

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7172-2024 (O&M)
Date of Decision:10.04.2024

*M/S. DARSHAN SINGH & COMPANY, MOGA THROUGH ITS
PARTNER, SH. SANJEEV KUMAR SAINI*
.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS *.....Respondents*

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA.

Present Mr.Mohan Jain, Senior Advocate, assisted by
 Ms. Madhu Bala, Advocate
 Mr. Gautam Warikoo, Advocate
 Ms. Divay Gupta, Advocate and
 Mr. Sushant Mahajan, Advocate
 for the petitioners.

 Mr.Gurminder Singh, Advocate General, Punjab, assisted by
 Mr. Saurabh Kapoor, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. By way of this Writ Petition, the petitioner has challenged the Excise Policy of State of Punjab for the year 2024-2025 vis-à-vis Clause 2 and Clause 15(2).
2. Learned counsel for the petitioner has submitted that while introducing the Excise Policy for the year 2024-2025 (hereinafter referred to as “the Policy”), the respondent-department has brought about reforms in liquor trade and the application fee for the liquor vends has been increased to ₹75,000/- which shall be non-refundable. The same is wholly arbitrary and unjustified.

3. It is stated by learned counsel for the petitioner that certain persons had applied for liquor vends individually, while some persons have made several applications in the name of different family members for the same liquor vends. Thus, it is alleged that there is a huge scam. It is further argued that the Policy as framed by the respondents, is in violation of the Punjab Excise Act, 1914 (hereinafter referred to as “the Act”) and the Punjab Liquor License (First Amendment) Rules, 2024 (hereinafter referred to as “the Rules of 2024”).

4. Learned counsel has further submitted that without framing the Rules, the Policy has been introduced and in support of his submissions, he has relied on the judgment passed by the Supreme Court in the case of Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others; 2006(4) SCC 327. He has relied on the following paragraph of the said judgement:-

“17. A rule is not only required to be made in conformity with the provisions of the Act whereunder it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any plenary legislation made by the Parliament or the State Legislature.

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25. While imposing terms and conditions in terms of Section 18A of the Act, the State cannot take recourse to something which is not within its jurisdiction or what is otherwise prohibited in law. Sub-sections (c) and (d) of Section 24 of the Act provide that every licence or permit granted under the Act would be subject to such restrictions and on such conditions and

shall be in such form and contain such particulars as the Government may direct either generally or in any particular instance in this behalf. The said provisions are also subject to the inherent limitations of the statute. Such an inherent limitation is that rules framed under the Act must be lawful and may not be contrary to the legislative policy. The rule making power is contained in Section 29 of the Act. At the relevant time, sub-section (1) of Section 29 of the Act provided that the government may make rules for the purpose of carrying out the provisions of the Act which has been amended by Act No. 12 of 2003 with effect from 1.4.2003 empowering the State to make rules either prospectively or retrospectively for the purposes of the Act.

26. Its power, therefore, was to make rules only for the purpose of carrying out the purposes of the Act and not de'hors the same. In other words, rules cannot be framed in matters that are not contemplated under the Act.

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28. The Rules in terms of sub-section (1) of Section 29 of the Act, thus, could be framed only for the purpose of carrying out the provisions of the Act. Both the power to frame rules and the power to impose terms and conditions are, therefore, subject to the provisions of the Act. They must conform to the legislative policy. They must not be contrary to the other provisions of the Act. They must not be framed in contravention of the constitutional or statutory scheme.

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36. The law that has, thus, been laid down is that if by a notification, the Act itself stands affected; the notification may be struck down.

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58. *"Take it or leave it" argument advanced by Mr. Chacko is stated to be rejected. The State while parting with its exclusive privilege cannot take recourse to the said doctrine having regard to the equity clause enshrined under Article 14 of the Constitution of India. The State must in its dealings must act fairly and reasonably. The bargaining power of the State does not entitle it to impose any condition it desires."*

5. It is further submitted that if the law requires something to be done in a particular manner, it must be done in that manner, and if it is not done, it would have no existence in the eyes of law.

6. Learned counsel for the petitioner has strenuously objected to the manner in which the liquor vends have been distributed and submits that the vends could not have been distributed by way of draw of lots. He submits that vends should have been openly auctioned and the system of lottery adopted is illegal and *de hors* the Rules of 2024.

7. Learned Advocate General, Punjab has appeared on behalf of the respondent-State and has informed this Court that the Policy introduced by the State is in strict conformity with the provisions of the Act and the Rules of 2024. It is stated that as per Section 58(2) of the Act, the State Government is empowered to make Rules for regulating the import and export.

8. He further submits that as per Rule 36 of the Rules of 2024 liquor vends can only be allotted by way of “**draw of lots**” and therefore, the Policy and the procedure laid down for draw of lots in the Policy is strictly in

accordance with the Rules and the contentions raised by the learned counsel for the petitioner are without any basis.

9. We have considered the submissions of learned counsel for the parties and perused the available record.

10. Section 58(2) of the Punjab Excise Act, 1914 provides as under:-

“Section 58

58. Power of State Government to make Rules. –

(1) XXXX

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may make rules :-

(a) XXXXX

(b) XXXX

(c) XXX

(d) regulating the import, export, trans port or possession of any in toxicant or Excise bottle and the trans fer, price or use of any type of description of such bottle;

(e) regulating the period and localities for which, and, the per sons, or classes of per sons, to whom li censes, permits and passes for the vend by whole sale or by re tail of any intoxicants may be granted and regulating the number of such licenses which may be granted in any local area;

(f) prescribing the procedure to be followed and the matters to be as certained before any li cense is granted for the retail vend of liquor for consumption on the premises;

(g) for the prohibition of the sale of any intoxicant to any person or class of per sons;

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11. This Court finds that the State Government has framed the Punjab Liquor Licence Rules, 1956 in compliance of the provisions of the Act wherein Rules 35 and 36 lay down the procedure for grant of the licence. As per the substituted Rules 35 and 36, issued vide notification dated 24.03.2006, the procedure for allotment of the liquor vends has been laid down by draw of lots. Earlier vide amendment dated 19.03.2019, Rule 36 (2) of the Rules was amended to the extent of the cost of application form to be ₹30,000/- inclusive of GST, if any for each application, which shall be non-refundable. The cost of application form was increased from ₹30,000/- to ₹75,000/- by making an amendment in Rules 36 vide notification dated 31.03.2024 by way of “the Punjab Liquor License (First Amendment) Rules, 2024”. It would be apposite to quote the amendments made in Rules 35 and 36 whereby new Rules have been substituted as under:-

“In the said Rules, for Rules 35 and 36, the following Rules shall be substituted, namely:-

35. *(1) The retail liquor licenses i.e. L-2/-14A shall be granted for the financial year 2024-25 to the applicants through draw of lots as per the procedure prescribed in rule 36.*

(2) XXXXX

(3) XXXXX

(4) XXXX

(5) XXXX

(6) XXXX

36. Procedure to grant the license: *The following procedure shall be followed for the grant of liquor licenses i.e. L-2 and L-14A, namely:-*

*(A) **Procedure for draw of lots.**- The following procedure shall be followed for the draw of lots for grant of liquor licenses L-2 and L-14A, namely:*

- (1) The applications shall be taken in Form-1;*
- (2) The application form for the grant of liquor groups or zones shall be available in the office of the Excise Officers, in charges of the districts, Assistant Commissioners (Excise), in charges of Range and Deputy Commissioners (Excise), in charges of Zones. The application Forms can also be downloaded from the website ie. (e-Abkari) <https://excise.punjab.gov.in> of the Department of Excise and Taxation. In addition, these application forms shall also be available in various bank branches authorized by the Department of Excise and Taxation for receipt of applications. The applicant can submit his application for any Group/ Zone of any district in any of the authorized bank branches. The application fee shall be Seventy-five thousand (75,000/-) rupees per application.*

This amount shall be non-refundable. If the allotment procedure through draw of lots is cancelled by the Department, or any application form is rejected by the Department being invalid and not put to draw of lots, then the amount of application fee shall be refunded to the concerned applicant, after deducting two thousand rupees per application as processing fee. The application forms shall be serially numbered at three places, i.e. in the application form, in the slip of draw of lots and on the receipt, issued to the applicant.

- (3) XXX*
- (4) XXX*
- (5) XXX...*
- XXXX*
- XXXX....”*

12. This Court is satisfied that the Policy has been duly notified and the Government has acted in strict conformity with Section 56 (3) of the Act and therefore, it cannot be said that the Policy is *de hors* the Rules or the Act.

13. The submission of learned counsel for the petitioner that the liquor vends should be allotted by way of auction is found to be without any basis. This Court is not going to substitute its own opinion to that of the State Government with regard to its Policy.

14. In Panna Lal Vs. State of Rajasthan; 1975 (2) SCC 633 the Supreme Court held as under:-

“21. The licences in the present case are contracts between the parties. The licensees voluntarily accepted the contracts. They fully exploited to their advantage the contracts to the exclusion of others. The High Court rightly said that it was not open to the appellants to resile from the contracts on the ground that the terms of payment were onerous. The reasons given by the High Court were that the licensees accepted the licence by excluding their competitors and it would not be open to the licences to challenge the terms either on the ground of inconvenient consequence of terms or of harshness of terms.”

15. In Assistant Excise Commissioner Vs. Issac Peter ; 1994 (4) SCC 104, the Supreme Court has held as under:-

"23. May be these are cases where the licencees took a calculated risk. May be they were not wise in offering their bids. But in law there is no basis upon which they can be relieved of the obligations undertaken by them under the contract. It is well known that in such contracts- Which may be called executory contracts- there is always an element of risk. Many an unexpected development may occur which may either cause loss to the contractor or result in large profit. Take the very case of

arrack contractors. In one year, there may be abundance of supplies accompanied by good crops induced by favourable weather conditions; the contractor will make substantial profits during the year. In another year, the conditions may be unfavourable and supplies scarce. He may incur loss. Such contracts do not imply a warranty- or a guarantee- of profit to the contractor. It is a business for him- profit and loss being normal incidents of a business. There is no room for invoking the doctrine of unjust enrichment in such a situation. The said doctrine has never been invoked in such business transactions. The remedy provided by Article 226, or for that matter, suits, cannot be resorted to wriggle out or the contractual obligations entered into by the licencees.

24. Learned Counsel for the Respondents sought to invoke the Rule of Promissory estoppel and estoppel by conduct. The attempt is a weak one for the said Rules cannot be invoked to alter or amend specific terms or contract nor can they avail against statutory provisions. Here, all the terms and conditions of contract, being contained in the statutory Rules, prevail."

16. This Court is of the firm view that right to trade of liquor is not a fundamental right and is an exclusive privilege of the State to lay down its Excise Policy. The principles of natural justice have no application in matter of contract and trade. [See **Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly**; (1986) 3 SCC 156 and **Delhi Transport Corporation Vs. DTC Mazdoor Congress**; 1991 SCC (L&S) 1213. The same principle reiterated in **Mary Vs. State of Kerala**; (2014) 14 SCC 272].

17. Thus, this Court further finds that the argument raised by the learned counsel for the petitioner regarding conditions applied in the Policy

being totally violative against principles of natural justice and against the Act, is also without any basis.

18. In **Churchward** Vs. **Queen**; (1965-66) 1 QBD 173, Ckckburn, C.J., held as under:-

"Where a contract is silent, the court or jury who are called upon to imply an obligation on the other side which does not appear in the terms of the contract, must take great care that they do not make the contract speak where it was intentionally silent; and, above all, that they do not make it speak entirely contrary to what, as may be gathered from the whole terms and tenor of the contract, was the intention of the parties. This I take to be a sound and safe rule of construction with regard to implied covenants and agreements which are not expressed in the contract."

19. It would be apposite to quote the law as laid down in **State of West Bengal** Vs. **Keshoram Industries Ltd. and Others**; (2004) 10 SCC 201 by the Constitutional Bench with reference to entry 52 and 54, wherein the Supreme Court held as under Page 58.

"129 (8) X X X X X X X The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field 'subject to' any other entry pr abstracts the field by any limitations imposable and permissible. A tax or fee levied by State with the object of augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied, by State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental."

20. The aforesaid principle of law is required to be essentially followed while reading the terms of contract. Since the petitioner never participated in the process and appears to be a busy body, the question relating to the fees of application, as raised by such person, is without basis.

21. Since it is informed that those applicants had applied voluntarily for said bids knowing that the application fee is not refundable, it cannot be said that such condition is illegal or arbitrary nor it can be said that there is unjust enrichment on the part of the Government.

22. In view of the above, no case for interference of this Court is made out. Therefore, this Writ Petition stands **dismissed**

23. All pending application stands dismissed accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SUDEEPTI SINGH]
JUDGE

April 10, 2024
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>