IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.28928 of 2019 (O&M)
Date of decision: 24.03.2023

Surinder Kaur

…Petitioner

Vs.

State of Punjab and another

…Respondents

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

Present: Mr. Arnav Sud, Advocate,
for the petitioner.

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

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Ritu Bahri, J. (oral)

Petitioner is seeking a writ in the nature of Mandamus directing respondent No.2 to take appropriate action on the representation dated 13.08.2019 (Annexure P-5).

As per representation dated 13.08.2019 (Annexure P-5), the petitioner, who is representing the Chohal Group, had been allotted five liquor vends, through draw of lots in the year 2019-2020, for the total license fee of Rs.5,47,99,930/-. Out of those vends, one vend had been allotted at village Sainchan and this fact has been depicted in the license (Annexure P-1) issued by the Deputy Excise and Taxation Commissioner, Jalandhar as well as in the group chart issued by the Department of Excise and Taxation, Punjab. However, the said vend could not be opened and the officers of the department told that they would get it opened after the Lok Sabha elections. Even after the said elections, the vend could not be opened and the petitioner suffered a loss in the business. Finally, the petitioner requested that the license fee for the vend at village Sainchan be deducted from the total annual license fee of the group.

Upon notice, reply dated 15.01.2020 on behalf of respondent Nos. 1 and 2 has been filed, wherein reference has been made to Rule 36 (28) of the Punjab Liquor License Rules, 1956, which reads as under:-

> "36. *Procedure to grant the license* – (28) The licensee shall make his own arrangements for opening of the retail outlet, for which the department undertakes no responsibility. The licensee shall be required to open his vend on or before 15^{th} day of April 2019. In case, he fails to do so, the AETC of the district concerned may extend the said period upto 30^{th} day of April, 2019 on payment of late fee of Rs.25,000/- in respect of the area falling within the jurisdiction of a Municipal Corporation, and Rs.10,000 in other areas."

As per the above said rule, petitioner was liable to open the liquor vend at village Sainchan and she cannot claim any refund on account of her own failure to open the liquor vend. Even as per license (Annexure P-1), it is the petitioner who was to get the site plan of vend premises approved from the Assistant Excise and Taxation Commissioner, in charge of the District and to display the site plan in the vend premises. The petitioner had submitted her site plan for opening the liquor vends at Chohal, Adamwal, Bassi Gulam Hussain and Bagowal and started operating those vends from 01.04.2019. However, she never approached the respondents to submit the site plan for the liquor vend at village Sainchan. Hence, she cannot seek refund of the license fee and excise duty on account of her own default. Respondents have placed on record copy of letter dated 25.11.2019 (Annexure R-1), which was sent to the petitioner to operate the liquor vend at village Sainchan and her reply dated 02.12.2019 (Annexure R-2), whereby she stated that she only wanted refund of the license fee and excise duty qua the liquor vend at village Sainchan. In response to the reply dated 02.12.2019 (Annexure R-2), the respondents against sent a letter dated 11.12.2019 (Annexure R-3) clarifying that it was the liability of the petitioner to open the liquor vend at village Sainchan and there was no question of refund of any amount as no injustice has been caused to her. Along with this letter, the respondent have also annexed the location and name of five vends, which were allotted to the petitioner at villages Chohal, Adamwal, Bassi Gulam Hussain, Bagowal and Sainchan. They have also placed on record copy of the license and as per this license, it was the licensee, who had to get the site plan of vend premises approved from the Assistant Excise and Taxation Commissioner, in charge of the District. Relevant clauses of the license are reproduced as under:-

> "6)The licensee shall get the site plan of vend premises approved from the Assistant Excise and Taxation Commissioner, in charge of the District and shall display the site plan in the vend premises.
> 7) The licensee shall get the name(s) of the authorized agents/salesmen approved from the Assistant Excise and Taxation Commissioner, in charge of the District and shall mention these names in the inspection book maintained at the vend premises."

Since the petitioner had opened four other vends and could not open the fifth vend at village Sainchan on account of pending elections or any other reason, she is bound by the conditions of the license and cannot claim refund of the license fee qua the fifth vend, as the payment/fee was submitted for all the five vends together. In this regard, clause no.2 of the license is reproduced as under:-

> "2) The license shall be for the period from 01.04.2019 to 31.03.2020 subject to payment of a Fixed license fee of Rs.71,98,846/- and Additional Fixed License Fees for Rs.14,39,769/- & Excise Duty of Rs. 4,61,61,316/- fixed for the Zone of licensing units as a whole."

Hence, the above said fee cannot be divided amongst all the five vends. Moreover, as per Rule 36 (28) of the Punjab Liquor License Rules, 1956, it is the licensee, who has to make his own arrangements for opening of the retail outlet and the department has no responsibility for the same. There was a provision for extension of time to open the liquor vend up till 30.04.2019 on payment of late fee. The petitioner, in the present case, vide letter dated 25.11.2019 (Annexure R-1), was asked to open the vend. However, in the reply dated 02.12.2019 (Annexure R-2), she had specifically stated that she only wanted the refund of the license fee and excise duty qua the liquor vend at village Sainchan. Vide letter dated 11.12.2019 (Annexure R-3), the petitioner was again informed that it was her responsibility to open the vend and she was not entitled to claim any refund.

Since, as per the Punjab Liquor License Rules, 1956, there is not provision to refund any amount to the licensee for non opening of the vend, no ground is made out to direct the respondents to refund the license fee and excise duty, as prayed by the petitioner.

No merits. Dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

24.03.2023
ajp

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