

(1973) 11 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2744 of 1970

M/s. Samand Singh Sohan Singh and Co., Amritsar	APPELLANT
Vs	
The State of Punjab and others	RESPONDENT

Date of Decision : 13-11-1973

Acts Referred:

Punjab Excise Act, 1914 — Section 60

Citation : (1973) 11 P&H CK 0022

Hon'ble Judges : R.S. Narula, J;D.K. Mahajan, J;Bal Raj Tuli, J

Bench : Full Bench

Advocate : Tirath Singh Munjral and Mr. Lakhinder Bir Singh with him, for the Appellant; Joginder Singh Wasu, Advocate-General, Punjab and Mr. D.N. Rampal, D.A.G., Punjab, with him, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—This order will cover civil writs Nos. 2744, 2300, 2407, 2347, 2196, 2567, 2375, 2779, 1334 and 1446 of 1970.

2. The learned counsel for the petitioners states that in the matter involved in these petitions there is a difference of opinion between my Lord Mr. Justice Narula and Mr. Justice Suri and this difference of opinion has not been resolved, inasmuch as the matter has not been posted before a third Judge for decision. In view of the difference of opinion between the two learned Judges of this Court, we deem it proper that these petitions be put up before a Full Bench. We therefore, direct that the papers of this case be placed before the Hon'ble the Chief Justice for constituting a larger Bench.

3. In civil writ No. 1446 of 1970, it was ordered that it should be heard with civil writ No. 1334 of 1970 and as Civil Writ No. 1334 of 1970 has been referred to a Full Bench, this case will automatically be placed before the Hon'ble the Chief Justice, alongwith that case, so that it is also posted before the Full Bench.

JUDGMENT OF THE FULL BENCH

B.R. Tuli, J.

4. This judgment will dispose of C.W. Nos. 1334, 1446, 2196, 2300, 2347, 2375, 2407, 2567, 2744 and 2779 of, 1970, as common questions of law and fact arise in all these cases and have been referred to a Full Bench by my learned brothers Mahajan and Narula, JJ. There is, in fact, only one point of law requiring decision by this Bench as all other questions of law have already been decided by this Court in various judgments against some of which appeals are pending in the Supreme Court. Mr. Tirath Singh Munjral, therefore, submits that it should not be taken as if he has not pressed those points but that he cannot argue those points in face of the previous decisions. We accordingly record that Mr. Tirath Singh Munjral has not given up any point of law involved in these cases but has only refrained from arguing the same in difference to the decisions already rendered.

5. In order to decide the common question of law, the facts of C.W. 2744 of 1970, *M/s Samand Singh Sohan Singh and Co. v. The State of Punjab and others*, may be stated. The petitioners made the highest bid of Rs. 1,29,000/- at the auction of licence for retail vend of country liquor at Khalra, district Amritsar, held in the month of March, 1969, for the financial year 1969-70. The quota of ordinary spiced country liquor for this vend for the whole year was fixed as 5500 proof litres. The amount of licence fee payable by the petitioners was Rs. 1,29,000/- which was to be paid in twelve equal monthly installments before the 25th of each month. The petitioners, in spite of having worked the vend for the whole year, fell into arrears and the amount of about Rs. 35,000/- remained due from them for the recovery of which proceedings were taken by the respondents under the Punjab Land Revenue Act to recover the amount as arrears of land revenue. The petitioners have filed this petition denying their liability for payment of the deficiency in the amount of licence fee on various grounds and have also challenged the authority of the respondents to recover that amount as arrears of land revenue.

6. Written Statement has been filed in which the action for recovering the amount as arrears of land revenue has been justified.

7. The only point argued by the learned counsel for the petitioners, as stated by him, is :

The terms and conditions of the licence and the rules entitle a licensee to obtain the full auctioned annual quota without any precondition as to the payment of proportionate licence fee and since a new condition has been imposed, the petitioners are absolved of the liability at least to the extent of proportionate licence fee of the liquor not supplied to them.

It has been stated in the writ petition that the full quota of 5500 proof litres was not supplied to the petitioners on the ground that they had defaulted in the payment of the monthly instalments. In reply, it has been stated that the petitioners were not harassed nor was the supply of liquor refused to them. Their licence was cancelled by respondent 3 vide orders dated January 7, 1970, for

default in making payment of licence fee for the month of October, 1969, and re-auction was fixed by January 22, 1970, but respondent 3 postponed it to January 28, 1970, vide his memorandum No. 777/X. III dated January 19, 1970. The re-auction of the petitioners' vend was, however, not done as the petitioners, in the meantime, assured that they would make the payment and they did clear the arrears for the month of October, 1969, by the end of February, 1970, by depositing the licence fee in instalments from January 23, 1970. For the delay in making payment of licence fee for the months of April, May and June, 1969, respondent 3 allowed the petitioners to retain their licence under rule 37(33) (ii) of the Punjab Liquor licence Rules, 1966, on payment of additional fee of Rs. 50/-, Rs. 25/- and Rs. 25/- respectively for those three months, which the petitioners deposited into the Government treasury.

8. The argument of the learned counsel for the petitioners is that on the failure of the petitioners to pay the monthly instalments of the licence fee regularly, the supply of liquor could not be withheld. Their licence could be cancelled and reaucted but as long as the licence was continuing, the supply of the liquor could not be refused. The relevant conditions of auction based on the Liquor Licence Rules, which were widely advertised before the auctions were held and on the faith and basis of which the petitioners made their bid, are as under :--

1. All licences, whether for wholesale or for retail sale of country liquor, foreign liquor, beer and bhang shall be granted subject to the provisions of the Punjab Excise Act (1 of 1914) and the rules framed thereunder from time to time.

2. The Excise Commissioner may reject, without assigning any reasons, any bid accepted by the Collector or the Presiding Officer, as the case may be, within a period of twenty-one days of the date of auction.

14(i) The licences for retail vend of country liquor shall be granted on the basis of licence-fee fixed by auction.

(ii) The quota of ordinary spiced country liquor (in proof litres) fixed for each vend shall be announced before such vend is put to auction.

(iii) In case no bid at the time of auction is forth coming in respect of a vend or a group of vends, the Presiding Officer may grant the licence for that vend or a group of vends as the case may be by private contract-negotiations.

15(i) The successful bidder shall deposit security equivalent to 1/12th of the amount of the annual licence fee within a period of 7 days of the date of auction or by the last day of the month in which the auction takes place whichever is earlier. The aforesaid amount of security shall be refundable to him at the end of the year, unless the same or any part thereof is forfeited or adjusted against any amount of fee, duty or penalty due from him in respect of his licence. In the event of the amount of the security deposit or any part thereof being forfeited or adjusted, as aforesaid, the deficiency in the security amount shall be made up by him within 7 days of the happening of such an event, failing which the licence

shall be liable to cancellation by the authority by which it was granted.

(ii) The successful bidder who is granted a licence for retail vend of country liquor shall pay the whole amount of licence fee in 12 equal instalments, each instalment being payable by the 25th day of the month, beginning from the month of April, 1969.

(iii)... ..

(iv) In the event of a licence for retail vend of country liquor being cancelled, the Collector or any Gazetted Officer authorised by him in this behalf may resell it by public auction or by private contract in accordance with the procedure laid down in the Punjab Liquor Licence Rules, 1956, and any deficiency in the licence-fee and all expenses of such resale or attempted resale shall be recoverable from the defaulting licensee in the manner laid down in section 60 of the Punjab Excise Act (1 of 1914).

16. Ordinary spiced country spirit of the strength of the 50 degree under proof shall be issued for sale at the licensed premises.

Provided that a licensee, who pays the full proportionate monthly licence fee in respect of his vend by the 20th day of the month, shall be entitled to draw, subject to availability, a quota of special spiced country liquor up to a maximum of 10 per cent of the monthly proportionate auctioned quota of ordinary spiced country liquor in respect of that vend against payment of proportionate additional licence fee at the same rate of incidence as in the case of ordinary spiced country liquor.

18(i) A licensee shall not be entitled to any compensation or claim for damages if the supplies of country liquor to him fall short of the quota fixed in respect of his vend or vends. He will, however, be entitled to the refund of the proportionate licence fee in such a contingency provided he establishes to the satisfaction of the Excise Commissioner that such a short-fall of supplies did not occur because of any fault on his own part. Such claims for refund shall be preferred and considered only after the close of the financial year 1969-70.

(ii) Subject to availability and genuine demand of the area concerned, the Excise Commissioner or any officer authorised by him in this behalf, may, in his discretion, allow additional quota of country liquor, i.e., over and above the quota fixed for his vend on payment of proportionate additional licence fee.

26. Subject to the directions issued by the Excise Commissioner from time to time regulating the supplies from different distilleries in Punjab for various districts/ areas, the licensed vendors will be free to obtain their supplies of country liquor, wholly or partly, from any of the licensed distilleries or the licensed warehouses in Punjab.

9. The combined reading of the conditions of licence, set out above, which are based on the provisions of the Punjab Excise Act and the Rules framed

thereunder leads to the following conclusions :--

(i) The licences for retail vend of country liquor are to be granted on the basis of licence fee fixed by auction.

(ii) The quota of ordinary spiced country liquor in proof litres has to be fixed for each vend and announced before such vend is put to auction.

(iii) The Excise Commissioner has the power to reject any bid accepted by the Collector or the Presiding Officer, as the case may be, within a period of twenty-one days of the date of auction.

(iv) Each successful bidder has to deposit security equivalent to 1/12th of the amount of the annual licence fee within a period of seven days of the date of auction or by the last date of the month in which the auction takes place, whichever is earlier.

(v) The amount of security so deposited is to be refunded to the licensee at the end of the year unless the same or any part thereof is forfeited or adjusted against any amount of fee, duty or penalty. If any part of the security is so adjusted or forfeited, the licensee has to make good the deficiency within seven days of the happening of such an event, failing which the licence is liable to cancellation by the authority by which it was granted.

(vi) The licence fee is to be paid by the successful bidder in 12 equal monthly instalments, each instalment being payable by the 25th day of the month beginning from the month of April, 1969, that is, the licence fee is to be paid in monthly instalments extending over 12 months before the 25th of each current month,

(vii) If the security deposit is not made or the highest bidder refuse to accept the licence, the Collector has the right to resell the licence at the risk and expense of the defaulting bidder.

(viii) A licensee who pays the full proportionate monthly licence fee in respect of his vend by the 20th day of the month shall be entitled to draw, subject to availability, a quota of special spiced country liquor up to a maximum of 10 per cent of the monthly proportionate auctioned quota of ordinary spiced country liquor in respect of his vend against payment of proportionate additional licence fee at the same rate of incidence as in the case of ordinary spiced country liquor.

(ix) In case there is increase in the genuine demand of the the area concerned, the Excise Commissioner or any officer authorised by him in this behalf, may, in his discretion allow additional quota in addition to the quota fixed for his vend to a licensee on payment of proportionate additional licence fee.

(x) A licensee shall not be entitled to any compensation or claim for damages if the supplies of country liquor to him fall short of the quota fixed in respect of his vend or vends. He is, however, entitled to the refund of the proportionate licence fee in such a contingency provided he himself is not at fault. Such claims for

refund are to be settled after the close of the financial year, and

(xi) The Excise Commissioner has to regulate the supplies from different distilleries in Punjab for various districts/areas and the licensed vendors will be free to obtain their supplies of country liquor, wholly or partly, from any of the licensed distilleries or the licensed warehouses in Punjab.

10. The purpose of requiring a licensee to make a deposit of security to the extent of 1/12th of the licence fee is to ensure the realisation of licence fee for a month. The special spiced country liquor is allowable, on fulfilling the conditions by the licensee, to the extent often percent of the monthly proportionate auctioned quota of ordinary spiced country liquor which clearly means that the annual quota fixed for the auction has to be distributed equally over the twelve months of the year and the licensee is entitled to draw up to his monthly quota for one month and not the entire quota fixed for his vend or any quantity in excess of the monthly quota. However, if there is a genuine demand for increase in the supply of liquor in any month, he can obtain the additional quota from the Excise Commissioner or his delegate on payment of proportionate additional licence fee. These conditions of licence clearly show that the annual quota fixed for a vend has to be equitably distributed over all the twelve months of the year and the licensee has to draw the proportionate quota for each month so that no mal-distribution of available supplies of country liquor to all the vends in the State occurs. The supplies of country liquor have to be made by the distilleries whose production is also regulated and spread over all the months of the year. It, therefore follows that every licensee has the right to ask for the monthly proportionate quota of ordinary spiced country liquor without making the payment of licence fee for that particular month in advance. The payment of the monthly licence fee can be made upto the 25th of the current month and before that date arrives, the Excise Officers cannot insist on the payment in advance of the licence fee at the time when supplies are made to the licensee but if the licensee does not pay the monthly licence fee on or before the 25th of the month, the Excise Authorities have the right to stop further supplies to him and/or cancel the licence for the vend and reduction it. That action can be taken u/s 36 of the Punjab Excise Act which authorises the cancellation or suspension of the licence. In this view of the matter, the learned counsel cannot successfully urge that the temporary stoppage of the supplies to a licensee within the annual quota fixed for his vend on the ground of default in the payment of the licence fee, which has become due from him, amounts to a new penalty not covered by the conditions of licence. The temporary suspension of supplies of country liquor within the quota fixed for the vend to the licensee is a penalty which is less harsh than the penalty of cancellation of the licence. If an authority is competent to impose a higher punishment, prescribed for an offence or a default, he has certainly the power to impose the lesser one according to the circumstances of the case. The imposition of a lesser punishment or penalty does not amount to laying down a new condition or a new penalty. The right to impose a lesser penalty is inherent and is included in the right to impose a higher penalty. The

cancellation of the licence amounts to permanent stoppage of the business of the licensee whereas temporary suspension of supplies only enables him to carry on his business with the limited supplies already with him and to receive further supplies on fulfilment of the obligations undertaken by him while bidding for the licence. This course results in much less hardship to the licensee than the cancellation of the licence. After cancellation the Department has to re-auction the vend for continuing the sale of country liquor at the vend in order to meet the demands of the area at the risk of the defaulting licensee and that takes time and may result in a greater loss to him. In none of these ten cases, which are for decision before us, was the licence cancelled. In every case temporary suspension of supplies was resorted to in order to enable the licensee to fulfill his obligation regarding the payment of licensee fee to the Department. In the case in hand, the delay in making payment of the licence fee started right in the beginning of the licence, that is, during the months of April, May and June, 1959, but the petitioners were allowed to retain their licence under rule 37 (33) (ii) of the Punjab Liquor Licence Rules, 1956, on payment of additional fee of Rs. 50/-, Rs. 25/- and Rs. 25/- respectively which were paid by the petitioners. There is no denial of this fact on behalf of the petitioners as no replication has been filed, although the return had been filed more than a year ago. In respect of the licence fee due for the month of October, 1969, the default was much longer and on January 7, 1970, the licence was cancelled and the re-auction was fixed for January 22, 1970, which was postponed to January 28, 1970. The petitioners began to make part payment of that instalment from January 23, 1970, and completed full payment by the end of February, 1970, and thus the vend was not re-auctioned and the petitioners were allowed to continue. There is no allegation that during any month the petitioners had asked for the supply of liquor within the monthly quota when they were not in arrears of the payment of licence fee for the previous months and the Department refused to issue the permits. If they were in default, as regards the payment of licence fee, the Department was within its rights to refuse further supplies until the arrears were paid. We are, therefore, of the opinion that the proposition canvassed by the learned counsel for the petitioners is too widely worded and cannot be accepted. Our conclusion is that the licensee is entitled to receive the supplies of ordinary spiced country liquor up to the 25th of each month within the monthly quota, which is to be determined by dividing the annual quota by twelve, without advance payment of the licence fee if he is not in arrears with regard to the licence fee for any previous month or months. If he fails to pay the licence fee for the month before the 25th, then the Department is at liberty to stop further supplies until the default in the payment of the arrears of licence fee is made good by the licensee. The licensee is not entitled to more than the monthly quota during the month but it is open to the Excise Authorities to allow him to draw more than the monthly quota to be adjusted against the quotas for the succeeding months. If there is any genuine demand for more country liquor, the licensee is entitled to receive the same, subject to the availability of stocks, on payment of additional proportionate licence fee. Any instructions issued by the Department requiring

advance payment for every supply of country liquor irrespective of the fact whether the licensee is in default or not with regard to the payment of the licence fee for the previous month or months will be contrary to the Liquor Licence Rules and cannot be enforced. Because of the deposit of the security to the extent of 1/12th of the licence fee, the licensee is entitled to draw supplies to that extent within a month.

11. The learned counsel for the petitioners has relied on the judgment of their Lordships of the Supreme Court in *Har Prasad Choubey Vs. Union of India (UOI) and Another*, for the proposition that a new condition cannot be imposed during the continuance of a contract. There is no quarrel with this proposition and, in fact, the learned Advocate General stated that he did not dispute it. That proposition, however, does not apply in the present case as no new condition has been imposed. As I have said above, the non supply of ordinary spiced country liquor to a licensee on his failure to pay the proportionate licence fee for the month is a lesser penalty than the cancellation of the licence and is included in that penalty. If this penalty is imposed, it does not amount to a new penalty having been brought in.

12. In the instant case the learned counsel for the petitioners advanced an argument that the country liquor vend in favour of the petitioners was auctioned on March 21, 1969, and they did not deposit the security within seven days thereof as required under the rules and, therefore, no contract came into existence between the petitioners and the State Government. It was up to the Excise Commissioner to reject their bid within twenty-one days but that was not done because the petitioners paid Rs. 8,252/- on April 8, 1969, Rs. 2,000/-, on April 19, 1969, and Rs. 500/- on April 21, 1969, thus making a total of Rs. 10,752/-, which was equal to the security required to be deposited. They also accepted the licence and began to operate the vend with effect from April 1, 1969. They continued operating that vend thereafter and never disowned the contract or the licence. They even paid the licence fee for many months and on account of delayed payments of the monthly instalments of the licence fee for some months, they paid additional fee by way of penalty. It is, therefore, too late for them now to urge that no contract- in fact, had come into being between them and the State Government. This submission is consequently repelled.

13. The facts of other cases are similar and, for the reasons given above, there is no merit in these petitions which are dismissed but the parties are left to bear their own costs.

D.K. Mahajan, J.

14. I entirely agree.

R.S. Narula, J.

15. So do I.