
(2009) 11 P&H CK 0127
In the Punjab And Haryana At Chandigarh

Harinder Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 2 RCR(Civil) 425

Hon'ble Judges : Tirath Singh Thakur, C.J;Mahesh Grover, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—The petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India with a prayer for issuance of a writ of certiorari for quashing of Licence in Form L-14/A of Excise Unit No. 50R-24/2 (Annexure P4) situated in village Dhab Kariyal, Block Guru Harsahai, District Ferozepur which stands allotted in favour of respondent No. 3 on the ground that the same has been awarded to him contrary to the provisions of Punjab Excise Act, 1914 (for short, 'the Act') as well as contrary to the provisions of the Excise Policy (hereinafter referred to as 'the Policy') adopted by respondent No. 1 for the year 2009-2010.

2. A prayer has also been made to restrain respondent No. 3 from running the aforementioned excise unit.

3. The facts of the case, in brief, are as under:

In accordance with the provisions of the Act, respondent No. 1 is required to frame a policy every year for dispersal of PML and IMFL vends in all areas of Municipal Corporations, District Headquarters, Sub Divisional Headquarters, Rural Municipal Committees, Nagar Panchayats and Rural Areas.

4. For the year 2009-2010 too, a Policy was formulated and published, which stipulated that retail PML (L-14A) and IMFL (L-2) shall be granted by inviting

applications after being duly notified to the general public and in the eventuality of the responses being more than the number of available excise units or group of excise units, then the allotment was to be made by resorting to the process of draw of lots in the presence of the applicants and the public for which observers were to be appointed by the government. The Policy further stipulated that a successful allottee would be required to deposit 15% of the licence fee as security. Accordingly, the details of the licencing units for the rural areas of District Ferozepur were publicized and were also made available on the internet. It was further mentioned in the publication that a person desirous of obtaining a licence was required to pay a cost of Rs. 16000/-for application form for groups of two units and the same was non-refundable. This amount was to be forfeited to the State exchequer as dedicated fund for education.

5. Pursuant to the Policy, the petitioner applied for grant of licence in form L-14/A for sale of PML and IMFL and so did respondent nos. 3 and 4. The applications of the petitioner were numbered as 1623 and 1624 and he made the requisite deposit of Rs. 16000/-along with the draft of Rs.50,000/-as earnest money. The date of submission of the forms was fixed between 12.3.2009 to 16.3.2009 and holding of draw of lots was fixed on 20.3.2009. A total of sixty one persons had applied for allotment of L14-A for unit No. 24/2 and they all came present on 20.3.2009 for participating in the process of allotment by way of draw of lots which was carried out.

6. Respondent No. 4 was declared successful allottee qua unit No.24/2 and he was granted L14-A licence for the same.

7. The allotment of the said unit in favour of respondent No. 4 was challenged by respondent No. 3 by filing C.W.P. No. 6266 of 2009 on the ground that the allotment could not have been made in his favour because he was not eligible as per the provisions of the Act having not completed 25 years of age as on the date of application or as on the date of draw of lots which was one of the conditions of eligibility.

8. Confronted with the controversy, respondent No. 4 surrendered his licence and on his doing so, the said licence was granted in favour of respondent No. 3 which is now the grievance of the petitioner, who has assailed the allotment by way of the instant petition.

9. The primary ground of challenge in the writ petition is that the allotment in favour of respondent No. 4 which had been made on 20.3.2009 pursuant to the process of draw of lots, stood nullified on account of the fact that he was not eligible to be granted a licence and thereupon he had surrendered the same when a challenge had been mounted to the allotment and consequently, respondent Nos. 1 and 2 ought to have resorted to a fresh process of allotment, rather than awarding the licence to respondent No. 3.

10.It has been averred by the petitioner that since respondent Nos. 1 and 2 have not adopted the fresh process, their action in allotting the licence in question in

favour of respondent No. 3 was totally arbitrary, contrary to the Policy and the provisions of the Act.

12. Upon notice of motion having been issued by this Court, respondent Nos. 1 and 2 entered appearance and filed reply by way of an affidavit of Shri H.S. Brar, Excise & Taxation Officer (X), Ferozepur controverting the averments made in the writ petition. It has been averred that according to Rule 36(22) of the Punjab Liquor License rules, 1956 (for brevity, 'the Rules'), the action of respondent Nos. 1 and 2 in allotting the licence in question in favour of respondent No. 3 was totally justified. It has been pleaded that after having followed the process of allotment by way of draw of lots in a transparent manner and on observance of the provisions of Sub-rule (22) of Rule 36 of the Rules, respondent Nos. 1 and 2 had drawn out the slips from the jar which contained the slips of all the desirous applicants and took out two slips, one of which was in the name of respondent No. 4, who was declared to be successful allottee and the other was that of respondent No. 3, who was declared to be an allottee in waiting to be allotted the licence in the eventuality of the successful allottee not availing of the allotment or committing any default or being debarred for any reason. It has further been pleaded that in this manner, the allotment in favour of respondent No. 3 was legally justified.

13. The contentions of the learned Counsel for the parties were restricted to the narrow compass of the pleadings which have been noticed above.

14. After hearing the learned Counsel for the parties, we are of the considered opinion that there is no merit in the writ petition.

15. Sub-rule (22) of Rule 36 of the Rules is extracted below:

(22). In a rural area, all the applications for a particular licensing unit shall be put into the jar. The applicant whose slip, is first drawn, shall have the right for allotment of that licensing unit. The applicant whose slip is drawn thereafter, shall be declared as an 'allottee in waiting', who shall have the claim to allotment of the respective retail outlet, in case the first allottee defaults or is debarred. In the event, of the 'allottee in waiting' also getting defaulted or getting debarred, the application for the retail outlet shall be invited afresh, and the whole process shall be repeated again.

A reading of the above provision of the rule leaves no room for any doubt that the action of respondent Nos. 1 and 2 is justified.

16. As mentioned above, while resorting to the process of allotment by way of draw of lots, these respondents had taken into consideration a contingency wherein a successful allottee may commit default inviting cancellation of licence or in an eventuality when he is debarred at some point of time and to tide over such contingencies, they selected another allottee in the same process, i.e., respondent No. 3, as per the provisions of Sub-rule (22) of Rule 36 of the Rules, to term him as an 'allottee in waiting'.

17. Respondent No. 4, who was a successful allottee, surrendered his licence when a challenge was made to the same by way of C.W.P. No. 6266 of 2009 on the ground that he did not fulfill the eligibility condition being less than 25 years of age. The licence for the retail outlet, therefore, became available to respondent Nos. 1 and 2 once again and they allotted the same in favour of respondent No. 3 keeping in view the aforesaid provisions of Rule (22) of Rule 36 of the Rules.

18. Learned Counsel for the petitioner could not satisfy the Court as to how the action of respondent Nos. 1 and 2 was arbitrary as the same was apparently in consonance with the Rules.

19. We do not, therefore, find any substance in the writ petition and consequently, dismiss the same.