

(2015) 05 P&H CK 0295
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 9656 of 2015

Divya Singla and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

National Highways Act, 1956 — Section 2(2)

Citation : (2015) 05 P&H CK 0295

Hon'ble Judges : S.J. Vazifdar, A.C.J.; Gurmeet Singh Sandhawalia, J

Bench : Division Bench

Advocate : Anil Ksheterpal, Senior Advocate and Manender Singh Sain, for the Appellant; Harsimran Singh Sethi, A.A.G, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.J. Vazifdar, Actg. C.J.

1. The petitioners have challenged the order dated 23.04.2015 (Annexure P10), passed by the Assistant Excise and Taxation Commissioner, directing the Excise and Taxation Officer (Excise) to inspect all liquor vends situated at the National Highways and thereafter, as per the orders of the Courts, to shift the liquor vends, situated at National Highways. The communication informed the Excise and Taxation Officer (Excise) the next date of hearing before this Court, namely, 29.04.2015. The petitioners have also challenged the respondents' action in closing down their liquor vends located on the Phagwara-Banga-Nawanshahr-Balachaur-Rup Nagar road as also on Nawanshahr-Garhshankar road.

2. Considering the nature of the matter and the involvement of the Arrive Safe Society, we permitted Mr. Ravi Kamal Gupta, Advocate, to address us also.

3. The matter pertains to the year 2015-16. In view of the submissions raised before us, it is necessary to refer to the policy of the preceding year as well and the orders that have been passed in various proceedings, in respect thereof.

4. The State of Punjab had issued the Excise Policy for the year 2014-15. Clause 2.13 of the said policy, insofar as it is relevant, read as under:

"2.13.....

Location of vends on National Highways

In order to implement the interim orders passed by the Hon''ble Punjab and Haryana High Court in CWP No. 25777 of 2012, it has become necessary to define location of liquor vend along National Highways. The Hon''ble Punjab and Haryana High Court has observed that no liquor vend should be visible and have direct access from the National Highways.

In view of the above, it is proposed that during the year 2014-15, the liquor vends would not be allowed to operate at places from where they are visible and have direct access from the National Highways. The Deputy Excise and Taxation Commissioner of the concerned division shall be personally responsible to ensure that the above provision is complied with at the time of opening of liquor vends along National Highways."

5(A). A writ petition had been filed by the Arrive Safe Society, Chandigarh against National Highways Authority of India and others, being CWP No. 25777 of 2012, which was disposed of by an order and judgment of a Division Bench of this Court on 18.03.2014. The Division Bench dealt with the Excise Policies of the State of Haryana and the State of Punjab.

(B). In respect of the State of Haryana, the Division Bench directed modification of Clause (b) as it was found that the Clause, as it stood, would not suffice. The Division Bench recorded that the modifications had been made with the concurrence of the Learned Counsel for the National Highways Authority of India. Clause (b), as finalized by the Division Bench, reads as under:

"Clause (b), thus, will have to be read as under:-

"(b) No liquor vend shall be located along the National Highways/State Highways. They shall not be accessible or visible from the National Highways/State Highways or the service lane running along such highways.

Note:- It shall be the personal responsibility of the DETC (Excise) of the district concerned to ensure the strict compliance of the above stipulated restrictions."

It is also important to note that there was some dispute whether the Clause ought to apply to State Highways as well or only to the National Highways. The Division Bench rejected the plea on behalf of the State of Haryana that in substance, the issue raised was only qua National Highways and noted that it was both for the National Highways and the State Highways. The Division Bench noted that it could hardly be commended that driving and drinking could not be permitted on the National Highways but that should do no harm on the State Highways. The Division Bench, thus, directed the State of Haryana to incorporate the said amendments in the amended Liquor Policy, to be published, for the year

2014-15.

(C). That was so far as State of Haryana was concerned. The penultimate paragraph of the order deals with the State of Punjab and reads as under:

"As far as State of Punjab is concerned, it appears that the necessary affidavit has been filed in CWP 11391 of 2012. We have examined the same. It is pointed out that the only amendment required qua the issue raised before us is, once again, of making it applicable even for State Highways and service lanes and not confined to National Highways. The published Excise Policy also will make the necessary changes and ensure incorporation of model clause (b) as aforesaid."

The construction of this paragraph falls for consideration before us, in view of the interim order passed by the Supreme Court, which we will, now, refer to.

6. The State of Punjab challenged the above order of the Division Bench by filing Special Leave to Appeal (Civil) No(s).8267 of 2014. The appeal is pending before the Supreme Court. The Supreme Court passed the following interim order on 26.03.2014:

"Both parties are directed to maintain status quo prevailing as on date insofar as the direction in the penultimate paragraph of the impugned order in respect of the State of Punjab is concerned."

We set out the penultimate paragraph of the order of the Division Bench earlier.

7. The relevant clause of the Excise Policy for the year 2015-16 reads as under:

"2.15 Location of Vends:

.....

During the year 2015-16, the successful allottee shall not be required to get permission to open the vend where a liquor vend continued to run during the earlier year. For running a vend at some new place, the license holder shall have to obtain the permission of the department. One Licensing Unit is permitted to run L-2 and L-1A vend only under one roof. Only L-14A or only model shop can be opened in the form of a single unit. But this provision shall not be applicable upon those vends, which shall have to be closed under any Court order. It is also pertinent to mention here that the below mentioned affidavit has been submitted by the Department in the Hon"ble Court in C.W.P. No. 4681 of 2014 "Market Welfare Society Mohali versus State of Punjab:-

.....

Location of vends on National Highways/State Highways:

According to the order dated 18.3.2014 of the Hon"ble High Court passed in Civil Writ Petition No. 25777 of 2012 filed in the Hon"ble Punjab and Haryana High Court, no liquor vend should be visible from the National/State Highway and nor it should have direct access on the National High Way. Special Leave Petition in

this regard has been filed by the department in the Hon''ble Supreme Court.

The licensee shall be bounded to comply with the order as it is passed by the Hon''ble Courts in this case."

(emphasis supplied)

8. Mr. Sethi, Learned Addl. Advocate General, Punjab, appearing for the respondents, has invited our attention to the fact that Rule 37(9-C) of the Punjab Liquor License Rules, 1956 expressly provides that:

"Liquor vends should not be visible and directly accessible from National Highways."

9. Mr. Ksheterpal, Learned Senior Counsel, for the petitioners, contended that the petitioners' liquor vends were on roads which were originally State Highways. They were notified as National Highways on 02.09.2014, by a notification, issued by the Ministry of Road Transport and Highways, in exercise of powers under Section 2(2) of the National Highways Act, 1956. He submitted, therefore, that the subsequent notification of a State Highway as a National Highway, ought not to prejudice a party who had already bid for and was allotted a vend on the said Highway.

10. The submission is not well founded for more than one reason. Even assuming, as contended by Mr. Ksheterpal, that the Excise Policies and the orders of this Court and of the Supreme Court apply only to National Highways and not to State Highways, it would make no difference. The purpose of the clause is to ensure public safety. The authorities introduced these restrictions keeping in mind the hazards of operating liquor vends on Highways. The Division Bench had noted that this purpose would be equally met whether it is a State Highway or a National Highway. Private monetary interests cannot be protected at the cost of public safety and order. If, as a result of the notification of the road as a National Highway, the petitioners suffer any loss or damages, they are always at liberty to adopt appropriate proceedings for the recovery thereof, from the party concerned.

11. This submission cannot be accepted for another reason. The argument was founded on the basis that the vends which were previously being operated by erstwhile licensees were the same as the vends which were in existence on the very location, during the year 2014-15. He submitted that there is no reason, now, to remove the vends from the said locations as they have been in existence since the year 2014-15.

12. The basis of the submission is not well founded. Firstly, the petitioners themselves did not operate the vends. Secondly, those vends were in existence during the year 2014-15. The bar against the operation of vends on National Highways, which would include the petitioners' vends, came into existence on 02.09.2014. The petitioners, therefore, knew and in any event, ought to have known that the vends were located on a National Highway when they submitted

the bid for the year 2015-16, which commenced on 01.04.2015. Merely because another party operated the vends when they were located on the road which was then not notified as a National Highway but was only notified as State Highway, would make no difference.

13. Even if the same party continued to operate these vends, it would make no difference. The licence in respect of the vends are issued by the Excise Department from year to year. No right can be claimed on the basis of a road being notified as a State Highway in the previous year.

14. The contention that the respondents permitted the vends to continue even after 02.09.2014 and therefore, led the parties to believe that it was permissible, is equally unfounded. Firstly, assuming that the respondents let the parties to so believe, no advantage can be taken in matters such as this, if such believe was extended wrongly for any reason. Public safety and order cannot be compromised on the basis of an error of this nature and in such cases.

15. Further, as rightly contended by Mr. Sethi, respondent No. 1, in fact, took a lenient view of the matter by permitting the vends to continue at the said locations after 02.09.2014 despite the road having been notified as a National Highway. Neither the previous nor the subsequent vendees can take advantage of the same.

16. The contention that the locations were approved on National Highway is incorrect. Locations are approved generally. For instance, some of the locations pertain to a village or some other such general area. It is not every portion of that area that would be prohibited under the said clause in the policies. In a particular portion of the area, it may be possible to run a vend whereas in another, it may not be permissible to do so. In other words, a vend located in one part of a notified area may not be visible and/or accessible from a National Highway whereas a vend located in another location of the same area may be visible and/or directly accessible from the National Highway.

17. The apprehension that all 135 vends, in respect whereof, the petitioners have obtained licences, would be shut down only because some of them may violate the policy, is not well founded. As on date, only 33 vends have been shut down. We clarify that if, according to the petitioners, any vend has wrongly been shut down on the ground that the location is not contrary to the policy or the orders, the petitioners are at liberty to make a representation in that behalf to the respondent concerned or to challenge the same by filing appropriate proceedings.

18. We are unable to accept the contention that the impugned action was in breach of the principles of natural justice. In the facts of this case, there was no breach of the rules of natural justice. This was not a case where the locations of the vends had been approved and were subsequently closed down. The very commencement of the operations from the vends was objectionable. Despite the same, we have mentioned that if, according to the petitioners, the decision was incorrect on facts, namely, that the location is not in breach of the policy, they

are at liberty to make a representation to the respondents in that regard and any such representation, if made, shall be decided within 7 days of the receipt thereof, after affording the petitioners an opportunity of being heard.

19. The writ petition is, accordingly, disposed of.