IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 26590 of 2022
Date of decision : July 18, 2023

M/S JAGDISH KUMAR THROUGH ITS SOLE PROPRIETOR JAGDISH KUMAR

....PETITIONER

VERSUS

UNION TERRITORY OF CHANDIGARH AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sanjay Kaushal, Senior Advocate assisted by Mr. Yagyadeep, Advocate, for the petitioner

Mr. Sumeet Jain, Addl. Standing Counsel for UT, Chandigarh

<u>KULDEEP TIWARI,J.</u>

1. Petitioner-firm knocked the doors of this Court by invoking the inherent writ jurisdiction under Article 226 of the Constitution of India, seeking quashing of the order dated 26.8.2022 (Annexure P-18), passed by respondent no. 3, vide which the allotment of retail sale foreign liquor (L-2/L-14A) license to the petitioner for Vend Code 85 at Raipur Kalan (within Lal Dora), U.T. Chandigarh, was cancelled and also the order dated 14.11.2022, (Annexure P-24) vide which its statutory appeal was dismissed by respondent No. 2. The petitioner further sought a mandamus for issuance of directions to respondent no. 2 to allow the petitioner to shift the allotted liquor Vend from area falling under Lal Dora to a place outside Lal Dora of

village Raipur Kalan, UT. Chandigarh and also sought directions that 15% bid money paid at the time of allotment may not be forfeited by the Respondent-State.

2. At the time of issuance of notice of motion, learned counsel for the petitioner, at the very outset, on instructions imparted to him by the petitioner, made a statement that he does not want to press the issue of cancellation of allotment of the retail sale and liquor license pertaining to Vend Code 85. However, he confined the scope of instant petition with regard to forfeiture of 15% of the bid money as directed by the Appellate Authority i.e. the Excise and Taxation Commissioner, U.T., Chandigarh.

3. Before we embark upon the process of answering the disputed issue, as raised in the present petition, it would be apposite to first succinctly enumerate the brief facts of the matter.

4. The petitioner-firm was a successful bidder for Vend Code 85 situated at Village Raipur Kalan (within Lal Dora) for an amount of Rs. 2,53,16,013/- under the Excise Policy for the year 2022-23. However, the petitioner-firm was unable to open the Vend within the Lal Dora of village Raipur Kalan, because of two reasons. Firstly, it could not get any shop in that area and thereafter, when it got the shop, there was local resistance, which did not allow the petitioner-firm to open its liquor vend within the Lal Dora of the village. Since, the petitioner- firm could not open the shop, the total sale proceeds was nil and consequently, it did not deposit instalment of license fee for the month of April, 2022, which was required to be

deposited upto 30.4.2022 and upto 15.5.2022 along with the interest. Upon non-compliance of the condition of the Excise Policy for the year 2022-23, the respondent-Excise and Taxation Department, U.T., Chandigarh suspended the license of the petitioner-firm vide order dated 2.6.2022, with immediate effect. Thereafter, vide impugned order dated 26.8.2022, it also cancelled the Vend license of the petitioner and ordered the re-allotment of the said Vend by auction, at the risk and cost of the petitioner, in view of Clause 34 of the Excise Policy for the year 2022-23.

5. The above cancellation order constrained the petitioner-firm to prefer a statutory appeal, before the statutory appellate authority concerned. However, it remained unsuccessful and the same was dismissed vide order dated 14.11.2022. However, the learned statutory Appellate Authority concerned modified the order of the learned Collector concerned to the extent that the petitioner is not required to pay the license fee for the entire excise policy year, when it did not operate the Vend even for a single day and only ordered to forfeit 15% of the bid money paid by the petitioner. The relevant extract of the order reads as under:-

> *"Therefore, in the given circumstances it is unfair to burden the licensee for the license fee for the entire excise policy year when he has not operated the vend even for a period of 1 day. The Clause 22 of the Excise Policy 2022-23 provides that:*
>
> *........ In case, a successful bidder fails to arrange suitable/ eligible premises within 30 days from the date of allotment, the 15% of bid money paid by him as security will be forfeited and the e-bids will be invited again for the*

> *said license after re-fixing the reserve price for the remainder period of the license. Liability of a bidder in such case will be limited upto 15% of bid money......*
> *In view of the above facts, order dated 26.08.2022 of Collector (X) is modified to the extent that as per Clause 22 of the Excise Policy 2022-23, 15% of bid money paid by the appellant is forfeited. Accordingly, the appeal of M/s Jagdish Kumar is dismissed, and the orders of Collector (Excise) dated 26.08.2022 are hereby upheld with above decided modification."*

6. Being aggrieved with the above said order, the present writ petition has been filed.

SUBMISSIONS BY COUNSEL FOR THE PARTIES

7. Learned counsel for the petitioner while relying upon Clause 81 of the Excise Policy for the year 2022-23, contended that considering the peculiar facts of the case, Clause 81 ought to have been invoked in favour of the petitioner-firm, for the waiver of the condition as regard the forfeiture of the bid money, whereas, the same has been used against the firm. He further submitted that the petitioner-firm has not violated any terms and conditions of the Policy and has not committed any wrong, rather it was obstructed by the local people to open the Vend, within the Lal Dora of Village Raipur Kalan, which was beyond its control. The petitioner-firm made its best efforts to operate the vend, however, because of the law and order situation, which was the duty of the U.T. Administration and in which they have miserably failed, therefore, the petitioner-firm could not run the liquor Vend. He further submitted that even last year, this liquor Vend Code 85 was sold on a bid amount of Rs. 3,81,00,000/-

but the earlier licensee and the respondent-department concerned were then also unable to open the liquor Vend, within the Lal Dora of Village Raipur Kalan, due to agitation of the villagers concerned. Despite that, the department has again auctioned the present Vend. There is no fault on the part of the petitioner-firm. Therefore, the department cannot forfeit the bid amount paid by the petitioner-firm. He further drew the attention of this Court to various representations and inter-se department communications to show that due to villagers' agitation, the petitioner-firm could not open the liquor Vend even for a single day. Learned counsel for the petitioner further submitted that the petitioner was not allowed to open the liquor Vend even outside the Lal Dora of village Raipur Kalan, despite the availability of vacant Government land. For this, he placed reliance upon the letter dated 25.4.2022 (Annexure P/6), as written by the Executive Engineer, C.P. Division No. 2(R), U.T. Chandigarh.

8. On the other hand, Mr. Sumeet Jain, learned Additional Standing Counsel, U.T. Chandigarh, appearing on behalf of U.T. Chandigarh has relied upon Clauses 22 and 23 of the Excise Policy for the year 2022-23, to argue that it was the responsibility of the successful bidder to arrange suitable/eligible premises within 30 days from the date of allotment and in case the bidder fails to do so, the 15% of the bid money so paid, as security, shall be forfeited. He further submitted that once the petitioner-firm participated in the auction and accepted the terms and conditions of the auction, therefore, now it cannot raise any objection qua location of the liquor

Vend and also the petitioner-firm has not challenged the validity of Clauses 22 and 23 of the Policy, therefore, now it is estopped from raising the present dispute. As per the State counsel, the basic object of the Excise Policy 2022-23 was to give freedom to the successful allottee to open/shift the Vend to a particular place, within the area of the allotted Vend.

ANALYSIS

9. Before we proceed further, it is first apt to deal with the relevant clauses of the Excise Policy for the year 2022-23. Clause 14 prescribed the mode of allotment, according to which, it shall be the responsibility of the successful bidder to arrange suitable premises to open the liquor vend. The relevant extract of Clause 14 reads as under:-

> "*xxx xxx xxx xxx*
>
> *"It shall be the responsibility of the vendor to arrange suitable premises to operate the liquor vend.*
>
> *xxx xxx xxx xxx"*

Further Clause 22 of the Policy described the terms and conditions for locations of the liquor vends, according to which, the Excise Department will not be responsible for providing space for opening of liquor vend and in case the successful bidder fails to arrange suitable premises, within 30 days from the date of allotment, the 15% of bid money, paid as security, will be forfeited. Clause 22 reads as under:-

> *22. Location of Liquor Vends:- The licences will be granted at the locations notified in the Excise Policy. These licences will be granted in SCO/SCF/Shop/Booth, etc. in*

sectors, Industrial Areas, NAC, Rehabilitation colonies. The Department will not be responsible for providing space for opening of liquor vends. Further as per guidelines of the Apex Court, the sale of liquor shall be permitted only through licensed liquor vends which shall not be located within motorable or walking distance of 500 meters from the outer range of the National or State Highway or by a service lane along such highway and such liquor vends shall neither be directly visible nor accessible from such National or State Highway {Provided that the above restrictions shall not apply to the licensed liquor vends located within the limits of Municipal areas}. In case, a successful bidder fails to arrange suitable/eligible premises within 30 days from the date of allotment, the 15% of bid money paid by him as security will be forfeited and the e-bids will be invited again for the said licence after re-fixing the reserve price for the remainder period of the licence. Liability of a bidder in such case will be limited upto 15% of bid money. Further the liquor vends can be opened by the licensee at the premises/ pucca structure/ shops owned by the Chandigarh Administration in the respective areas as mentioned in the Excise Policy Year 2022-23 (01.04.2022 to 31.03.2023), with the approval of the Competent Authority. The rents thereof as decided by the concerned Competent Authority shall be paid by the licensee to the Department.

Further Clause 23 of the Policy prescribed that the license fee deposited by the successful bidder shall not be refundable or adjustable, in case the vend has to be closed down, due to court order, local resistance or any other reason. ***(emphasis specifically)***. Clause 34 of the Policy prescribed that the re-allotment of the Vend will be done at the risk and cost of original allottee. Clauses 23 and 34 of the Policy are read as under:-

"23. The license fee deposited by the successful bidder/

retail sale licensee for a particular vend shall not be refundable or adjustable towards any other liability of the said licensee if the vend has to be closed down due to court order, local resistance or any other reason.

34. In case any situation arises, where re-allotment of a licence is required, the reserve price will be fixed by computing it from the original license fee for the remainder period or the balance license fee as may be decided by the Department. In case no bid is received at this reserve price, the procedure prescribed for un-allotted licenses will be followed for allotment of that license. The re-allotment will be done at the risk and cost of original allottee. In case of any deficiency in the revenue, the balance/deficient amount will be recoverable from the original allottee as arrears of land revenue but in case a higher bid is received, no benefit will be given to the original allottee."

10. From a conjoint reading of the Clauses 14, 22 and 23 of the Excise Policy 2022-23, it is very much clear that it was the responsibility of the successful bidder to arrange suitable premises to operate the liquor Vend and in case the successful bidder failed to arrange suitable premises, within 30 days from the date of allotment, the 15% of the bid money paid by him, as security, will be forfeited and the e-bid will be invited again for the said vend after re-fixing the reserved price for the remaining period of the license for the vend. Clause 22 of the Policy *ibid* further specifically states that in the above said situation, the liability of a bidder will be limited upto forfeiture of 15% of the bid money, so deposited.

11. Here is a case, where the petitioner-firm could not arrange any suitable site, therefore, by dint of Clause 22 of the Excise Policy for the year 2022-23, the liability of the petitioner-firm is

limited only qua forfeiture of 15% of the bid money.

12. A perusal of clause 23 of the Policy *ibid* further makes it clear that the license fee deposited by successful bidder shall not be refundable or adjustable towards any other liability of the said licensee, if the vend has to be closed down due to court order, local resistance or any other reason. In view of the specific clause 23 of the Policy *ibid*, the department has a right to retain the license fee, in case the vendor could not run the vend due to any of the reasons, as prescribed in clause 23 of the Policy *ibid.* The bid amount in the form of security, was deposited by the petitioner-firm against the license fee, in view of the provisions of Clause 37 of the Policy. Clause 37 of the Policy reads as under:-

> *"37. Payment of Licence Fee in Installments: - After adjusting the amount of security money equal to 10% of bid money deposited in the form of security against license fee, the licensee will be required to pay the remaining license fee in nine installments each 10 % of the total bid amount or the number of months of allotment whichever is lower. In case of late payment of any installment an interest @1.5% per month to be calculated on daily basis shall be charged. The license shall be deemed to have been suspended and the licensing unit will be closed if the entire license fee of the month is not paid by 15th day of the next month. The licensee shall have to pay the balance installment along with interest to get his license operational. The balance security money equal to 5% of bid money furnished in the form of Bank Guarantee shall be refunded after clearance of all the dues, if any, pending towards the licensee. If some liquor vends are not allowed to open during the Excise Policy Year 2022-23(01.04.2022 to 31.03.2023), because of vends falling in containment zone or lockdowns will be announced by the Govt. of*

India/ Chandigarh Administration, in such cases, proportionate reduction in licence fee and quota will be given."

13. It is also worthwhile to mention here that the petitioner-firm had earlier filed a writ petition bearing No. 9318 of 2022, before this Court, seeking a mandamus against the respondents therein, to invoke Clause 81 of the Policy *ibid,* in their favour, to change the location of Vend Code 85 from village Raipur Kalan (inside Lal Dora) to Raipur Kalan or in the alternative, to issue direction to respondent-department concerned to earmark the vacant government land, as already available with the Engineering Department of U.T. Administration, for construction of Vend. However, the above said writ petition was not accepted and the same was dismissed vide order dated 6.5.2022. The relevant extract of the order reads as under:-

"The relief sought in the instant petition is for directing the respondents to earmark vacant government land as already available with the Engineering Department of the Administration for construction of pucca liquor vend inconsonance with the directions issued by this Court in the judgment dated 01.06.2018 (Annexure P-9).

A writ of mandamus is also sought on the strength of Clause 81 of the Excise Policy for the year 2022-23 (Annexure P-1) to change the location of Vend No.85 from Raipur Kalan (inside Lal Dora) to Raipur Kalan.

We are of the considered view that the judgment placed reliance upon by the petitioner at Annexure P-9 dated 01.06.2018 cannot enure to the benefit of the petitioner. That was a case where the liquor vend had been put to auction and the location happened to be on agricultural land. The clear distinction herein is that the *petitioner with open eyes has submitted a bid for a liquor vend wherein the location was clearly defined to be within the lal dora of Village Raipur Kalan.*

In the writ petition averments had been made that there ought to have been due compliance of the Punjab Intoxicants Licence & Sale Orders 1956 and that the petitioner has been taken for a ride as on a previous occasion also the villagers had objected to setting up with the liquor vend inside the lal dora of Village Raipur Kalan. It was sought to be contended that under such circumstances it was incumbent upon the association to rectify the shifting of the location before calling for the bids.

Even such submission and contention does not impress us.

All such arguments/contentions if at all could have been raised by the petitioner prior to having participated in the auction process.

Having submitted a bid and the same having been accepted, it would not be open for the petitioner to raise such submissions at this stage.

We find essentially the grievance of the petitioner is with regard to a law and order situation. We are not inclined to enter into any fishing and roving enquiry into the matter.

We are making such observations even by accepting the submissions made by learned Senior counsel at the bar that there has been an incident of stone pelting etc. Even if that be so it is always open for the petitioner to approach the concerned law enforcement machinery under the UT administration and to avail of such other remedies as may be available in accordance with law.

Mr. Aman Pal, learned Additional Standing Counsel, UT Chandigarh makes a statement that in case petitioner were to approach the police authorities, UT Chandigarh, the matter would be examined, looked into and steps as deemed fit and warranted, would be taken, in accordance *with law.*

Statement is accepted.

No further directions are required to be passed.

Writ petition disposed of."

14. The petitioner has now again approached this Court and has challenged the forfeiture of 15% bid money, as done by respondent-department, on the similar grounds, which were not earlier accepted by this Court and it was specifically held that it was the duty of the licensee to do all due diligence before participating in the auction proceedings. Moreover, the above order dated 6.5.2022 has attained finality. ***(emphasis specifically)***.

15. The reliance placed upon Clause 81 of the Policy *ibid,* by the learned counsel for the petitioner, is totally misplaced. As already discussed above, Clauses 22, 23 and 34 of the Policy *ibid*, empowers the department concerned to forfeit the bid money. Furthermore, the enabling provisions of Clause 81 of the Excise Policy *2022-23,* entitle the department concerned to remove any difficulties that obstruct the implementation of the provisions of the Excise Policy. The above provisions cannot be altered or twisted for the benefit of a single vendor, specifically when an obligation is cast upon every bidder to do due diligence before making any bid and to arrange suitable premises to open the vend, within the allotted vend area. Further, the demarcated area of a vend, is the core object of the Excise Policy, which gives freedom to the allottee to open/shift the vend to a particular place, only within the demarcated

area of the allotted vend and the policy does not authorise the department, to allow change in the demarcated area of the vend and the Excise Policy 2022-23 is not under challenge and therefore, in view of the above discussions, we do not find any perversity or any illegality in the orders passed by the Authorities below. The present writ petition is devoid of merits and therefore, the same is dismissed.

(RITU BAHRI)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 18, 2023
'dalbir'

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No