
(2014) 12 SHI CK 0136
In the High Court Of Himachal Pradesh
Case No : CWP No. 7353 of 2014

Hem Raj

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2014) 12 SHI CK 0136

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Jagat Paul, Advocate for the Appellant; Ramesh Thakur, Asstt. Advocate General, Advocate for the Respondent

Judgement

Sureshwar Thakur, J.—Through the instant writ petition, the petitioner herein seeks quashing of notice comprised in Annexure P-7 as well as the impugned orders comprised in Annexures P-9 and P-10, besides a direction is sought for from this Court against the respondents inasmuch, as, the latter being directed to order for the petitioner being holder of Unit No. 23.

2. As divulged by Annexure P-1 a license qua Unit No. 23 was issued by the respondents in favour of the petitioner. Under Unit No. 23, L-2 Shalaghat, L-14 Shalaghat, L-14 Palania, L-14 Madhuva fall. The petitioner under Annexure P-4 deposited a sum of Rs. 7,50,879/- for obtaining renewal of license qua Shallaghat Unit No. 23 as initially issued in his favour as divulged by Annexure P-1. He continues to aver that even a no objection certificate as divulged by Annexure P-6 was issued in his favour by the competent authority. However, under Annexure P-7 the respondents were constrained to communicate/convey to the petitioner for the reasons comprised in it that they were precluded or deterred to renew the license as comprised in Annexure P-1, initially issued in favour of the petitioner qua Unit No. 23.

3. The entire factual matrix apposite for rendition of an adjudication on the writ petition is embedded and encapsulated in impugned Annexures P-9 and P-10. An

incisive reading with discernment of the aforesaid Annexures articulates that in both the impugned Annexures aforesaid the authority concerned as was seized of a lis inter-se similar/analogous contestants as are the contestants herein, had on an in-depth scrutiny of the facts, material as well as the apposite law applicable thereon concluded that the ventilation of the grievance therein by the petitioner herein had no force. True it is that under Annexure P-1 license qua Unit No. 23 inasmuch as qua Shalaghat was issued in favour of the petitioner herein for the year 2013-14. The petitioner under Annexure P-4 deposited before the authority concerned the necessary fee for renewal of license qua Unit No. 23 in his favour, however, under notice comprised in Annexure P-7 a communication was conveyed to the petitioner that owing to non-renewal of Unit No. 20 Kunihar, Unit No. 25 Darlamor, Unit No. 27 Bhararighat and Unit No. 44 Dumehar of Arki Tehsil, a conscious decision was taken by the respondents in the interest of buoying revenue that the units aforesaid be clubbed with Units No. 22 Arki, Unit No. 23 Shalaghat and Unit No. 24 Darlaghat. Since the liquor license issued in favour of the petitioner under Annexure P-1 was qua Unit No. 23 inasmuch, as, qua Shalaghat hence when the unit aforesaid on reconstitution/regrouping respectively of Units No. 20, 25, 27, 44 with it a newly constituted Unit No. 45 of which hitherto Unit No. 23 qua which a liquor license was initially issued in favour of the petitioner herein is a part, came into existence, as such the respondents were constrained not to renew the liquor license in favour of the petitioner qua Unit No. 23, it having lost its identity or it having become extinct on its amalgamation with units aforesaid whereby a rechristened unit No. 45 was constituted. Even the respondents had advised the petitioner to file an application before 12.00 noon on 26.03.2014 before the authority concerned, for obtaining license on completion of codal formalities for the newly constituted Unit No. 45. Nonetheless, the petitioner herein has chosen to anchor his claim for renewal of license qua Unit No. 23 which now has faded into extinction on regrouping/reconstitution of Units. His espousal before this Court for renewal of license qua Unit No. 23 is anchored upon the factum of Annexure P-4 with a disclosure in it of his having deposited the necessary fees before the authority concerned, hence, it is urged by the counsel for the petitioner that the receipt of the necessary license fees by the authority concerned as portrayed by annexure P-4 invests an inherent, indefeasible right in him ensuing from the applicability of the principle of promissory estoppel or in other words acceptance of license fees by the authority concerned from the petitioner disclosed by Annexure P-4 estops/interdicts the respondents against non renewal of license of Unit No. 23 in his favour qua which a license initially was issued in his favour comprised in Annexure P-1. He also proceeds to submit that the regrouping and reconstitution as well as realignment of Units No. 20, 25, 27, 44 with Unit No. 22, 23 and 24 and theirs hence being ascribed a new Unit No. 45 is an act of the respondents ridden with arbitrariness merely to oust the petitioner herein to obtain renewal of hitherto Unit No. 23 even when he had deposited the necessary fees for its renewal before the authority concerned.

4. Both the submissions aforesaid are bereft of legal tenacity or sinew. The mere factum of the petitioner having deposited license fee before the authority concerned as divulged by Annexure P-4 does not perse bestow or invest in him a right to obtain renewal of hitherto Unit No. 23 especially when Unit No. 23 has faded into extinction on its alongwith units No. 20, 25, 27 and 44 having come to be realigned, reconstituted and regrouped, unless it was demonstrated that the re-alignment of units aforesaid alongwith Unit No. 23 qua which a liquor license was initially issued in favour of the petitioner under Annexure P-1 smacks of malafidies or is ultra vires the rules. Besides it was entailed upon the counsel for the petitioner to substantiate that such regrouping has been constituted or such regrouping/realignment is generated by exercise of extra constitutional power by the respondents or is prodded by whimsicality or caprice arising from no authority or power vesting in the authority concerned to create a new group by amalgamation or regrouping. In the aforesaid scenario the non-renewal of license qua Unit No. 23 in favour of the petitioner would be ridden with the vice of arbitrariness and concomitant illegality. However, an incisive perusal of the record demonstrates that the authority concerned is vested by empowerment contained in Rule 13 and 34 of the Himachal Pradesh Liquor License Rules, 1986 read with Conditions No. 1.2, 1.3 and 3.18 of the Excise Allotment/Renewal Announcements for the year 2014-15 to carry out regrouping/realignment of liquor Units/Vends and concomitantly to amalgamate Units. In fact an un-circumscribed/unfettered power is vested in the Financial Commissioner to carry out regrouping of liquor units. The plenitude of powers vested in the Financial Commissioner to carry out realignment of liquor units and on such regrouping reconstitute and assign them a new unit number has been upheld in a decision reported in *Rishi Pal and Co. Vs. State of H.P. and Others*, . Besides vires thereof has been upheld in a decision rendered by this Court in Civil Writ Petition No. 473 of 2008 decided on 25.09.2008. In face thereof the act of the respondents to render extinct Unit No. 23 qua which a liquor license was initially issued in favour of the petitioner under Annexure P-1 by its tenable act of on its regrouping/realignment with other Units bearing No. 20, 25, 27 and 44 ascribe to it a new unit No. 45 cannot obviously bestow any right in the petitioner herein to on merger of Unit No. 23 with other Units aforesaid claim a vested or entrenched right merely on the anvil of his having deposited the revenue fees qua one of the Units forming a part of newly constituted Unit No. 45 for the latter renewal in his favour. Moreso, when the license initially issued under Annexure P-1 qua one of the Units forming part of newly constituted unit No. 45 has faded into extinction. In other words, when Unit No. 23 no longer exists or has faded into oblivion, no vested/subsisted rights endure in the petitioner to claim renewal of license qua a part of reconstituted unit number in his favour. He though does have a right to participate in the process for allotment or issuance of license qua newly constituted Unit No. 45 and in case he was interdicted or forbidden to participate in the process for allotment/issuance of license qua newly constituted Unit No. 45 on its coming into being on regrouping/realignment of units aforesaid then he could tenably agitate before this Court that such interdiction imposed upon him

by executive fiat acquires the taint of bias and is liable to be interfered with by this Court in the exercise of writ jurisdiction for facilitating the cherished constitutional tenet of equality. However, when as apparent on an incisive rummaging of the record that the petitioner was advised by the respondents to file an application before the authority concerned, before 12.00 noon on 26.3.2014 for his being considered for issuance of license or his being allotted on completion of codal formalities newly constituted Unit No. 45, yet his having omitted to participate renders him ill-equipped to agitate that in the process undertaken by the respondents to allot newly constituted Unit No. 45 he has been denied an opportunity compatible with other bidders seeking allotment/issuance of license qua it, besides estops him from contending that the process initiated by the respondents for allotment of the newly constituted Unit No. 45 by omitting elicitation of his participation is ridden with arbitrariness.

5. The discussion aforesaid unfolds the factum that the authority concerned in taking to obliterate Unit No. 23 by resorting to a tenable or legally ordained act of regrouping/realignment had not committed any illegality nor had indulged in any act smacking of arbitrariness. Besides when the rule of promissory estoppel as sought to be invoked by the petitioner on the strength of his having deposited license fee for the since obliterated Unit No. 23 by a tenable act of regrouping by the respondents, hence, stands effacement, obviously it cannot surge forth to the rescue of the petitioner for his claiming renewal of liquor license qua Unit No. 23.

6. For reiteration, In the face of Unit No. 23 standing obliteration it would be an abuse of the equitable principle of promissory estoppels to stretch it to a scenario as in the instant case when with the unit qua which it is canvassed to be purportedly generated has faded into oblivion by a tenable act of the respondents. In other words, it would be a travesty of the rules permitting exercise of un-circumscribed powers embedded in the authority concerned to create/constitute new units by regrouping of hitherto units in case merely on the strength of deposit of license fees by the petitioner herein for renewal of an extinct liquor vend/unit, the equitable principle of promissory estoppel is permitted to sprout. The latter rule is a rule of equity and is unavailable to be drawn, when rules as in the instant case governing the issuance of liquor license to the aspirants exist. Even otherwise, the act of the respondents in rendering extinct Unit No. 23 by resorting to by its tenable act of regrouping create a new unit No. 45 is buoyed or fostered by a profiteering motive of the Government. Annexures P-9 and P-10 portray that since no application for renewal of license in respect of four units namely Kunihar, Darlamore, Bhararighat and Dumehar having a license fee of Rs. 4.23 crores were received, as such, for want of receipt of application for renewal of units aforesaid which application if received would have reared a revenue of Rs. 4.23 crores to the State exchequer the legally authorized step of the respondent to regroup of the units aforesaid with Unit No. 23 and thereby create/constitute newly ascribed unit No. 45 is to be presumed to be a legally warranted step prodded by statistical data. The petitioner has

omitted to display any material portraying that no statistical data losses of revenue to the respondents existed before they proceeded to obliterate units aforesaid and on regrouping/realigning thereof theirs having constituted a new Unit No. 45 in which the participation of the petitioner herein too was elicited. For lack of adduction on record of the aforesaid material an invincible conclusion which ensues is that the respondents in resorting to the act of regrouping/realigning of Units and on such regrouping, ascribing a new unit number had carried out a stretched and thoughtful exercise. Preponderantly then, when the said exercise is not imaginative or conjectural rather is obviously to buoy revenue or obviate loss to the exchequer in the sum of Rs. 4.23 Crores, it cannot be construed to be smacking of any malafides or arbitrariness.

7. Preeminently the ascription of Unit No. 45 to Unit No. 23, on its regrouping with units at Kunihar, Darlamore, Bhararighat and Dumehar too, cannot be said to have been arbitrarily done inasmuch as Unit No. 23 qua which initially a liquor license was issued in favour of the petitioner under Annexure P-1, having been arbitrarily singled out for amalgamation with other units, on regrouping whereof, a newly constituted unit No. 45 came into existence, especially in the face of revelation by the impugned annexures that not only newly constituted unit No. 45 came into existence on regrouping rather with their being a revelation on an incisive discernment of the record of Darlaghat & Arki units, too having been subjected to regrouping or realigning hence theirs having also then acquired a fresh identity rather dispel the contention of the learned counsel for the petitioner that his unit No. 23 was arbitrary handpicked or singled out by the respondents to an act of regrouping alongwith other units.

8. The upshot of above discussion is that the authorities below while rendering the impugned Annexures had incisively applied their mind to the entire material on record. It appears that they neither excluded germane material from consideration nor took inapposite material into consideration. Consequently, the findings as recorded by both the Authorities below in their impugned Annexures are well merited, they do not suffer from any perversity or absurdity of misappreciation or non-appreciation of material placed on record. Accordingly, we find no merit in the petition, which is accordingly dismissed, so also the pending application, if any. No costs.