

(2006) 08 P&H CK 0242
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3279 of 2006

State of Haryana and Another	Vs	APPELLANT
Dharmender Singh		RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Punjab Excise Act, 1914 — Section 61

Citation : (2006) 08 P&H CK 0242

Hon'ble Judges : P.S. Patwalia, J

Bench : Single Bench

Advocate : R.S. Kundu, A.A.G, for the Appellant; N.R. Dahiya, for caveator, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Patwalia, J.—This order will dispose of Civil Revision Nos. 3279 of 2006 and 3280 of 2006 since the facts and controversy involved in both is common. For facility of reference facts are being taken from Civil Revision No. 3280 of 2006.

2. The present revision petition has been filed by the State of Haryana challenging the order passed by the learned District Judge, Bhiwani whereby an application under Order XXXIX Rules 1 and 2 of the CPC filed by the plaintiff has been allowed.

3. The brief facts of the case are that the State of Haryana formulated a new policy for allotment of liquor vends for the sale of Indian Made Foreign Liquor, beer and country made liquor for the year 2006-2007. Whereas earlier the allotment of vends was made by open auction to the highest bidders, in the present policy the allotment was to be made by draw of lots. Accordingly, applications were invited from the general public throughout the State of Haryana for allotment of the vends upto 11.3.2006. The draw of lots was to be held on 17.3.2006. Even after the completion of the entire process some vends of country made liquor in various districts of the State including District Bhiwani

remained unallotted.

4. As a result of this, the Excise and Taxation Commissioner, Haryana vide letter dated 26.3.2006 made an amendment in the policy and decided to convert 20 per cent of the quota of the country made liquor into Indian Made Foreign Liquor. Consequently, 18 new vends of Indian Made Foreign Liquor were created in District Bhiwani and for allotment of the same, the Excise Department issued a fresh publication in the leading newspapers inviting applications upto 28.3.2006 which could be submitted upto 3.00 P.M. The names of the vends and the specific area under them was mentioned in the publication. The draw of lots for these vends was to be held on 29.3.2006 at 9.00 A.M.

5. It is the case of the plaintiff that upto 3.00 P.M. on 28.3.2006, no application was received for the vend situated at Fountain Chowk, Dadri. The area of the vend at Fountain Chowk, Dadri was described as City Police Station to Jagdish Cycle Store, Old Bus Stand, Charkhi Dadri on either side of the road. It is the case of the plaintiff that since there was no application for this vend as aforesaid, the plaintiff at 4.20 P.M. submitted an application for the Fountain Chowk, Dadri mentioning the area from Fountain Chowk to Jagdish Cycle Store. Since no other person had come forward to file his application for the vend as advertised, the plaintiff's application as submitted was accepted. A receipt was given on 28.3.2006 at 4.20 P.M. accepting the application along with earnest money of Rs. One lac in cash. The receipt which is duly signed by the Excise and Taxation Commissioner, Bhiwani clearly mentioning the area of the vend Fountain Chowk, Dadri to be from Fountain Chowk to Jagdish Cycle Store. Accordingly, the vend was allotted to the plaintiff as no other person had come forward to apply for the same. The plaintiff opened his vend on 1.4.2006 and deposited the remaining 20 per cent security amount on 7.4.2006 and 8.4.2006. The plaintiff submits that, however, subsequently the respondents raised an objection in respect of the place of the opening of the vend by stating that the vend as opened did not conform to the area as advertised. Accordingly on 12.4.2006, the vend was sealed.

6. Aggrieved against this action, the plaintiff filed a suit for declaration and mandatory injunction to declare the closing of his vend as illegal, arbitrary and against the principles of natural justice and prayed that the seal/lock should be removed and he should be allowed to run his vend. Along with the suit he filed an application for interim injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The respondents filed a reply wherein the stand taken was that the plaintiff had not opened his vend within the area as advertised i.e. from City Police Station to Jagdish Cycle Store, Old Bus Stand, Charkhi Dadri on either side of the road. The plaintiff of his own treating the area from Fountain Chowk, Charkhi Dadri to Jagdish Cycle Store, Charkhi Dadri opened his vend in that area illegally creating nuisance for the defendants. It was stated that the plaintiff was asked to shift his vend at a proper place but since he failed to do the vend was sealed.

7. The application under Order XXXIX Rules 1 and 2 filed by the plaintiff was dismissed by the trial Court. The lower Appellate Court, however, granted the interim injunction.

8. It is the case of the plaintiff that the vends were advertised for the first time on 11.3.2006. When the vends remained unallotted, they were again advertised for the second time inviting applications upto 28.3.2006 at 3.00 P.M. When even upto 3.00 P.M. there was no response, the plaintiff negotiated with the officials of the defendants. He specified the area of Fountain Chowk to be allotted to him in his application form. This area was duly accepted by the officials. It is this area which he had clearly mentioned in the application form.

9. The same area is mentioned in the receipt issued by the Deputy Excise and Taxation Commissioner, Bhiwani. He further states that his application form was therefore accepted at 4.20 P.M. which is after 3.00 P.M. Even thereafter the remaining security amount of 20 per cent was accepted by the respondents on 7.4.2006 and 8.4.2006. It was thereafter that he opened his vend in the area which was allotted to him. On the other hand, the respondents denied this statement and took the plea that it is only the vend which is advertised that can be allotted. The lower Appellate Court has considered this argument and recorded as hereunder:

It is not disputed that vend of "Fountain Chowk" was newly created, when various vends of country made liquor remained unallotted on account of none coming forward of anyone from the general public. The application for allotment of said vend were to be submitted up to 28.3.2006 by 3.00 p.m.... Perusal of part-I of application form and receipt (part II) issued by the department shows that the plaintiff had applied for L2 vend of Fountain Chowk specifying its area from Fountain Chowk to Jagdish Cycle Store. It is further not disputed that the plaintiff had opened his vend on 1.4.2006 and the defendant had issued the permits/transit pass to the plaintiff to bring liquor for transportation and sale. It is also not disputed that in pursuance of the application of the plaintiff, the department got deposited the balance 20% of the Security amount from him on 7.4.2006 and 8.4.2006. If the plaintiff had mentioned the wrong area not agreeable to the defendants, in that event they were well competent to reject his application under its terms, conditions and procedure framed by it. In Rule 6, the procedure for inviting the applications has been given, whereas in Rule 7 of the same it has been specifically mentioned that verification of full documents furnished by the successful allottee shall be made by the Excise Inspector of the respective circle and counter signed by the Excise and the Taxation Officer (Excise)/Assistant Excise and Taxation Officer (Excise), before the licence is actually granted. Rule 11 of the condition and procedure formulated by the department further speaks about the examination of the applications by the Excise Inspectors and supervised by the Excise and Taxation Officer (Excise/Assistant Excise and Taxation Officer (Excise) and thereafter, displaying of the list of valid applications and invalid applications, category wise, separately for

country liquor and IMFL retail outlets at the prominent place in the office of the Deputy Excise & Taxation Commissioner (Excise), In the instant case if the application of the plaintiff was invalid, in that event, the decision of this respect should have been displayed at the prominent place in the office of the Deputy Excise and Taxation Commissioner (Excise), but nothing sort was done by the department, rather allotment was made and remaining security amount was got deposited in view of Rule No. 14-1. Hence, the alleged advertisement/publication of the defendants specifying the area of Fountain Chowk had lost its significance after accepting the application of the plaintiff in toto and got depositing the remaining earnest money agreeing to his area.

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More-so intentions of the officials of the defendants are not bonafide, because neither they want to allow the plaintiff to run his business nor they want to refund his earnest money. The department is totally acting in an illegal and arbitrarily manner. Admittedly, no notice was given to the plaintiff before sealing his vend, which is certainly against the principles of natural justice. Perusal of Section 61 of Punjab & Excise Act, 1914 relied upon by the learned Govt. Pleader shows that same also does not permit the officials of the department to seal any vend, because it simply provides to impose a meager penalty from Rs. 50/- to Rs. 500/- per bottle. The officials of the department cannot act arbitrarily. They can only act under the rules and regulations formulated by the State Government in this respect or in accordance with law. Learned Govt. Pleader could not show me any rules and regulations under which Excise Inspector was empowered to seal the vend of the plaintiff, more particularly without issuing any notice. On one hand the department is taking a plea that due to negligence or over sight it could not scrutinize the application form of the plaintiff and at the same time, it is not ready to refund the security amount of the plaintiff even despite committing mistake and thus, it cannot be allowed to blow hot and cold in the same stream at one point of time.

10. I am in agreement with the findings recorded by the lower Appellate Court that in the present case the plaintiff had clearly stated in his application form as to for which area he was applying for. It is this application form which was accepted and a receipt given to the plaintiff. The receipt also mentions the same area. Under these circumstances, I do not find any error in the order of the lower Appellate Court granting the ad interim injunction to the plaintiff. At this stage, however, two facts need to be clarified. During the course of arguments, it was contended by learned Counsel for the State of Haryana that if the plaintiff was allowed to run the liquor vend as he was now doing, his area would over-lap with the area of some other allottee. I had asked the State counsel to produce site plans to substantiate this fact. Site plan was produced. A perusal of the same, however, reveals that even as at present the area allotted to the plaintiff does not over-lap with the area allotted to any other person. This contention of the

State was therefore proved to be factually incorrect.

11. Apart from this it deserves to be noticed that the plaintiff even before the Courts below had taken the stand that if the area as he had applied for could not be allotted to him, then the money deposited by him with the Government should be refunded and he would close the vend. The State Government, however, did not agree to this which is clear from the following observations made by the lower Appellate Court:

At the outset, it is pertinent to mention here that before starting the arguments to end the controversy, learned Counsel for the plaintiff-appellant made a offer to the department to refund his money if it do not want to allow him to open his vend in the area mentioned in his application, to which learned Government Pleader assisted by Shri Ram Bhagat, Inspector of the Excise & Taxation Department flatly refused.

12. Even during the course of arguments before me, I had asked the counsel for the State of Haryana to ascertain as to whether the State is willing to refund the proportionate license fee deposited by the plaintiff for the balance year upon which the plaintiff would close his vend. The State counsel, however, after seeking instructions stated that the State Government was not willing to refund the proportionate license fee.

13. In view of the facts stated hereinabove, I do not find any merit in these revision petitions. The same are accordingly dismissed.