2016 passed by the Collector-cum-Deputy Excise and Taxation Commissioner, Ferozepur Division, Ferozepur an order was passed against the petitioner suspending the license (all liquor vends) of M/s R.G. Liquor, Sharab Desi / Angreji Licensed, Unit No. 55U-4-1, Badhni Kalan Group, District Moga for a period for seven days i.e. from 08.04.2016 to 14.04.2016. The petitioner having preferred an appeal under Section 14 of the Punjab Excise Act, 1914, the Excise and Taxation Commissioner, Punjab vide order dated NIL at Annexure P-3 granted a stay of the impugned order on 11.04.2016 subject to payment of Rs. Three lacs. However, the appeal was finally dismissed by imposition of penalty of Rs. Two lacs over and above the amount of Rs. Three lacs that had been got deposited at the stage of granting stay.

We have perused Rule 36A of the Punjab Excise Act, 1914 Rules. Under sub-rules (2), (3) and (4) of Rule 36, the minimum retail price for liquor / beer has been stipulated.

Under the proviso to Rule 36A sub-rule (4), it is mandated that a licensee who is found guilty of selling liquor in contravention of the prices fixed shall be liable for the following action :

For 1st offence	Penalty of Rs. Three lac;
For 2nd offence	Penalty of Rs. Ten lacs; and
For 3rd or subsequent offences	Suspension of the license of licensing unit or group or zone for one week.

Mr. Gurpreet Singh, learned Addl. Advocate General, Punjab, upon instructions from Sh. Navdeep Singh, Excise Officer, Moga, concedes that in the facts of the present case, it was the first offence that had led to the passing of the impugned orders.

As per operation of Rule 36A sub clause (4) for the 1st offence a penalty of Rs. Three lac was liable to be imposed.

This court is finding it difficult to fathom as to on what basis was suspension of the license for the entire group imposed for a period of one week which otherwise could have been imposed only for 3rd or subsequent offences.

We direct the filing of an affidavit of the Financial Commissioner Taxation, State of Punjab to explain such anomalous situation."

Pursuant to the above said order, a short affidavit dated 15.09.2022 has been filed by the Secretary, Taxation of State of Punjab on behalf of respondent No.1. In this affidavit, it is stated that the petitioner sold liquor to a customer at lesser rates than the fixed rates prescribed as per the Punjab Excise Policy of 2016-2017 and Punjab Liquor License Rules, 1956 (Annexure R-3) and the penalty of Rs.2 lacs over and above previous penalty of Rs.3 lacs has been imposed which he had deposited during the pendency of the proceedings under Section 36 (c) of the Punjab Excise Act, 1914 which reads as under:-

> "36. Power to cancel or suspend licences, etc. - Subject to such restrictions as the State Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it.
>
> (c) in the event of any breach by the holder of such licence, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass"

For the purpose of charging the price of liquor, reference has been made to Rule 36-A of the Punjab Liquor License Rules, 1956 (Annexure R-3). In the same very rules, procedure has been prescribed for sale price, license fee and quota of Punjab Medium Liquor of 50 degree, Rum/Gin/Whisky of 65 degree and 75 degree shall be allowed to be sold at PML vends. Rules have been framed by the Punjab Government way back in the year 1956 to carry out implementation of Punjab Excise Act, 1914 as applicable to Punjab State. Rule 36 has laid down the procedure to be followed for fixing the sale price of the liquor. In this very provision, as per proviso to Rule 4, if a person is an offender for the first time, then penalty of Rs. 3 lacs is to be imposed.

In the present case, respondents are not disputing the fact that petitioner was the offender for the first time. Hence even if the petitioner had violated the provisions of excise policy 2016-2017 and Punjab Liquor License Rules, 1956, the authorities were bound by the provisions of Rule

36A(4) of the Punjab Liquor License Rules, 1956 which mandates that the licensee who found guilty of selling liquor in contravention of the prices fixed shall be punished for first offence with a penalty of Rs.3 lacs. Instead of following the above said Rules, the authorities have proceeded to impose penalty of Rs. 2 lacs over and above of previous penalty of Rs. 3 lacs despite the fact that the petitioner was the offender for the first time. Even in the short affidavit, respondent No.1 has conveniently referred to provisions of Section 36 of the Punjab Excise Act, 1914 whereby the authorities can pass order in the event of any breach by the licensee, permit or pass or by his servants or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass. Even in the said affidavit, reference has not been made to the Punjab Liquor License Rules, 1956 which govern the imposition of penalty as referred above.

Hence, writ petition is allowed and order dated Nil (Annexure P-3) passed by Excise and Taxation Commissioner, Punjab is set aside and the respondents are directed to pay Rs.10,000/- as costs to the petitioner for not following Rule 36(A)(4) of Punjab Liquor License Rules, 1956.

(RITU BAHRI)
JUDGE

23.01.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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