(2010) 07 SHI CK 0164

In the High Court Of Himachal Pradesh

Case No : CWP No. 3788 of 2010

Daya Nand Tyagi APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:
Punjab Excise Act, 1914 — Section 24

Citation : (2010) 07 SHI CK 0164

Hon'ble Judges : Kurian Joseph, C.J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.—The Writ Petition is filed with the following prayers:

i) To call for the records of the case and after examining the legality and propriety of the same, to set aside the impugned order Annexure P-21 and to direct the Respondents to allow the Petitioner to continue the L-14 Kalyanpur liquor vend at its present location in terms of the site plan Annexure P-6.

ii) To issue appropriate writ, order or direction to the Respondents to the effect that the Respondents sanction the already deemed sanctioned site plan Annexure P-6 and not to interfere with the running of the business of the liquor vend No. 77 at Kalyanpur, which is being run by the Petitioner after complying with all codal formalities and procedure.

iii) To set aside the impugned order Annexure P-21 and direct the Respondents to act in consonance with the Punjab Excise Act, the H.P. Liquor License Rules as also the H.P. excise Policy/Announcements for the year 2010-11.

2. Short facts. The Petitioner has been in the liquor business and is licensee of liquor Unit No. 18, since 2008-09. Liquor Unit No. 18 has three vends, at Kalyanpur, Bhud and Baddi. The issue in this Writ Petition pertains to the change of location of the liquor shop at Kalyanpur. That shop has been shifted to a place

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at a distance of around 2 kms. According to the Petitioner, he is entitled to shift the shop to anywhere in the revenue estate- locality. He also contends that once an application is filed for shifting and in case the same is duly acknowledged, it would amount to a provisional approval of the shifted premises to which the shop is shifted.

3. In order to appreciate the contentions taken by the Petitioner, it is necessary to refer to the position under the relevant Rules and the Policy Announcements. The license is governed by the Himachal Pradesh Liquor License Rules, 1986. Rule 37 (2) onwards deals with the licensed premises and to the extent relevant, they are extracted below:

37(2) The licensee shall not carry on any business connected with his license, or store any liquor to be sold or otherwise dealt with under his license, except in the premises specified in his license, hereinafter called the licensed premises.

The Collector may, however, with the previous sanction of the Financial Commissioner, grant in an exceptional case a permit u/s 24(3) of the Punjab Excise Act as applied to Himachal Pradesh to store a quantity of liquor exceeding the limit of the retail sale, at a place other than the licensed premises. This permission shall be granted on payment of an extra fee of Rs. 100/- per annum and only in cases where it is impossible and impracticable to stock liquor in the main licensed premises. Before the grant of such permission the Collector shall satisfy himself that the proposed place is adequately guarded and that there is no means of access to it by the public.

(3) When a licensee has more licenses than one, sale or other business under each license shall be in a separate premises and liquor to be sold on each license shall be stored separately and the accounts of each license shall be kept distinct.

Exceptions:

(a) Sales under the license in form L.5 to L.8 may be carried on, in the licensed premises of a hotel, restaurant, railway refreshment room or dining car, as the case may be, and common stocks may also be kept, but separate accounts of sales under each license and of the common stock of liquor shall be maintained.

(b) In any other case, the special permission of the Collector may be given and endorsed on the license to sales being carried on the same premises but unless the Financial Commissioner sanctions otherwise, stocks and accounts must be separate.

(4) Licensed premises shall be premises owned or leased in by the licensee. It will be obligatory on the part of the licensees to get the licensed premises approved from the Collector before starting the shop:

Provided that when the licensee submits his application, for approval of the premises and the name of the salesman, to the office of the Assistant Excise and Taxation Commissioner/Excise and Taxation Officer, Incharge of the district on or

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before 1st April and obtains an acknowledgement from the office of the Asstt. Excise & Taxation Commissioner/Excise and Taxation Officer, Incharge of the district in token of having submitted the aforesaid application on or before 1st April, the submission of such application shall be deemed to be a provisional approval of the premises and the name of the salesman mentioned therein.

4. Rule 37(2) provides that the business as per the license shall be conducted only in the premises specified in the license called licensed premises. Under Rule 37(4), it is further made clear that before starting the business, the premises shall be got approved from the Collector. However, the proviso to Rule 34(4), gives an indication that where the licensee submits an application for approval of the premises showing also the name of the salesman to the Excise and Taxation Commissioner-Excise and Taxation Officer on or before 1st April and obtains an acknowledgement in that regard, the submission of the application would be deemed to be provisional approval of the premises in the name of the salesman thereunder. Schedule "D" to the Rules, which is annexed as Annexure "A" to the Rules provides for application for allotment-renewal of the license. A licensee is bound to disclose " Nature and the Location of the Vend(s)".

5. The department of Excise and Taxation, Government of Himachal Pradesh has made its policy announcements regarding the allotment-renewal of licenses for vending country liquor and foreign liquor, for the financial year 2010-11. Chapter X at paragraph 10.2 deals with the location and shifting, the same reads as follows:

10.2 The licensees shall have to make their own arrangements for procuring liquor and also for suitable vends (shops) to carry on their business in the localities for which particular licenses are sanctioned. It will be obligatory on the part of the licensee to get the premises and the name of the salesman approved alongwith his photograph, before starting the vends. The premises will be within a specific locality, where the location is not further specified, for which such licenses are sanctioned, but licensees cannot claim that the new premises should remain restricted within the area and premises in which the vends had been functioning previously. In case the licensee fails to arrange premises for the vends to the satisfaction of the Additional/Joint/Deputy Excise & Taxation commissioner of the Zone, he shall be liable to forfeiture of entire amount deposited by him and be further liable to penal action under the rules for any other loss of Government revenue, even if the business is not carried on:

Provided that when the licensee submits his application, for approval of the premises and the name of salesman, to the office of the Assistant Excise and Taxation Commissioner/Excise and Taxation Officer, Incharge of the district, on or before 1.4.2010 and obtains an acknowledgement from the office of the Assistant Excise and Taxation Commissioner/Excise and Taxation Officer, Incharge of the district in token of having subnmitted the aforesaid application on or before 1st April, 2010, the acknowledgement of such application shall be deemed to be a provisional approval of the premises and the name of the

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salesman mentioned therein including provisional grant of a license.

6. It is seen from the reply-affidavit that for the financial year 2010-11, the State of Himachal Pradesh has only framed policy for the renewal of the existing vends. In the light of such policy, read with paragraph 10.2, which is extracted above, it can be seen that the licensee has to make his own arrangement with regard to the shop in the locality. The policy also, as in Rule 37(4), makes it clear that it is obligatory on the part of the licensee to get the premises and the name of the salesman approved before starting the vend. Similarly, the policy also provides that in case an application is duly filed for approval of the premises and the name of the salesman on or before 1.4.2010 and acknowledgement in that regard is obtained from the Excise and Taxation Commissioner/ Excise and Taxation Officer/ Incharge of the District, the acknowledgement of such application should be deemed as a provisional approval of the premises and as a provisional grant of license.

7. The Petitioner applied for the renewal of the license in respect of the liquor shop at Kalyanpur for the year 2010-11 without specifying any change in location. So much so, when the application for renewal was considered, it was taken that the renewal of the license for the sale of liquor at Kalyanpur is at the same premises where the shop was conducted during 2008-09 and 2009-10. The Petitioner after submitting the application for renewal, submitted an application for change of location from the old premises to a new premises at a distance of 2 kms. near Jaswant Raj Marg at Chakka road. According to the Petitioner since the application had been duly acknowledged by the competent officer, it shall be taken that there is a provisional approval for the premises. But, it has to be seen that as per the Rules and the policy announcements, a premises has to be got approved from the competent officer before starting the business. The contention of the Petitioner is that once an application is duly submitted before the Asstt. Excise and Taxation Commissioner/ Excise and Taxation Officer on or before 1.4.2010 for shifting the place and in case the application is duly acknowledge, the same shall be deemed to be a provisional approval of the premises. We are afraid that such contention cannot be appreciated. As already stated above in the application itself, the location of the premises has to be specified and the premises has to be got duly approved before starting the business. The question of deemed approval arises only when a license is granted. In the case of the Petitioner, it is renewal of the license. The Petitioner got his license renewed on the basis that shop is being conducted at Kalyanpur in the premises where the shop existed during the previous year namely 2009-10. For the financial year 2010-11, the Petitioner has only made an application for shifting the same to a place near Jaswant Raj Marg as per Annexure P-6. The same has not been approved by the competent authority. Unless the business is conducted in an approved premises, it would amount to gross violation of the Rules. It would also amount to a situation that a vendor who is licensed to sell liquor in a locality can keep on shifting his premises by only submitting an application, by taking recourse to the deeming provision. That deeming provision is subject to the

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further condition that such a shifting should only be to a premises in the same location since the shops are allotted on the basis of locating the shop in a particular place, vaguely mentioned as locality. Within the location in the locality, a licensee is free to shift the shop to another room and due application in that regard should be submitted on or before 1st April, 2010 and if the same is duly acknowledged until orders are passed on the same there is a deemed approval. In other words, neither the Rules nor the Policy announcements would enable a licensee to shift his shop to any place he likes within a revenue estate. The license is in respect of a location within a revenue estate and the premises namely the shop-room, under Rules and the premises can be shifted to another room in the same location and not to a different place.

8. Even assuming for arguments sake that Annexure P-6, application for shifting the shop to a distant place near Jaswant Raj Marg is deemed to be a provisional approval also, once the same has been duly considered and validly rejected, there is no further scope for the deemed continuance of provisional approval. In the impugned Annexure P-21, Order, the Financial Commissioner has referred to all the relevant aspects of the matter and has come to the conclusion that the shifting, as proposed and as done by the Petitioner cannot be permitted. It is stated in the impugned order that the liquor shop at Kalyanpur was being run only in the old location for the last 15 years and the Petitioner ventured to shift it to a place at a distance of 2 kms., only during the current financial year namely 1.4.2010. There was no prior approval from the competent authority and shifted premises also has not been approved by the competent authority. It is also stated in the impugned order that the very fixation of quota in the matter of supply of liquor and the license fee is on the basis of the probable consumption and additional quota lifted during the previous year namely 2009-10. Any change of the place would have its impact on the consumption pattern and it would affect the calculation of quota as well as the value of vend, it is stated in the impugned order. Still further, it is stated in the order that the Petitioner having entered into a valid commercial contract with the department, is bound to comply with the terms and conditions of the license which is issued in terms of the Rules and the Policy Announcements. The sale of liquor as per the license can be permitted only at a premises duly approved by the competent authority in respect of the location where the liquor shop is to be operated. We find that the Financial Commissioner has referred to all the relevant aspects of the matter. No irrelevant consideration has been crept in the process. It may not also be all together out of context to take note of the submission made by the Advocate General that the Petitioner himself had submitted an application before the Financial Commissioner seeking time to shift his shop to the old location in respect of which the license had been granted and the Financial Commissioner had granted a limited time and that period also is over and therefore, the submission is that it is not fair on the part of the Petitioner to challenge the order for the same. The above submission also is noted.

9. For all the above reasons, we do not find any merit in the Writ Petition and the

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same is accordingly dismissed, so also the pending application(s), if any.

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