(1992) 03 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2796 of 1992

Vinod Kumar and Co. APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 18-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Excise Act, 1914 — Section 54
Punjab Liquor Licence Rules, 1956 — Rule 37(35)

Citation : (1992) 102 PLR 213

Hon'ble Judges : V.K. Bali, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : Mohan Jain, for the Appellant; Gopal Krishan Chatrath, General and M.C. Beri, D.A.G., for the Respondent

Judgement

A.L. Bahri, J.—Vide this order a bunch of writ petitions (C. W. P. Nos. 2796, 3005, 3006, 3007 3456, and 3632 of 1992) filed by wine-merchants of the State of Punjab are being disposed of as common question of law and facts have arisen. In some of the cases respondent-State is represented and reply has already been filed while in some other cases notice is yet to be issued. Broad facts are given from writ petition No. 2796 of 1992.

2. The petitioners are holders of L-14A and L-2 licences issued for the year (sic)-92 obtained by the petitioners in auction conducted by the Excise and Taxation Commissioner. The period of the licence is April 1, 1991 to March 31, 1992 for which the vends have been granted to them. The District Magistrate on June 18, 1991 passed an order u/s 54 of the Punjab Excise Act, 1914 (hereinafter referred to as ''the Act'') for closure of the wine shops for the period June 20, 1991 to June 24, 1,991 in pursuance of the Assembly Elections. Although elections were postponed yet the petitioners'' shop remained closed. Another order was passed on October 7, 1991, whereby" the District Magistrate regulated the timings of the, vends i.e. ''the vends would be opened at 10.00 a. m. and closed at 5.40 p.m.'' Originally the vends were to open at 9.00 a m. and

to close at 10.00 p.m. Subsequently on February 10, 1992 the District Magistrate passed an order for closure of the vends for the period from February 17, 1992 to February 21, 1992 due to elections of the Parliament and the Assembly. Copy of the order is Annexure P. 1. The claim of the petitioners is that since the vends were ordered to be closed under the orders passed by the District Magistrate for a period of more than three days at a time, the petitioners were entitled to the concession of remission of licence fee proportionately for the aforesaid period of closure of the vends. Reference was made to some of the decisions of this Court in the writ petition.

3. On behalf of the State reply was filed by the Excise and Taxation Officer, inter alia alleging that the orders were passed by the District Magistrate or the Sub-Divisional Magistrate to close down the shops in public interest and preserve public peace u/s 54 of the Act. The Division Bench of this Court in another case had already rejected the claim of the wine-merchants, copy of the order relied upon is Annexure R. 1. Further reference was made to the Rules framed under the Act and contained in Annexure R 2 that if the liquor vends were closed under orders of the District Magistrate passed u/s 54 of the Act, no concession was to be granted to the wine-merchants. A replication was filed controverting the allegations. We have heard Shri Mohan Jain, Advocate for the petitioners and Shri Gopal Krishan Chatrath, Advocate General, Punjab, for the respondents.

4. The fact that District Magistrate passed orders u/s 54 of the Act for closure of the liquor vends for the period mentioned above in order to maintain law and order during election days is not disputed. The only question for consideration is that if on account of passing of such orders u/s 54 of the Act, vends of the wine-merchants remained closed for more than toree days, would the petitioners be entitled to concession proportionately for such days from the licence fee of the petitioners. Section 54 (1) of the Act reads as under :-

"54. Power to close shops for the sake of Public peace :-(I) The District Magistrate or Sub-Divisional Magistrate by notice in writing to the licancee, may require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace."

Under the aforesaid Act Rules have been framed which contained in Punjab Excise Manual Volume III. Relevant extract of Rule 3.19 reads as under :-

"3.19. Cases sometimes arise in which concessions may equitably be made to license-holders who though no fault of their own have failed to obtain from their licensed business the profits that they have reason to expect : -

(a) ......

(b)......

(c) When there is an equitable claim for compensation owing to unavoidable circumstances which could not have been foreseen when the license was granted such as an outbreak of plague, the occurrence of unusual scarcity, communal other riots, bands or putting the area under curfew, a case for concession may be made out.

Compensation under sub-paragraph (b) requires the sanction of the Financial Commissioner and that under sub-paragraphs (a) and (c) of the Excise and Taxation Commissioner."

5. Rule 37 (35) of the Punjab Liquor Licence Rules, 1957 (hereinafter called the Rules) reads as under :-

"Rule 37 (35). Conditions relating to compensation :-No compensation shall be due for any closure made u/s 54 of the Excise Act :--

Provided that in case of imposition of curfew and the consequent cessation of all business activity resulting in loss to the liquor licensees, the licensees, holding license in Form L-2 and L-14-A in order to make good the loss shall be allowed by the Excise Commissioner proportionate relief in license Fee in case the curfew or closure of vends ordered by the District Magistrate is for a continuous period of three or more days with the exception of normal lifting of curfew for supplies of essential commodities;

Provided that in case of country liquor licenses the quota meant for the period has not been lifted."

6. Before dealing with the arguments on the facts of the present case reference be made to certain decisions of this Court on which reliance has been placed by the learned counsel for the petitioner. Annexure P-2 is the copy of the order passed in CWP No. 7940 of 1991 (Som Nath Virmani v. State of Haryana, C W P No. 7940 of 1991.), decided on July 23, 1991 by the Division Bench of this Court. Vide this order proportionate remission was allowed to the liquor vendors of the State of Haryana for the days their shops remained closed. The details of the days in respect of the districts of Haryana in which such remission was to be given are mentioned in the order itself. A purusal of this order would show that the same was passed as amicably sorted out by the parties Such an order in our view cannot be treated as a precedent to be followed in the present case which relates to closure of liquor vends under orders of the District Magistrate In the present case the stand of the respondents categorically is that the petitioners are not entitled to the remission of the licence fee. In CWP No. 12295 of 1991 (M/s Hans Raj and Co. etc. v. State of Punjab and Ors., C.W.P. No. 9096 of 1991.), decided on August 20, 1991. A direction was given to the Excise and Taxation Officer to decide the question of granting concession under Rule 3.19 of the Rules aforesaid by passing a speaking order. Copy of this order is Annexure P 4. Another Civil Writ Petition No. 9096 of 1991 (M/s. Pardeep Kumar & Co. and Ors. v. Chandigarh Administration etc., C.W.P. No. 12295 of 1991.), was decided on August 20, 1991. It was a case from Chandigarh. A direction was given to the Excise and Taxation Commissioner to treat the writ petition as representation and to decide the question of granting any concession to the petitioners of that case

if they had suffered any loss on account of closure of their vends for a period of 8/10 days. In CWP No. 8242 of 1991 (M/s. Vinod Kumar & Company v. State of Punjab and Ors., C.W. P. No. 8242 of 1991.),. decided on December 6, 1991, the Excise and Taxation Commissioner was directed to decide the representation of the liquor-licensees and to decide the question of granting remission of licence fee on account of closure of the vends. Letters Patent Appeal No. 138 of 1992. (State of Punjab and Anr. v. M/s. Vinod Kumar & Co., L. P. A. No. 138 of 1991.) filed against this decision was dismissed on February 5, !992. Copy of the order is Annexure P. 7. Haryana matters were disposed of on concession of the parties. The State of Haryana, as already observed above had agreed in principle to allow remission for closure of liquor vends in different districts of Haryana State. The position in the present case is entirely different The stand of the State of Punjab is that no remission is permissible under the law i.e. under Rule 37 (35) of 1956 Rules which is to be read along with Rule 5.19 reproduced above. Since there is a contest based on interpretation of Rules this case is to be decided independently of the decisions referred to above which were made on concession. Likewise the decision in Pardeep Kumar''s case (supra) is of no assistance in deciding the case in hand. Another decision which has been relied upon by the petitioner is of this Court in CWP No. 8242 of 1991, M/s. Vinod Kumar''s case (supra) decided by G. C. Garg, J. on December 6, 1991. This was a case where the licensees were forced to close their vends on account of terrorist activities prevalent in the State. A direction was given to the Excise and Taxation Commissioner to consider the question of granting relief in the remission of licence fee. if any, to the petitioners (in that case) in case he comes to the conclusion that the petitioner was unable to run vends on account of terrorist activities. Speaking order was required to be passed in view of Rule 3.19 (as referred to above). As already stated above, Letters Patent Appeal filed against the aforesaid judgment was dismissed on February 5, 1992.

7. Some of the petitioners in these petitions are L-2 Liquor Licensees (English wine). There is no quota fixed for such a wine. The other petitioners are liquor licensees L-14A (country-made liquor) For such a licence quota is fixed. The contention of Shri MohanJain, Advocate for the petitioners is that since under the orders passed by the District Magistrate twice liquor vends were closed for a period of more than three days every time, their cases for proportionate remission of the licence fee were required to be considered.

8. Learned Advocate General appearing on behalf of the State has argued that no compensation was required to be paid in respect of closure of the shops under orders of the District Magistrate passed u/s 54 of the Act. After giving due consideration to these arguments and after taking into consideration the provisions of the Act and these Rules reproduced above, we are of the view that in a ease where order of the District Magistrate passed u/s 54 of the Act directs closure of the vends for a period of less than three days no remissions are required to be allowed in the case of licence fee However, when the period of closure of the vends under such orders is more than 3 days, Rule 37 (35) of the

Rules and 3.19 clause (c) of the Punjab Excise Manual would straightaway be attracted. This would be a case wherein equity concession is given to the licensees as for no fault of theirs, they ware deprived of the profits of their business. When orders have been passed by the District Magistrate the licensees could not avoid it. Sub-Clause (c) of Rule 3.19 is not exhaustive of the circumstances mentioned therein, for which remission can be granted. If in order to keep peace and public order immediate directions were required to be given for closure of the vends as required u/s 54 of the Act, such a circumstance could not reasonably be foreseen. The power is given to the Excise and Taxation Commissioner to consider the question of equitable claim for compensation on that account, specifically, when u/s 54 of the Act order for closure of the liquor vends is passed for a period of more than three days. Rule 37 (35) of the Rules aforesaid would be attracted in such a case. This Rule also relates to compensation and the opening part of the Rule is categorical that no compensation is to be allowed for closure of the vends made u/s 54 of the Act. However, a proviso is added to this General clause empowering the Excise and Taxation Commissioner to grant proportionate relief in the licence fee in respect of both the licences i.e. L-2 and L-14-A. The only rider is that the shop must have been ordered to be closed for 3 days or more. Much reliance has been placed by the Advocate General on the second proviso, in other words proviso to the proviso, which is as under :-

"------ provided that in the case of country liquor licensees the quota meant for the period has not been lifted."

The aforesaid second proviso is not at all applicable to the licence issued in Form L-2 as no quota is fixed for English Wine. It is only in the case of licence in L-14 A that the question would arise as to whether the licensee had not lifted the quota meant for the period aforesaid i.e. for which shops were closed. This question cannot be decided in this writ Petition as it is for the Excise and Taxation Commissioner to decide such a question on the facts of each case. Otherwise perusal on the rules'' referred to above leaves no manner of doubt that when liquor vends are closed for more than 3 days the question for the grant of proportionate relief from the licence fee has to be decided by the Excise Commissioner.

9. During arguments learned counsel for the petitioners pointed out that after the decision of the L. P. A. in Vinod Kumar''s case the Government issued policy decision for granting the relief. The same is contained in the letter dated February 12, 1992. Learned counsel for the petitioners also produced statement showing the incidence per bottle for the year 1991-92 in respect of Excise Circle, Kapurthala. It is taken that such like statements do exist in respect of other districts also. These statements give details of the quota fixed for 1991-92 in respect of different vends. The quota is given on daily bottle basis as well as annual bottles and annual quota in P. L. It will not be difficult for the Excise & Taxation Commissioner to determine the proportionate remission to be allowed

under the Rules aforesaid.

10. For the reasons recorded above the writ petitions are allowed with the direction to the Excise & Taxation Commissioner to decide the question of granting of remission in the licence fee in respect of both the licences issued in Form L-2 and L-14 A to the petitioners for the period their licensed vends were ordered to be closed under the aforesaid two orders of the District Magistrate, promptly, without insisting the petitioners to deposit the entire amount of the licence fee. The petitioners would furnish bank guarantee for the proportionate amount of licence fee for the period their vends were ordered to be closed. If under the orders of the Excise & Taxation Commissioner some more amount would be refunded to the petitioners the same would be done promptly and if some amount is found to be recoverable, the same would be recovered from the Bank guarantee to be furnished by the petitioners. Such Bank guarantee would be furnished within one week from today. With the directions aforesaid writ petitions are disposed of. No costs.