(2015) 02 P&H CK 0303

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 10423 of 2014

Kaptan Singh APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:
Punjab Excise Act, 1914 — Section 14

Citation : (2015) 02 P&H CK 0303

Hon'ble Judges : Rajive Bhalla, J;B.S. Walia, J

Bench : Division Bench

Advocate : Anil Kshetarpal, for the Appellant; Mamta Singhal, Assistant Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.S. Walia, J.

1. Petitioners prayer in the writ petition is for the issuance of a writ in the nature of Certiorari for quashing of undated order (Annexure P-7), rejecting the representation of the petitioner and directing him to apply for renewal of group of vends in Group No. CL- 13, District Palwal and / or for the issuance of a writ in the nature of prohibition, prohibiting the respondents from recovering any amount from the petitioner on account of difference of the original licence fee i.e. Rs. 2,49,99,999/- + 5% and the amount of Rs. 1,31,25,000/- (i.e. the amount of licence fee received on re-allotment of the same vends) and / or for the issuance of a writ in the nature of Mandamus directing the respondents to refund the amount of security as well as additional security deposited by the petitioner along with interest @ 18% per annum w.e.f. 01.04.2014 etc.

2. Brief facts of the case necessary for the adjudication of the writ petition are that Group No. CL-13 consisting of three vends of country liquor, namely, Baghpur, Shekpur and Kulena were allotted to the licensee Sher Singh (i.e. allottee prior to the petitioner) through process of tender w.e.f. 01.04.2013 for a

period of two years i.e. w.e.f. 01.04.2013 to 31.03.2015. The afore-mentioned allotment was made pursuant to the Excise Policy adopted by the cabinet as is contained in Annexure P-1. Clause 2, 2A, 2.30 and 2.31, which are relevant for the decision of the instant writ petition, are reproduced below :-

"2. MANNER OF DISPOSAL OF RETAIL OUTLETS OF LIQUOR : 2A. LONG TERM POLICY:

In order to bring stability in the liquor trade the liquor vends [both country liquor (L-14A) as well as IMFL(L-2)] shall be allotted for a period of two years i.e. from 1st April, 2013 to 31st March, 2015 subject to the following conditions :-

(i) The license shall be granted to the successful bidder on the basis of highest bid received for the year 2013-2014.

(ii) The allotment will be for the year 2014-15 also with the condition that the license fee for 2014-15 will be 5% more than the license fee for the year 2013-14.

(iii) Vend-wise quota of liquor (both country as well as IMFL) shall remain same for each of the years.

(iv) Security deposit @ 21% of the license fee for the year 2013-14 will be deposited by the allottee, which will be adjusted in the last 2 installments of the year 2014-15.

(v) It will be obligatory on the part of the licensees to get their license renewed for the year 2014-15 between February 15th and February 28th, 2014. In case a licensee fails to renew his license, his security deposit will be forfeited and his vends will be re- allotted as per prescribed procedure at his risk and cost.

(vi) Full amount of license fee pertaining to the year 2013-14 will be recovered from the licensee in 12 equal monthly installments. The license fee of the year 2014-15 after adjusting the amount of the security will be recovered in 9 equal monthly installments. The security amount will be adjusted in the last 2 installments of the year 2014-15.

Clause 2.30 of the Excise Policy deals with the process of allotment of unallotted groups / vends while clause 2.31 deals with the process of re allotment of groups/ vends. Aforementioned clauses are reproduced below :-

2.30 PROCESS OF ALLOTMENT OF UN-ALLOTTED GROUPS/VENDS:

Those Groups / vends for which, there are no takers and could not be allotted before the start of the financial year, shall again be advertised and after inviting tenders and following the same procedure, shall be allotted at the earliest.

The process of inviting tenders shall be adopted and continued by successively reducing the reserve price in the slab of 5% of original reserve price till it is allotted or upto 15th May or the next working day, which ever is earlier. In case any Group / vend still remains unallotted upto 15th May or the next working day, the Group / vend shall be disposed off by the Excise and Taxation Commissioner taking appropriate measures as he may deem fit in the interest of revenue in consultation with the Excise Collector and the DETC (Excise) concerned.

2.31 PROCESS OF RE-ALLOTMENT OF GROUPS / VENDS :

In case of re-allotment, the process shall begin with inviting tenders on the reserve price computed from original license fee or the balanced license fee of the Group / Vend by reducing it in the successive slabs of 10% of original license fee or the balanced license fee of Group / Vend till it is allotted in the manner prescribed for fresh allotment in the currency of the year. The re-allotment shall be done at the risk and cost of original allottee. In case of a bid higher than the original bid, no benefit is to be given to the original allottee."

3. We have have heard learned counsel for the parties and with their assistance have gone over the record. Submission on behalf of the petitioner is that the original licensee of Group No. CL-13 having stopped running of the liquor vends, the petitioner was allotted the licence of aforesaid group of vends w.e.f. 23.01.2014 to 31.03.2014 i.e. for a limited period of 68 days vide licence (Annexure P-2) at the licence fee of Rs. 25 lacs and that pursuant to the public notices issued by the department, he applied for renewal vide application dated 24.03.2014 specifically mentioning therein that he had been granted liquor vends of Group CL-13 at licence fee of Rs. 25 lacs and that he was ready to get the licence renewed in terms of the Excise Policy - 2013-15.

4. However, on coming to know that his application (Annexure P-3) was being misinterpreted by the department and the licence was sought to be renewed on licence fee on which the vends were allotted w.e.f. 01.04.2013 by adding 5% thereto, the petitioner, served a notice (Annexure P-4) dated 27.03.2014 on the Collector-cum-Additional Excise and Taxation Commissioner i.e. respondent No. 3 as well as respondent No. 4, specifically mentioning therein that he was ready to get the licence renewed on the basis of licence fee of Rs. 25 lacs for a period of 68 days, computed on yearly licence fee which worked out to Rs. 1,34,19,117/- and that by adding 5%, the amount of licence fee worked out to Rs. 1,40,90,073/-. On getting no positive response, the High Court vide order dated 04.04.2014 by giving a direction to respondent No. 4 to decide the legal notice (Annexure P-4) dated 27.03.2014 in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of certified copy of the order.

5. Pursuant to the directions of the High Court dated 04.04.2014, legal notice Annexure P-4 was decided vide undated order Annexure P- 7 directing the petitioner to apply for renewal of the vends, on the basis of licence fee of the original licensee for the year 2013-14. It is the afore-mentioned order, which has been impugned in the instant writ petition along with the other prayers in the alternative as noticed above.

6. Learned counsel contends that the directions of respondent No. 4 to the

petitioner to seek renewal of the license at the rates of the original licence fee + 5% are arbitrary and illegal as the petitioner was awarded the licence in between the year for a limited period of 68 days i.e. w.e.f. 23.01.2014 to 31.03.2014; that as per the policy, the petitioner was not the original licensee and the licence with respect to Group CL-13 was awarded to him only on default of the original licencee only for a period of 68 days; that at the time of getting the licence he deposited the security amount of Rs. 5,25,000/- + Rs. 1,00,000/- as additional security and licence fee of Rs. 25 lacs for the period of 68 days. It was further contended that although the petitioner was willing to pay licence fee of Rs. 1,40,90,073/- as intimated vide notice Annexure P-4 dated 27.03.2014 but in the fresh tender, the vends were allotted to one Sh. Rohtas at the licence fee of approximately Rs. 1,31,25,000/-. It is the stand of the petitioner that he was not aggrieved at not having been given any licence, although he had offered a higher licence fee. However, the orders of respondent No. 4 were perverse and the Policy or the Rules did not bound the petitioner to seek renewal of the licence at the yearly licence fee of the original licensee and further the petitioner could not be burdened with any penal consequences for not seeking renewal at the licence fee of the original licensee i.e. @ Rs. 2,49,99,999/- + 5% nor could the petitioner be asked to pay the difference of the amount between the original licence fee + 5% and the licence fee of Rs. 1,31,25,000/- (at which the vends of Group No. CL-13 had been re- allotted). The other plea on behalf of the petitioner was that the petitioner was entitled to refund of the security amount of Rs. 5,25,000/- + Rs. 1,00,000/- (additional security) along with interest, which was being illegally withheld.

7. In the reply on behalf of the respondents it has been submitted that the licence for Group No. 13 of the country liquor vends comprising liquor vends of village Bagpur, Sekhpur and Kulena were allotted to Sh. Sher Singh for an annual licence fee of Rs. 2,49,99,999/- which was operated by the licensee but during the financial year 2013- 14, the licensee, Sher Singh, failed to deposit the licence fee for the month of October 2013 onwards whereupon, after carrying out proceedings, the licence of Sher Singh, licensee, granted under the Haryana Liquor License Rules, 1970 was cancelled by respondent No. 3 vide order dated 23.12.2013. Thereafter group of vends of Group No. CL-13 was put up for re-allotment through public notice dated 13.01.2014 and last public notice dated 23.01.2014 whereupon it was re-allotted to the petitioner for a sum of Rs. 25,00,000/- for the remaining period of financial years 2013-14 and 2014-15 under the provisions of Clause 2.31 of the Haryana Excise Policy and Haryana Liquor License Rules, 1970.

8. It needs mention that the stand of the respondents in paragraph No. 3 of its preliminary submissions that the licence was allotted to the petitioner for a sum of Rs. 25,00,000/- for the remaining period of the financial years 2013-14 and 2014-15 is not reflected in the licence (Annexure P-2) issued to the petitioner, wherein, against the validity period of the licence, the dates 23.01.2014 to 31.03.2014 are mentioned. The licence does not specify that the same was for

the remaining period of financial years 2013-14 and 2014-15.

9. Further the stand of the respondents is that the petitioner was obliged to apply for renewal of the licence for the year 2014-15 in terms of Clause 2A of the Haryana Excise Policy for the year 2013-14 and 2014-15 and that as per the provision of Clause 2A of the Excise Policy, the allotment of groups of vend for the year 2014-15 was to be on the condition that the licence fee for 2014-15 would be 5% more than the licence fee of the year 2013-14. The original allotment of the group of vends was made on an annual licence of Rs. 2,49,99,999/- and the petitioner was obliged by Clause 2A of the policy to apply for allotment for the year 2014-15 by paying 5% more licence fee on the licence fee for the year 2013-14 but the licensee failed to comply with the provision of Clause 2A of the Excise Policy, therefore, respondent No. 4 proceeded further to allot the group of vends as per Clause 2.31 of the Haryana Excise Policy for the year 2013-14 and 2014-15 and allotted the liquor vends to Rohtash Singh for Rs. 1,31,25,000/- following the procedure laid down under Cause 2.31 of the Haryana Excise Policy for the year 2013-14 and 2014-15 on the risk and cost of the petitioner. It is further the stand of the respondents that subsequent allottee and re-allottee step into the shoes of the original allottee for the purpose of discharging its obligation according to the Excise Act. Lastly, the writ petition was not maintainable as the impugned order was appealable under Section 14 of the Punjab Excise Act, 1914.

10. In the afore-mentioned background, the following questions arise for consideration by this Court :-

(i) Whether the impugned order is appealable under Section 14 of the Punjab Excise Act, 1914. If so, whether the writ petition is liable to be dismissed and the petitioner relegated to avail the remedy of appeal ?

(ii) Whether in terms of Clause 2A of the Excise Policy for the year 2013-14 and 2014-15, the petitioner was required to apply for renewal of vends making the licence fee of the year 2013-14 as per allotment to the original allottee the base for calculating the renewal charges for the year 2014-15?

(iii) Whether in terms of Clause 2A of the Excise Policy for the year 2013-14 and 2014-15, loss on account of failure of the original allottee to get the license renewed leading to the vends being allotted to someone else at a lesser rate was recoverable from the original allottee ?

(iv) Whether the petitioner having offered to renew the license at 5 % rates more than the rate at which the vend was allotted to him stood absolved of any liability for loss occasioned to the Department ?

(v) Whether in the circumstances the remedy of the Department to recover the loss is from the original allottee i.e. Sher Singh ?

(vi) Whether the petitioner is entitled to refund of security deposit of Rs. 5,25,000/- as also additional amount of Rs. 1,00,000/- from the respondent ?

11. As per Clause 2A of the Haryana Excise Liquor Policy 2013-14 and 2014-15, liquor vends were decided to be allotted for a period of two years in order to bring stability in the liquor trade i.e. from 01.04.2013 to 31.03.2015 subject to conditions noted therein which have been reproduced in the preceding part of the judgment. The conditions contained in Clause 2A of the Haryana Excise Policy referred to above reveal that it is obligatory on a licensee, who has been allotted a licence for the year 2013-14, to get the licence renewed for the year 2014-15 between February 15 and February 28, 2014 and that in case the licensee failed to get the licence renewed, his security deposit would be forfeited and vends would be re-allotted as per prescribed procedure at his risk and cost at his risk and cost at his risk and cost at his risk and cost.

12. Clause 2.31 of the Haryana Excise Policy which deals with the process of re-allotment of groups / vends lays down that in case of re- allotment, the process shall begin with inviting tenders on the reserve price computed from original license fee or the balanced license fee of the Group/Vend by reducing it in successive slabs of 10% of original license fee or the balanced license fee of Group/Vend till it is allotted in the manner prescribed for fresh allotment in the currency of the year at the risk and cost of original allottee.

13. As per Clause 2.31, re-allotment is at the risk and cost of the original allottee. In Annexure P-7 i.e. the order passed by respondent No. 4 pursuant to directions of this Court vide order dated 04.04.2014, it is mentioned as under :

"But the licence of the original licensee was cancelled and subsequently Sh. Kaptan Singh S/o Lala Ram (licensee) was re-allotted said vends for licence fees of Rs. 25,00,000/- for the remaining period of 68 days of the financial year 2013-14 as per clause 2.31 of the Excise Policy for the year 2013-14 and 2014-15 at the risk and cost of the original allottee."

14. The petitioner was re-allotted vends for licence fee of Rs. 25,00,000/- for a period of 68 days only for 68 days of the remainder of the financial year 2013-14 at the risk and cost of the original allottee. As per Clause 2A, the liquor vends were allotted for a period of two years i.e. 01.04.2013 to 31.03.2015. Initially licence was to be granted for a period of one year i.e. for the year 2013-14, whereafter it was to be got renewed for the year 2014-15 with 5% more licence fee than for the year 2013-14 and on failure to get the licence renewed, the licencee was to forfeit his security deposit and vend would be re-allotted as per prescribed procedure at his risk and cost. These aspects of the policy were fully to the knowledge of the original allottee, Sher Singh, as well as the petitioner, Kaptan Singh.

15. Thus, both original allottee Sher Singh as well as Kaptan Singh being aware of the provisions of Clause 2A as well as Clause 2.31 of the Haryana Excise Policy, are bound by the terms and conditions contained therein. Since the petitioner was allotted the licence for a period of 68 days only i.e. from 23.01.2014 to 31.03.2014, therefore, he would step into the shoes of the

original allottee i.e. Sher Singh and would be bound to seek renewal of the licence for the year 2014-15 subject to the condition that renewal would be at 5% more than the licence fee of the year 2013-14. The term 5% more than the licence fee of the year 2013-14 in the case of the petitioner has to be read as the licence fee paid by the petitioner and computed on the said basis for the entire year i.e. 01.04.2013 to 31.03.2014 + 5% of the said price. So computed, the licence fee for the year 2013-14 works out to Rs. 1,40,90,073/- and the petitioner had offered to renew the licence for the year 2014-15 at the said rates vide legal notice Annexure P-4 dated 27.03.2014. However, the respondents chose not to accept the same and insisted that the petitioner seek renewal of the licence for the year 2014-15 by treating the licence fee for the year 2013-14 as per allotment to the original licencee i.e. Sher Singh i.e. Rs. 2,49,99,999/-. In fact the afore-mentioned stand of the respondents is very surprising since in terms of Clause 2.31, re-allotment of the liquor vends was done to the petitioner after cancelling the allotment of the original allottee i.e. Sher Singh and as per Clause 2.31, re-allotment is to be done at the risk and cost of the original allottee. Order (Annexure P-7) mentions that re-allotment of the liquor vend allotted to Sher Singh was done to the petitioner in terms of Clause 2.31. Therefore, claim, if any, qua loss caused on account of getting a licence fee for the remaining part of the year 2013-14 as well as for the year 2014-15, lesser than 5% more than the licence fee of the year 2013-14 i.e. at the rate at which the licence was allotted for the year 2013-14 and the resulting loss, would be recoverable in terms of Clause 2.31 from the original allottee, namely, Sher Singh. The respondents not only did not accept the offer of the petitioner for renewal of the liquor vend at Rs. 1,40,90,073/-.but also did not proceed against Sher Singh in terms of Clause 2.31 for recovery of loss caused by him i.e. the original allottee for reasons best known to them.

16. Regarding availability of alternative remedy of appeal suffice it to notice that the same was not pressed. Even otherwise in a case like this involving interpretation of the provisions of the Excise Policy we refrain from relegating the petitioner to avail the remedy of appeal since the rule of alternative remedy is merely a rule of caution. Accordingly, the questions posed above having been answered as above, the writ petition is allowed. Order (Annexure P-7) is quashed. It is held that although the petitioner was bound to seek renewal of the licence for the year 2014-15 on licence fee 5% more than the licence fee of 2013-14 yet the petitioner''s offer in terms thereof as made vide legal notice (Annexure P-4) dated 27.03.2014 not having been accepted, the petitioner stood absolved of his responsibility to get the license renewed. The petitioner is not responsible for the loss attributable to the initial allottee. In the circumstances, the respondents are duty bound to refund the security amount of Rs. 5,25,000/- as also additional amount of Rs. 1,00,000/- to the petitioner. The same would be without prejudice to the petitioner''s right to seek recompense in accordance with law against the respondents for the delay in the refund of the afore-mentioned amount. However, the respondents would be at liberty to take action in

accordance with law to recover the loss on account of getting an amount on renewal of the liquor vends for the year 2014-15 lesser than the licence fee + 5% for the year 2013-14 from Sher Singh i.e. the original allottee.

Writ petition is allowed. No order as to costs.