(2008) 07 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Godara Wines APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:
Haryana Liquor Licence Rules, 1970 — Rule 5

Citation : (2008) 152 PLR 279 : (2009) 1 RCR(Civil) 281

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—In the present writ petition, the petitioner M/s Godara Wines, which is a partnership firm, has prayed for issuance of a Writ in the nature of Certiorari for quashing the allotment of L-1 license allotted by the respondent-State in favour of private respondents i.e. respondents No. 4 to 7 for the District Hisar in pursuance of the Excise Policy for the year 2008-09 of the Government of Haryana and Public Notice (Annexure P-2) inviting applications for the allotment of wholesale licenses of IMFL (L-1) for the general public, with a further prayer for issuance of a direction to respondents No. l to 3 to consider the case of the petitioner-firm and allot L-1 license for the District Hisar.

2. The brief facts of the case are that the State of Haryana issued Excise Policy for the year 2008-09 for allotment of retail and wholesale licenses for the sale of IMFL. The relevant part of the said policy is reproduced hereunder:

4. 14 L-1 License, whole sale of IMFL

The wholesale outlets of IMFL (L-1) shall be granted, on payment of application fee of Rs. 5,000/- and security of Rs. 5 lacs and annual license fee of Rs. 25 lacs.

The number of such licenses in a district shall be 4 per district in all districts of the State of Haryana except Gurgaon and Faridabad, where it will be 8 each. The license may preferably be granted on the basis of amount of revenue contributed in terms of L-2 license fee of the District for the year.

A cut off date shall be prescribed and published/pronounced well in time for the purpose of determining the revenue contribution.

The applicant shall not be defaulter of any dues under the Punjab Excise Act, 1914, Haryana General Sales Tax Act, 1973, CST Act, 1956, Haryana Value Added Tax Act, 2003, Haryana Local Area Development Tax Act, 2000.

The applicant shall furnish authorization certificates from at least three distilleries and breweries for selling their produces in wholesale.

The applicant shall furnish proof of ownership, lease, rental of the premises at which the wholesale outlet of IMFL (L-1) is proposed to be opened.

The applicant shall furnish no objection certificates from the municipal committee, chief medical officer, fire officer of the respective district.

The applicant shall deposit an annual license fee of Rs. 25 lakhs by means of bank draft in favour of the Deputy Excise and Taxation Commissioner (Excise) of the respective district and shall furnish the requisite proof along with the application.

The supplies to the retail outlets of IMFL (L-2) shall be made from the wholesale outlet of IMFL (L-1) located in the District on permits/passes issued by the respective Deputy Excise & Taxation Commissioners (Excise) of the district.

The stock of IMFL at the stage of L-1 shall be duty paid.

The wholesale outlets of IMFL (L-1) shall receive supplies of liquor from the L-1B and L-1B1 licenses and other licenses as provided under other provisions of the law.

The wholesale outlets of IMFL (L-1) shall obtain permits/passes issued by the respective Deputy Excise & Taxation Commissioners (Excise) of the district for receiving supplies.

The licenses for the wholesale outlets of IMFL(L-1) shall be granted by the Excise & Taxation Commissioner on recommendation of the Dy. Excise and Taxation Commissioners (Excise) of the respective district.

3. As per Clause 4.14 of the aforesaid policy, preference was to be given for grant of license to the applicants on the basis of revenue contribution in terms of L-2 license fee of the district for the year. In pursuance of the aforesaid Excise Policy, a public notice was published by the Excise and Taxation Commissioner, Govt. of Haryana inviting applications for the allotment of wholesale licenses of IMFL (L-1) for general public for the year 2008-09. This notice also contained the stipulation that allotment of license shall be given to those who contribute maximum revenue in terms of license fee of L-2 in the District. The petitioner-firm which consists of 18 partners (who were having L-2 licenses, individually) submitted application along with necessary fee and other documents to the

Deputy Excise and Taxation Commissioner (Excise) District Hisar, Haryana on 19.3.2008. The petitioner-firm also submitted the details as regards the generation of revenue by the petitioner-firm vide letter dated 22.3,2008 (Annexure P-6).

4. As per the averments made in the writ petition, no response was received from respondent No. 3 as regards the allotment of L-1 license in the District Hissar. However, after a few days, the petitioner-firm came to know that all the four L-1 wholesale licenses for the District Hisar were allotted by the official respondents to respondents No. 4 to 7. On coming to know about this, the petitioner-firm represented to the Deputy Excise and Taxation Commissioner (Excise) District, Hisar to provide the details of the revenue/license fee generated by respondents No. 4 to 7 under L-2 licenses and from these details, the petitioner came to know that the revenue generated by respondents No. 4 to 7 is less than the present petitioner-firm and yet they have been allotted L-1 license with a male fide intention and for extraneous consideration. Hence, this writ petition.

5. Upon notice of motion, the respondents appeared and have filed separate written statements. In the written statements filed by the respondents, a specific stand has been taken that the impugned allotment has been made as per the policy of the State and in accordance with law. It has been further stated that the petitioner-firm was not a L-2 licensee and as such, was not eligible for allotment of L-1 license in terms of the Excise Policy for the year 2008-09, as the petitioner-firm being not the L-2 licensee and the contribution by the petitioner-firm towards revenue generation in terms of L-2 license fee of the District was Nil. The L-2 licenses held by the partners of the petitioner-firm were in their individual capacity and their contribution was much less than the contribution of respondents No. 4 to 7 in this regard. It was also stated that the petitioner-firm has claimed eligibility by changing its status of partnership firm which is not permissible either as per Excise Policy or as per guidelines (Annexure R-7), and therefore, the writ petition is without any merit and the same is liable to be dismissed.

6. Mr. Akshay Bhan, learned Counsel for the petitioner has vehemently argued that from the relevant para 4.14 of the Excise Policy, it is crystal clear that L-1 license has to be allotted to the retailers holding L-2 license who contribute more revenue in the District in a year whereas in the present case, the petitioner-firm whose partners have generated more than Rs. 5 crores of revenue as L-2 license fee from the relevant year was not considered in letter and spirit of the provisions of the Excise Policy, Public/Notice and Haryana Liquor License Rules, 1970. In support of his contention, learned Counsel has placed reliance upon Annexure P-6 to show that all the 18 partners of the petitioner-firm have contributed more than Rs. 5 crores as revenue as licensee fee for the L-2 licenses for the relevant year individually whereas the revenue generated by respondents No. 4 to 7 as L-2 licensee for the relevant year is much less in the case of each

respondent. Thus, counsel for the petitioner has vehemently argued that the allotment made in favour of the present respondents i.e. respondents No. 4 to 7 is liable to be set aside.

7. On the other hand, Sh. Ashok Aggarwal, learned Senior Advocate appearing on behalf of respondents No. 5 and 7 and Sh. Mohan Jain, learned Senior Advocate appearing on behalf of respondents No. 4 to 6 have strongly controverted the stand taken by counsel for the petitioner and have stated that the contribution of the petitioner-firm towards revenue generation in terms of L-2 license fee for the relevant year is Nil, as the L-2 license held by the partners of the petitioner-firm were in their individual capacity as is clear from Annexure P-6 itself and the contribution of each partner individually is much less than the private respondents. It has been further argued that in this case the preference is to be given to the applicant of L-1 license who has generated more revenue for L-2 license fee for the relevant year and undisputedly the petitioner-firm has not generated any revenue as L-2 licensee and therefore, the petitioner-firm cannot be permitted to change its status to claim this eligibility.

8. Sh. Mohan Jain, learned Senior Advocate appearing for respondents No. 4 and 6 has placed reliance on the judgment of the Hon''ble Supreme Court of India in the case of Bishnu Ram Borah and Another Vs. Parag Saikia and Others, to contend that in the matter of grant of liquor licence, it is impermissible for the High Court to have embarked upon an inquiry into the facts to adjudge the suitability or otherwise of the rival pairs of claimants and upon a reappraisal of the evidence come to a finding contrary to that reached by the competent Authority, more so when there is nothing on record to show that the Authority, had acted in excess of jurisdiction or there was an error apparent on the face of the record which resulted in manifest injustice. He has also relied upon the judgment of the Hon''ble Apex Court reported as M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, to contend that criteria issued for allotment of liquor vends is beyond judicial review.

9. However, it is relevant to mention at this stage that Sh. Akshay Bhan, learned Counsel for the petitioner has very fairly stated that the petitioner is not challenging the criteria/policy issued by the State of Haryana for allotment of liquor licenses and the only challenge in the writ petition is to the extent of interpretation reached by the respondents-authority to the condition of giving preference to those who contribute maximum revenue in terms of license fee of L-2 licenses in the District as mentioned in Clause-8 of the Public Notice (Annexure P-2). According to him the only criteria for allotment of L-1 license as per the policy was contribution of maximum revenue in terms of the license fee of L-2 licenses in the District by the applicant and the petitioner-firm which consists of 18 partners has generated maximum revenue in tarns of the license fee of L-2 licenses for the relevant year.

10. We have heard learned Counsel for the parties and perused the record. We are unable to accept the argument raised by counsel for the petitioner.

11. As per Rule 5 of the Haryana Liquor Licence Rules, 1970, a license may only be granted to-

(a) an individual;

(b) a body incorporated under the Companies Act, 1956;

(c) a society registered under the Punjab Co-operative Societies Act, 1961 (Punjab Act No. 25 of 1961);

(d) a partnership or firm.

The relevant part of the guidelines dated 13.3.2008 is reproduced:

Preference for granting license shall be given to those who contribute maximum revenue in terms of license fee of L-2 in the district. The cut off date for computation of revenue contribution shall be 20th March, 2008. The applications must reach in your office by 20th March, 2008.

xxxxxx For the purpose of computation of revenue contribution, only direct involvement of the applicant in the allotment of retail outlets of IMFL of the district shall be taken into account.

The license shall be granted subject to the provisions of the Punjab Excise Act, 1914 as applicants to the State of Haryana and rules framed thereunder.

12. From the combined reading of Rule 5 of Haryana Liquor License Rules, 1970, eligibility condition in the relevant para 4.14 of the Excise Policy for the year 2008-09 (i.e. the relevant part of the Excise Policy) and the guidelines dated 13.3.2008 as extracted above, for allotment of L-1 license, it is very clear that the partnership firm shall be eligible for L-1 license only if it is holder of L-2 license and not otherwise.

13. The eligibility for L-1 license is also clear from the Public Notice inviting applications (Annexure P-2). As per Clause 8 of this public notice, only the contribution of L-2 licensees in the district, is to be considered and accounted for, for the purpose of assessing maximum revenue in terms of licence fee. The Clause 8 of the public notice, Annexure P-2, is reproduced as under:

8. Preference for granting license shall be given to those who contribute maximum revenue in terms of license fee of L-2 in the district. The cut of date for computation of revenue contribution shall be 20th March, 2008.

14. It is also to be noted here that in the application for grant of L-2 license, it is mandatory to disclose the status of the applicant in terms of column No. 4, which reads as under:

4. Constitution of the busine ( ) whichever is applicable. In Personal Public Limited Board or Government Capacity Company Corporation Department Partnership HUF Association of Persons Private Co-operative Club Limited Society Company

Thus, it is clear that for the purpose of grant of L-1 license the status of the applicant as L-2 licensee is to be considered.

15. Even otherwise, the petitioner-firm is not the L-2 licensee, which is clear from his own averments in the writ petition. The petitioner has attached a list of L-2 licensees (Annexure P-6) from which it is clear that Naveen Sawhany and other partners of the petitioner-firm are the allottee of L-2 licence in their own and not on behalf of the petitioner-firm. The petitioner-firm individually have generated much lesser revenue as license fee for L-2 licenses than each of the private respondent. The name of petitioner-firm, i.e. Godara Wines does not appear anywhere in the list of L-2 licensees.

16. The petitioner-firm being not the L-2 Licensee, the contribution towards L-2, Licenses fee is nil. The L-2 licenses held by the partners of the petitioner-firm were in their individual capacity and their contribution was much less. The partners-firm has claimed eligibility by changing his status to partnership firm, which is not permissible either as per Excise Policy or as per guidelines Annexure R-7/1.

17. The contribution of individual partners of the petitioner-firm cannot be considered in terms of the public notice, Annexure P-2, towards the contribution of the petitioner-firm.

18. For the reasons recorded above, we find no merit in the present writ petition and the same is dismissed in limine.

