

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16332 of 2024 (O&M)

2024:PHHC:162594-DB

Reserved on : 25.11.2024
Date of Pronouncement : 04.12.2024

DA Bodega Hospitality and others ...Petitioners
Versus
State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Anand Chhibbar, Senior Advocate assisted by
Ms. Shreya B. Sarin, Advocate,
Mr. Vaibhav Sahni, Advocate,
Mr. Manu Loona, Advocate, for the petitioners.

Mr. Sharan Sethi, Additional Advocate General, Haryana.

SANJEEV PRAKASH SHARMA, J.

The petitioners have preferred this joint writ petition praying for quashing of Clause 9.8.8 of the Haryana Excise Policy 2024-25 to the extent it prohibits the bars/ pubs in all other districts of the State of Haryana barring Gurugram and Faridabad from operating beyond 12.00 midnight.

2. It is the grievance of the petitioners who are holding L-4/L-5 license of bars/ pubs situated at District Panchkula that while they had been granted licenses in the form of L-4 and L-5 for the year 2023-24. As per the Excise Policy of 2023-24, hours of sale in bars and pubs were provided and they were to remain open upto 02.00 AM in the State with a provision to further extend upto 08.00 AM on payment of additional annual fee of ₹ 20 lacs per annum. For 2024-25, so far as petitioner nos. 1 to 6 are concerned, their licenses have been renewed. As far as petitioner no. 7 is concerned, it is stated that he has yet to obtain license as he is still developing his site.

3. Duration of the policy for the year 2024-25 is from 12.06.2024 to 11.06.2025. While the other conditions for grant of L-4 and L-5 license are the same as were in the previous policy, the respondents have changed the hours of sale in bars and pubs and it has been laid down that the licensed bar for L-4/L-5/L-10E/L-12C/L-12G etc. would be allowed to remain open up to 12.00 AM (midnight) in the State. However, the timings of the bar licenses in Faridabad and Gurugram Districts can be further extended up to 02.00 AM on payment of additional annual fee of ₹ 20 lacs per annum. It can further be extended from 02.00 AM onwards on payment of additional annual fee of ₹ 5 lacs per annum for every additional hour in the said two districts.

4. Learned Senior counsel for the petitioners submits that the petitioners had after receiving the licenses for the year 2023-24 developed the infrastructure for continuing the bars/pubs for the entire night. Night clubs have been set up by them and the people attending the said pubs come from well educated families and there have been no untoward incident. The petitioners are running hospitality business and have spent huge amount of crores of rupees. By making an amendment in Clause 9.8.8 of the Excise Policy 2024-25, it is submitted that the petitioners have been deprived of their right to continue their business late beyond 12.00 midnight. It is further submitted that the petitioners have suffered huge loss on account of said Rule which applies to their district, namely, Panchkula, while similarly situated other license holders of L-4 and L-5 operating in Gurugram and Faridabad have been allowed to continue to operate their business for the entire night albeit on payment of extra fees which the petitioners are also ready to pay but they have been ousted from applying and consideration for extension.

5. It is further submitted by learned Senior Counsel that similarly situated persons cannot be allowed to be treated by different yard sticks. He submitted that in terms of parity, the license holders of L-4 and L-5 situated at Gurugram and Faridabad have been given hours in all respect similar to the petitioners. Both the license holders of Gurugram and Faridabad have paid the same fee for operation of licenses, while the provisions laid down a fixed criteria to operate upto 12.00 AM, option has been made available to the owners of pubs and bars of Gurugram and Faridabad to continue their business operation and earning upto 02.00 AM. Thus, it is submitted that it is a case of discrimination. Similarly placed persons have been treated differently by the authorities. The business of the petitioners has been impacted on account of arbitrary decision taken by the respondents.

6. Further it is submitted by learned senior counsel that no reasons have come forward for treating the petitioners dissimilar. They should also be allowed to get the timings extended upto 02.00 AM on payment of additional fee of ₹ 20 lacs per annum. Further they should be allowed to extend the time by hours in terms of the conditions extended for vendors, bar and hotel owners in Gurugram and Faridabad.

7. Learned Senior counsel for the petitioners also submitted that neither there has been any untoward incident of violation of rules nor any allegation of unrest on account of late night clubs, which were being run by the petitioners during the year 2023-24. He submits that change of time in the present policy is not based on sound principles. He submits that the said Clause seems to take away the bread and butter of the petitioners and violates the right to do business in comparison to the similarly situated liquor vendors and club owners of Districts of Gurugram and Faridabad in the State of Haryana.

8. It is further submitted by learned senior counsel that the petitioners and L-4 and L-5 license holders of Gurugram and Faridabad Districts are similarly situated to the petitioners and two different yard sticks cannot be allowed to be used. He, therefore, prays for quashing the said Clause of Policy and allow all L-4 and L-5 license holders, who have applied, for extension of time along with the requisite fee to operate in parity with Gurugram and Faridabad districts.

9. Learned Senior counsel for the petitioners also submitted that similarly situated persons should not be discriminated and equal protection of law is available to all persons who are similarly situated

10. Learned Senior counsel for the petitioners relies on the Supreme Court judgments in Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar and others AIR 1958 SC 538; The State of Gujarat and another vs Shri Ambica Mills Limited, Ahmedabad and another (1974) 4 SCC 656; Gauri Shanker and others vs Union of India and others (1994) 6 SCC 349; Dhirendra Pandua vs State of Orissa and others (2008) 17 SCC 311; Union Carbide Corporation and others vs Union of India and others (1991) 4 SCC 584; M.J. Sivani and others vs State of Karnataka and others (1995) 6 SCC 289; Khoday Distilleries Limited and others vs State of Karnataka and others (1995) 1 SCC 574; Confederation of Ex-Servicemen Association and others vs Union of India and others (2006) 8 SCC 399; State of M.P. and others vs Nandlal Jaiswal and others (1986) 4 SCC 566 and Division Bench judgment of this Court in Unique Wine Company vs State of Punjab and others 2012 SCC OnLine P&H 20248.

11. So far as the State is concerned, learned counsel for the State, namely, Mr. Sharan Sethi, Additional Advocate General, Haryana, has supported the policy. He submits that the petitioners have applied licenses

under the Policy of 2024-25 and have been granted licenses. The conditions would, therefore, be binding upon them. He further submits that it is for the State to frame the policy. So far as the time schedule for sale in pubs and bars of any areas or locality is concerned, the power is available with the State Government as well as with the Finance Commissioner under the Act and the Rules. The reasons may not be mentioned in the reply by the respondents, however, it is stated that the time schedule originally under the policy of 2024-25 was same for all. The time schedule of 2023-24 was being adopted, however, on account of the decision taken by the Council of Ministers, the policy decision for two districts was taken. It is fairly stated that while the reasons may not be mentioned in the order, however, there has been detailed deliberations by the Ministers under the Chairmanship of Hon'ble Chief Minister, therefore, there is no interference warranted.

12. It is further submitted by learned counsel for the State that the provisions cannot be quashed and set aside merely at the hands of whims and fancies of the concerned applicants. The time schedule can be different for two different localities. He submits that the question of Article 14 of the Constitution of India would have no application with regard to distribution of license and sale of liquor, as the same is not found to be a commercial right for business of liquor. He submits that no fundamental right has been violated and a commercial difficulty in a particular region cannot be a ground to set aside the policy decision taken by the Cabinet of Haryana.

13. Learned State counsel has also submitted that the rule making power is available with the State Government under the Act and the same does not warrant any interference. He relies on judgment of Hon'ble the Supreme Court in Assistant Excise Commissioner and others vs Issac Peter and others 1994 (4) SCC 104; and Division Bench judgments of this Court

in M/s Rattan Singh Kishore Chand and Co. vs State of Haryana 1998 (1) RCR (Civil) 448; Naresh Kumar and others vs State of Haryana and others 2022 (3) RCR (Civil) 94; and M/s Darshan Singh & Company, Moga vs State of Punjab and others 2024 NCPHHC 49641 in support of his contention.

14. We have considered the submissions.

15. The hours of sale provided in Clause 9.8.8 of the Haryana Excise Policy 2023-24 (from 12.06.2023 to 11.06.2024) are as under:-

“9.8.8 HOURS OF SALE IN BARS AND PUBS:

L-4/L-5/L-10E/L-12C/L-12G etc. licensed bars can remain open up to 02.00 AM in the State. The timings of these bars licenses can be further extended upto 08.00 AM on payment of additional annual fee of Rs. 20 Lakh per annum.”

The Excise Policy for the year 2024-25 was brought into force with effect from 12.06.2024 to 11.06.2025. The preamble and purpose of excise policy are as under:-

“The Excise Policies of the State have successfully achieved and strengthened the long term objectives of breaking the cartels, broad-basing the trade by facilitating the entry of new players of even modest means, simplifying/unifying the structure of wholesale supply of liquor by giving wholesale licenses to retail licensees, establishing a transparent system of allotment of retail outlets, complete check on manufacturing/sale of spurious liquor, thwarting all attempts of evasion of excise levies, plugging the leakage/pilferage, optimization of revenue, creating ambience for legitimate and responsible drinking, providing good quality liquor

at reasonable price to those who drink and to minimize the social cost of consumption.

Maximization of Government Revenue to generate resources that can be utilized to finance developmental projects is always accorded a high priority on the agenda by the policy planners. However, when it comes to framing a policy such as Excise Policy, social considerations and ramifications also assume paramount significance. An ideal Excise Policy, therefore, not only has to strike a delicate balance between the twin objectives of preventing dominance in liquor trade or social degeneration on the one hand and securing an optimum revenue for the Government on the other, but also has to address the concerns of all the four key stakeholders i.e. the Government, the Manufacturers, the Licensees and Consumer alongwith social considerations and ramifications.

While preparing Excise Policy, 2023-24, the challenges thrown by excise policies of neighbouring States have been borne in mind, as 21 out of 22 districts are bordering with other States. Besides, several changes are being introduced with a view to delegate, to ensure Ease of Doing Business and increase transparency.”

16. The policy lays down the restrictions of location of Vends and Sub-Vends on scheduled roads, establishment of vends subject to compliance of various provisions of the local bye-laws, Food Safety and Standard Authority of India, Controlled Areas Restriction of Unregulated Development and other laws, which may be applicable to the areas. The policy also mentions of there being no vends where gurukuls are functioning. Certain authorized drinking places have also been provided known as Tavern, as mentioned in Clause 1.4 of the Policy. Taverns have been granted at a fixed fee for different districts. For Gurugram, it is 3% of the license fee of the zone. For Faridabad, Panchkula and Sonapat, it is 2%

of the license fee of the zone and for other remaining districts, it is 1%. Thus, we find that the policy lays down different criteria for different districts. Grant of L-4, L-5 and other bar licenses has been provided under Clause 9.8.1 and the license of existing personal bars located anywhere in the State would be renewed by the concerned DETC (Excise). Similarly license of bar in a golf club (L-12C) is also granted as per Clause 9.8.1.1. The said annual license is granted to a club of repute for the districts having Metropolitan Development Authority at annual license fees of ₹ 20 lacs. For other districts, the annual fee is ₹ 10 lacs. For L-12C license granted in a residential condominium in District Gurugram it is ₹ 15 lacs and in Faridabad, it is ₹ 12 lacs while in other districts it is ₹ 8 lacs. However, in army sponsored club like Sirhind Club, Ambala, the license fee is ₹ 5 lacs. License fee for L-4 and L-5 in District Gurugram having grading of 3 star hotel, is ₹ 22 lacs, while for Faridabad, Panchkula and Sonapat it is ₹ 16 lacs and for all other districts, it is ₹ 12 lacs.

17. Having noticed above factors, we find that the excise policy deals differently for different licenses for different districts in the State of Haryana. The license holders of L-4 and L-5 of Districts of Faridabad and Gurugram and for that matter other districts including Panchkula cannot be said to be similarly situated nor it can be said that they are a singular class qua excise policy.

18. This Court is of the firm view and it is well settled that Article 14 of the Constitution formulates class legislation. However, reasonable classification for the purpose of achieving the ends of legislation would not violate Article 14 of the Constitution.

19. In **Khoday Distilleries Limited**'s case (supra), the Constitution Bench of Hon'ble the Supreme Court was examining the Andhra Pradesh

(Regulation of Wholesale Trade, Distribution and Retail Trade in Indian Liquor and Foreign Liquor, Wine and Beer) Act, 1993. The challenge was to the vires of the said Act. The High Court had held that the amendments made in the Rules as well as the Act were not invalid as they only violated the right to carry out trade in liquor, which is not fundamental.

20. Thus, the Supreme Court was to answer as to whether the petitioners had a fundamental right to carry out trade in liquor and the other question was whether the taking over of trade of liquor during the validity of the license by imposing prohibition could be said to be unjustified. Having noticed the various provisions and the intricacies of Article 19 of the Constitution of India, the Apex Court held as under:-

“60. We may now summarise the law on the subject as culled from the aforesaid decisions.

- (a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.*
- (b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., res extra*

commercium, (outside commerce). There cannot be business in crime.

- (c) *Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.*
- (d) *Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.*
- (e) *For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.*
- (f) *For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The restrictions, and*

limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

- (g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.*
- (h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.*
- (i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.*
- (j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right*

to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

- (k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.*
- (l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.*
- (m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.”*

21. Learned counsel for the petitioners has attempted to plinth submissions on the observations of the Apex Court in the aforesaid paras (g) and (h).

22. We have carefully considered the said aspect of law as stated by the Apex Court with regard to the present case. As noticed hereinabove, the petitioners are carrying on business of sale of liquor in their pubs and bars at Panchkula, the persons situated at Gurugram and Faridabad cannot be said to be similarly situated. The amount of license fee which they have to pay is different from what is being paid by license holder at Panchkula. While license fee for Panchkula and Faridabad is ₹ 12 lacs, the license fees for Gurugram is ₹ 15 lacs, while license fee for other remaining districts it is ₹ 5 lacs. The time for sale of liquor has been generally fixed as upto 12.00

midnight. The only concession given to bar license holders of Faridabad and Gurugram is that they may apply with additional fee of ₹ 20 lacs per annum for extension upto 02.00 AM with further additional facility to pay ₹ 5 lacs per annum for extension of time for every additional hour. The policy of granting extension of time to Districts Faridabad and Gurugram has been answered by the affidavit filed by the Collector (Excise) stating that the decision for different timings has been taken in its wisdom by the Council of Ministers in its meeting held on 15.05.2024. While reasons may not have come forward to the Department, we would refrain ourselves from examining the policy decisions of Council of Ministers. The entire excise policy is itself having different yard sticks for different districts. Thus, the observations of Constitutional Bench of Supreme Court in **Khoday Distilleries Limited**'s case (supra) would have no application to the facts of the present case. We, therefore, reject the contention of learned counsel for the petitioners that there is any discrimination meted out to the license holders of Panchkula.

23. In **Darshan Singh & Company, Moga** 's case (supra), the Division Bench headed by one of us had examined the excise policy wherein the contention was raised relating to the increase of application fee. After examining the power of the State Government to make rules under Section 58 of the Punjab Excise Act, 1914, and after considering the law as laid down in **Panna Lal vs State of Rajasthan** 1975 (2) SCC 633, **Mary vs State of Kerala** (2014) 14 SCC 272 and **Issac Peter**'s case (supra), we had held that the right to trade of liquor is not a fundamental right and it is an exclusive domain of the State to frame its own excise policy. The principles of natural justice do not have any application.

24. Similarly with reference to Punjab Excise Act, another Division Bench of this Court in *M/s Rattan Singh Kishore Chand and Company*'s case (supra) has observed that the State possesses a complete right of control over all aspects of trade in liquor.

25. That apart, once the petitioners have obtained license under the said Excise Policy and are doing their business in the terms laid down therein, they cannot turn around and challenge part of the said policy which does not suit them. Principle of 'take it or leave it' has to be accepted and applied in contractual matters. Where a person wants to do liquor trade, he would have to accept the conditions as framed by the State. No one has stopped the petitioners from doing business at Gurugram, if they found it to be more lucrative. The contention that the petitioners' business has been affected because of the change of the excise policy for the subsequent year is also found to be without basis. As noticed in the aforesaid judgment, a person who is carrying on liquor trade would know what is in store for him for the entire year. Change in excise policy for each year is well known to all.

26. This Court would be slow to put its own views with regard to the excise policy. Therefore, we reject the contention of the petitioners. However, we are unable to stop ourselves from making observations regarding allowing sale of liquor for the entire night. While the Excise Policy mentions of having noticed social verification and social degeneration at the time of framing the policies, it cannot be remained unnoticed that if the people are allowed to stay all night at bars and pubs, the social strain of Indian society is seriously hampered. Excess drinking and indulging in night life in Indian society is still a social taboo. While we may not be understood to discourage night clubs but the policy makers ought to take into

consideration the Indian culture and also consider the that the percentage of literacy and mature understanding and repercussions of excessive drinking is yet a far reaching goal. While few of the States of India have applied absolute prohibition and most of the States have laid down a time schedule for selling of liquor. Once a time schedule is laid down, there should be no provision for granting extension of the said time for the entire night by taking extra money. A balance has to be struck between the amount of revenue being earned vis-à-vis maintaining and nurturing the culture of the State. It is expected that the State shall take into consideration our observations while framing the future excise policy.

27. With the aforesaid observations and findings arrived at hereinabove, the writ petition is dismissed.

28. Let copy of this order be forwarded to the Chief Secretary of State of Haryana for noticing the observations while framing policy in future.

29. All pending applications stand disposed of.

30. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

04.12.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No