

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****113****CR-527-2025 (O&M)****Date of decision: 07.02.2025****Ishwar Dayal****...Petitioner(s)****Vs.****Excise and Taxation Department, Faridabad and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Baljeet Beniwal, Advocate for the petitioner.

*********NIDHI GUPTA, J.**

The petitioner/plaintiff has filed the present civil revision under Article 227 of the Constitution of India for setting aside the Impugned order dated 05.12.2024 (Annexure P-5) passed by the Id. Additional District Judge Faridabad, District Faridabad, whereby the Civil Misc. Appeal against order dated 25.10.2024 passed by the Id. Civil Judge (Junior Division), Faridabad whereby application under Order 39 Rules 1 and 2 read with Section 151 CPC, filed by the petitioner was dismissed in Civil Suit No. 2054 of 2024 dated 20.07.2024 titled as 'Ishwar Dayal vs. Excise and Taxation Department etc.'

2. Learned counsel for the petitioner submits that the learned Courts below were in a patent error in not granting the ad interim injunction to the petitioner under Order 39 Rules 1 and 2 read with Section 151 CPC as the petitioner had *prima facie* established on record that the



liquor vend of the petitioner was existing and functioning prior to that of respondent No.2. Therefore, as per the applicable Rules, it was mandated upon respondent No.1 to first shift the vend of defendant/respondent No.2. Instead, the vend of the petitioner is being sought to be removed.

3. Learned counsel submits that the fact that the liquor vend of the petitioner was operational prior to that of respondent no.2 is also evident from the fact that the previous licensee, namely, Valjendra Singh had been running the liquor vend on the same location which is prime location. The learned courts below have also not considered that the vend of the petitioner was functioning for 37 days continuously, and for that period permit was given for the same site of the petitioner. The impugned orders have therefore been passed without appropriately appreciating the factual circumstances.

4. No other argument is raised on behalf of the petitioner.

5. I have heard learned counsel for the petitioner and perused the case file in great detail.

6. The petitioner/plaintiff has filed the present suit (Annexure P-1) seeking permanent injunction that the defendant/respondent No.1 be restrained from cancelling the license of the petitioner; and not to remove/demolish the structure of the liquor shop forcibly, illegally in any manner whatsoever and by adopting coercive methods. The suit was accompanied by an application under Order 39 Rules 1 and 2 read with Section 151 CPC (Annexure P-2) seeking ad interim injunction. The said application was dismissed by the Id. Civil Judge (Junior Division) Faridabad



vide order dated 25.10.2024 (Annexure P-3). The appeal (Annexure P-4) of the petitioner against the order dated 25.10.2024 has been dismissed by the Id. Additional District Judge, Faridabad vide order dated 05.12.2024 (Annexure P-5).

7. The petitioner is aggrieved of the removal of his liquor vend from the location where it is situated. The allocation of spot for running liquor vend is governed by Condition no.1.3.5 of the Excise Policy 2024-25, and the same reads as follows: –

“1.3.5 LOCATION OF VENDS/SUB-VENDS: *There has to be a minimum distance of 2.0 KMs between any two main vends or between any two sub-vends or between any main vend and sub-vend belonging to two different licensees in rural areas. In case of dispute between a main vend and a sub-vend, preference shall be given to the main vend. In other cases, preference shall be given to the main vend/sub-vend set up earlier in time. The rural vend/sub vend of a zone shall also have to maintain a minimum distance of 2.0 KMs from any urban vend belonging to a different licensee. It is further provided that DETC (Excise) will be the competent authority to resolve the conflicts and ensure the compliance of the above provisions for the zones situated within his district. The Collector (Excise) will be the competent authority to resolve the conflicts and ensure the compliance of the above provisions for zones falling under different districts. The sub-vend shall also be subject to all other provisions of law. The vend/subvend is required to be preferably located on the 'phirni'. No vend or sub-vend in a rural zone can be located at a distance of less than 50 meter from the main gate of any house except when the licensee has submitted to the jurisdictional DETC, the*



written NOC(s) duly signed by all Heads of the families residing in every house whose main gate is within this 50-meter distance. All the provisions with regard to location of vends shall also apply to the sub-vends."

8. A bare reading of the above Condition shows that there has to be a distance of 2 km between two vends. In the present case, there was only a distance of 225 m between the vend of the petitioner and that of respondent no.2. Accordingly, respondent No.2 had made a complaint to the concerned authorities, whereupon a Committee was constituted to look into the matter vide letter dated 19.07.2024. The Committee had visited the site and submitted its report that the liquor vend of the petitioner was functioning in violation of the relevant Excise Policy.

9. It is the contention of the petitioner that he is not in violation of the Excise Policy, as his vend was existing and functional prior to that of respondent No.2; and therefore, as per the above Condition, the vend of respondent No.2 ought to be removed first. The said argument of the petitioner is found to be factually incorrect as a perusal of the record of the case shows that respondent No.2 had been granted liquor license for the previous year i.e. 2023-2024 also, for the command area of village Baloch; and presently also for the current year of 2024-25, respondent no.2 is running his retail shop at the same place. On the other hand, it is the admitted case of the petitioner that he has been granted liquor license for the current year 2024-25 only. The petitioner has shown nothing whatsoever to this Court to indicate that he was having liquor license for the year 2023–24 as well. In fact, even for the current year, the license of



the petitioner was issued after that of respondent No.2. As such, petitioner has failed to make out a prima facie case for grant of injunction. Thus, balance of convenience would also be in favour of the respondent no.2.

10. It is next contended by the petitioner that one Valjendra Singh had been running the liquor vend from the same spot where the shop of the petitioner is situated. Firstly, it appears from the record that the said ground was not raised by the petitioner before either of the learned courts below i.e. neither in the application under Order 39 Rules 1 and 2; nor in the appeal (Annexure P-4). As such, the veracity of the said contention of the petitioner is not verifiable. Further, even if for the sake of argument, it is accepted that one Valjendra Singh was running his liquor vend from the same spot, no right would accrue to the petitioner therefrom. As such, this argument of the petitioner is misconceived.

11. It is also pertinent that the petitioner's license has not been cancelled. As per the said policy, the petitioner has only been directed to shift his vend since the petitioner's vend is within 2 km radius of vend of respondent No.2. In fact, the petitioner has already made a written request to the DETC Faridabad to shift his liquor vend to a new location. It was in this background that the learned courts below opined that the 3 prime ingredients "*prima facie case*", "*balance of convenience*" and "*irreparable loss and injury*" required for grant of ad interim injunction were not made out in the present case.

12. I am in agreement with the view taken by the learned courts below. The petitioner has failed to dispute or controvert the findings of the



learned courts below. The petitioner has been unable to show this Court that his license was issued prior to that of respondent No.2. The petitioner has also not been able to dispute that the vend of respondent No.2 was functioning in the year 2023-24 also. The petitioner has also failed to demonstrate that he is not in violation of the provision of 1.3.5 of the Excise Policy 2024-25. In this regard, the relevant findings of the Id. lower Appellate Court in the impugned order dated 05.12.2024 (Annexure P-5) are as under:-

"It is not in dispute that the appellant/plaintiff was granted liquor licence for retail qua country made liquor and Indian made foreign liquor under general category for the command area village Deeg-1 while respondent no.2 for command area Village Baloch for the period w.e.f. 12.06.2024 to 11.06.2025. As per condition No.1.3.5 of Excise Policy 2024-25 there has to be minimum distance of 2 KM between two vends and in case of dispute DETC is authorised to resolve it. The condition no.1.3.5 provides that "There has to be a minimum distance of 2.0 KMs between any two main vends or between any two sub-vends or between any main vend and sub-vend belonging to two different licenses in rural areas. DETC (Excise) will be the competent authority to resolve the conflicts and ensure the compliance of the above provisions for the zones situated within the District." Though, it is the case of the appellant that his site plan for the disputed place was approved by the respondent no.1 and it is geo mapped online by the respondent no.1 but no document in this regard is placed on record. For the sake of arguments, if it is believed that site plan of the appellant was earlier approved by the respondent no.1 even then DETC Excise was authorised to cancel it, if it is found in



violation of any of the terms and conditions of Excise Policy 2024-25 since liquor licence was not absolute one and rather is subject of Excise Policy 2024-25 and other rules. The respondent no. 2 moved an application to respondent no.1 department on 16.07.2024 that retail shop of appellant/plaintiff is situated within 2 KM from his shop and on the said application, a committee comprised of AETO and three Excise Inspectors was constituted to report about it. The said committee gave its report on 19.07.2024 holding that retail shop of appellant/plaintiff is situated only 225 meter from the retail shop of respondent no.2 and thus retail shop of appellant is in violation of condition no.1.3.5 of Excise Policy. The condition no.1.3.5 of Excise Policy provides that "In case of dispute between a main vend and a sub-vend, preference shall be given to the main vend. In other cases, preference shall be given to the main vend/sub vend set up earlier in time." The documents placed on record shows that respondent no.2 was granted liquor license for previous year 2023-24 also for command area Village Baloch and this time for current year 2024-25 and he is running his retail shop at the same place while appellant/plaintiff is granted liquor license for current year 2024-25 only. Thus retail shop of respondent no.2 is existed much prior to the retail shop of appellant and thus preference was rightly given to the respondent no.2 for continuing his shop there and appellant was asked to shift his retail shop in compliance of condition no.1.3.5 of Excise Policy 2024-25. Thus, I do not find any substance in the contentions of learned counsel for the appellant that respondent no.1 is estopped from asking the appellant to shift his shop as earlier his site plan was approved by it. Even if site plan was approved earlier then also DETC Excise is within his right to resolve the



dispute between two licensee as per condition.1.3.5.of Excise Policy and can asked the licensee to shift the retail shop. It is also contended of the learned counsel for the appellant that appellant had invested huge money in constructing the retail shop and if he is asked to shift it then he would suffer irreparable loss and injury. The appellant cannot be allowed to run his shop in violation of provisions of Excise Policy as liquor licence is not absolute one and rather is subject to provisions of Excise Policy and it is the duty of the officials of Excise department to see that all the conditions are complied with. Moreover, retail shop of the appellant is made up of tin shed and is temporary in nature and no huge investment is made to construct it as alleged by the appellant. It is the respondent no.2 who shall suffer the huge loss as his sale of liquor would be affected if appellant would be allowed to run his shop at the said place in violation of Excise Policy. Thus respondent no.1 has rightly directed the appellant to shift his retail shop by cancelling his site plan. It is pertinent to mention here that photographs placed on record clearly shows that retail shop of appellant was sealed by the officials of respondent no.1 on 20.07.2024 prior to grant of any stay order in favour of appellant. Thus, neither a prima facie case nor balance of convenience lies in favour of the appellant and it is respondents who would suffer irreparable loss and injury, if appellant is allowed to run his retail shop in violation of terms and conditions of Excise Policy, 2024-2025. Thus, all the three golden principles of granting injunction does not lie in favour of the appellant/plaintiff. Consequently, his application under order 39 Rules 1 and 2 read with section 151 CPC was rightly dismissed by the trial Court. I do not find any reason to differ with the findings of Id. Trial Court in this regard."



13. As such, I find no infirmity in the impugned orders dated 25.10.2024 (Annexure P-3) and 05.12.2024 (Annexure P-5).
14. The present civil revision petition is hereby **dismissed**.
15. Pending application, if any, stands disposed of.

07.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No