(2010) 11 P&H CK 0211

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 15582 of 2010 and CWP No. 3879 of 1993

B.D. Gupta and Company APPELLANT

Vs

State of Haryana and Another RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Citation : (2010) 11 P&H CK 0211

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.

C.M. No. 15582 of 2010

Heard.

The writ petition is restored to its original number.

CM stands disposed of.

CWP No. 3879 of 1993

1. Heard learned Counsel for the parties.

2. The petition seeks a direction for quashing order dated 11.3.1993 passed by the Excise and Taxation Commissioner, Haryana under Rule 3.19 of the Punjab Excise Manual Volume-III declining to remit the licence fee for the liquor vend.

3. Case of the Petitioner is that it was granted licence for sale of country liquor for the year 1992-93 against fee of Rs. 28 lacs. It paid a sum of Rs. 22,93,735/-. The liquor vend had to be closed on 5.11.1992 due to agitation by the public. The quota fixed was 38000 proof litres, out of which the Petitioner lifted 21285 proof litres and the remaining quota could not be lifted. The deposit already made by the Petitioner was in excess of the amount due for the quota lifted

during seven months. Accordingly, the Petitioner sought refund for remaining period of five months. The refund was not allowed. CWP No. 511 of 1993 was filed which was disposed of on 12.1.1993 with a direction to take decision on the claim of the Petitioner. Accordingly, the impugned order was passed. The operative part of the impugned order is as under:

The case of the Petitioner is not covered by any of the stipulations mentioned above. The argument of the Petitioner was that he could not run his shop because of the resistance of the Gram Panchayat and the people belonging to different socio-religious organisations. No details of day to day sales have been given to further elaborate the argument. In the absence of this, it is difficult to comment on the exact quantum of loss suffered by the Petitioner. Moreover as per the contractual agreement between the parties, the department is not responsible for the day to day running of the vends. The licencee has to make his own marketing arrangement for selling his allotted quota. If there is any law and order problem in the area, they can sort out the same in consultation with the district administration. The Excise and Taxation Department does not have any statutory power to enforce law and order in any area. I have examined Rule 3.19 of the Punjab Excise Manual in detail. The rule does not mention any situation entitling the licensee for compensation which the learned Counsel for the Petitioners argued before me. In view of above, I feel that the case of the Petitioner is not covered by the ruling mentioned above. The Petitioner is not entitled for any remission of licence fee. The petition is rejected.

4. The finding recorded above shows that the Petitioner failed to give the details of loss allegedly suffered. Rule 3.19 (c) allows concession being made in the case of outbreak of plague, occurrence of unusual scarcity, communal or other riots, bands or putting the area under curfew etc. The said rule is as under:

3.19. Cases sometimes arise in which concessions may equitably be made to license-holders who through no fault of their own have failed to obtain from their licensed business the profits that they had reason to expect:

(a) xx xx xx

(b) xx xx xx

(c) When there is an equitable claim for compensation owing to unavoidable circumstances which could not have been foreseen when the license was granted such as an outbreak of plague, the occurrence of unusual scarcity, communal or other riots, bandhs or putting the area under curfew, a case for a concession may be made out.

5. It is clear from the above rule that the same enables making of concession in certain situations which power has to be judiciously exercised depending upon the facts and circumstances of each case. In the present case, the Commissioner has considered the case of the Petitioner and not found any ground for granting concession. The decision taken in the facts and circumstances is neither shown to

be malafide nor arbitrary. The period for which licence is operated cannot be split up. In a given case, even in short period a person may make profit while in another one may be in loss even after working for full year. Refund or concession is permissible if claim is ''equitable'' in a fact situation. The view taken in the present case is a possible view. In these circumstances no interference is called for.

6. The writ petition is dismissed.

