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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12949-2024 (O&M)
RESERVED ON: 12.12.2024
PRONOUNCED ON: 10.01.2025

BRINDCO SALES PRIVATE LIMITED .....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. B.S. Patwalia, Advocate, and
Mr. Simran Brar, Advocate,
for the petitioner.

Mr. Saurabh Kapoor, Addl. AG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. Necessary facts, shorn of details, are that the petitioner – company is engaged in wholesale distribution and import of alcoholic beverages across several States in India. For the State of Punjab, it had an L-1 licence for the year 2022-23 which was renewed for 2023-24.

As on 31.03.2024, petitioner's annual turnover was approximately Rs.2,378 crores. They are aggrieved by the respondents' action regarding the non-renewal/denial of fresh L-1 licence for State of Punjab for the year 2024-25. The L-1 licence is issued for wholesale distribution to ensure the supply chain from manufacturers to retails, while L-2/L-14 Licenses are issued for retail liquor vends, under the Punjab Excise Act, 1914. The power to reject, suspend or cancel licence is permissible only under specific conditions as mentioned in the statute.

2. Learned Senior counsel for the petitioner submits that the present petition is third round of litigation on the issue, and by way of this petition, he challenges the order dated 17.05.2024 passed by respondent No.3 – Excise Commissioner, and order dated 10.04.2024 passed by respondent No.5 i.e. Collector-cum-Deputy Commissioner (Excise).

3. By the aforesaid orders, the petitioner has been denied grant of L-1 licence for wholesale of liquor on the premise of its having been involved in an FIR, registered against one of the Directors of the Company. The order passed by the Collector-cum-Deputy Commissioner (Excise) has been upheld by the Excise Commissioner in the appeal, vide its order dated 17.05.2024.

Learned Senior counsel for the petitioner submits that the order dated 17.05.2024, passed by respondent No.3 suffers from non-application of mind, and therefore, the order is wholly arbitrary and non-speaking in nature.

4. It is stated that on 11.03.2024, the respondents issued the Excise Policy for the year 2024-25, whereby it amended the earlier policy of renewal of L-1 licence, and decided that all existing L-1 licence holders would be required to obtain a fresh licence for the excise year 2024-25.

5. As per the new Excise Policy, L-1 licence was divided into L-1 (PML) i.e. Punjab Medium Liquor and L-1 (IMFL/IFL) i.e. Imported Foreign Liquor, and one entity was allowed to hold only one type of L-1 licence out of the two.

6. The petitioner, having vast experience and having fulfilled all the conditions as laid down under the new Excise Policy, applied for grant

of L-1 licence on 18.03.2024. However, the respondents have demanded further clarification on 04.04.2024 from the petitioner with regard to FIR dated 25.08.2023 and also the information regarding FIR registered against son of one of the Directors of the company. The petitioner was also asked to provide information for grant of L-1 licenses in other states.

7. It is stated by learned Senior counsel for the petitioner that the petitioner – company consists of three Directors. However, prior to the year 2023, one Amandeep Singh Dhall was also the Director of the company, and he resigned on 19.09.2022. His resignation was accepted, however, an FIR was registered by the Police Station CBI, ACB, New Delhi on 25.08.2023 for offences under Section 120-B I.P.C. and Sections 7, 7A and 8 P.C. Act, 1988. In the said FIR, one of the Directors of the petitioner – company is accused, allegedly due to political vendetta and competition in the field of liquor trade. The investigation is still on going, and neither charges have been framed nor any charge-sheet has been filed.

8. In response to the queries raised by the respondents, it is stated that the detailed reply was filed along with the affidavits of all the Directors of the company. Learned Senior counsel for the petitioner has submitted that there was no statutory requirement under the Excise Policy or any other relevant laws to disclose pending FIRs at the time of applying for L-1 licence.

9. Affidavits were submitted by the Directors of the company reiterating that they had not been convicted under the Punjab Excise Act, 1914, or the East Punjab Opium Smoking Act, 1948, East Punjab Molasses (Control) Act, 1948, or under the Indian Power Alcohol Act, 1948, or under

the Narcotics Drugs and Psychotropic Substances Act, 1985, nor any case had been registered for any non-bailable offence against the petitioner.

10. The petitioner's Directors were asked to remain present for personal hearing before the Collector-cum-Deputy Commissioner (Excise), and the authorised Signatory of the petitioner – company attended the hearing with all relevant documents and pointed out that the petitioner was already holding similar L-1 licences for other States across India. However, still the application of the petitioner was rejected.

11. Aggrieved thereto, the petitioners preferred writ petition No.8512 of 2024 before this Court, wherein directions were issued to the respondents to file an appeal, in terms of Section 14 of the Punjab Excise Act, 1914, within a period of ten days.

12. It is stated that the appeal was not heard by the Appellate Authority who recused himself, whereafter the petitioner again preferred a writ petition No.9951 of 2024, and on the date of hearing of the writ petition, Advocate General appeared and intimated that the State of Punjab had issued a notification on 07.05.2024 appointing Additional Commissioner of State Tax, Punjab as the person who would decide the excise appeal. The High Court accordingly, passed an order on 08.05.2024 directing the nominated officer for Excise Commissioner to hear and decide the Excise Appeal, preferably within 7 days. However, the appeal was dismissed, upholding the rejection of grant of L-1 licence to the petitioner.

13. Feeling aggrieved thereto, present writ petition has been filed.

14. Learned Senior counsel appearing for the petitioner has vehemently submitted that the respondents have arbitrarily rejected the

application of the petitioner, without adequately considering the merits of the case.

15. It is submitted that in the previous licensing years 2022-23, 2023-24, and current licensing year 2024-25, several similarly situated entities, against whom FIRs for severe offences had been registered, and who had even been charge-sheeted in cases pending, have been granted L-1 licence by the respondents, and therefore, the order is wholly discriminatory.

16. It is further submitted that the excuse taken by the respondents is artificial and motivated by favouritism. Petitioner has a reputable standing in the market for over 40 years and has incurred several financial losses due to this decision. At the close of licensing year 2023-24, the petitioner held huge number of cases of liquor and beer worth over Rs.56 crores, with market outstanding dues of Rs.34.82 crores. The refusal to grant a licence has exposed the petitioner to financial loss exceeding Rs.90 crores.

17. It is submitted that the Additional Commissioner of State Tax, Punjab, who heard the appeal, did not apply his mind nor examined the merits of the appeal and has based his order entirely on the findings of the order impugned and mechanically reaffirmed the finding of respondent No.5.

It is submitted that merely on the basis of the reasonable suspicion, the order of rejection could not have been passed. The FIR was registered against the Director of the petitioner – company on 17.08.2022 yet the petitioner was issued L-1 licence for the year from 01.07.2022 to 31.03.2023 and again from 01.04.2023 to 31.03.2024.

18. Learned Senior counsel for the petitioner submits that the petitioner cannot be singled out, and cited cases of other similarly situated licensees, who were granted L-1 licence for the year 2024-25 and against whom FIRs in criminal cases were pending. That apart for other licensees also, the criteria of criminal cases pending was not applied and licenses have been issued to them.

Learned Senior counsel for the petitioner further submits that merely on account of a case registered against one of the Directors of the company, the business of the company cannot be jeopardized and it cannot be said that the company itself was involved in any criminal activity.

It is submitted that once, the company has presented that it was doing business not only with the respondent – State, but was also having similar licenses for the State of Haryana, Maharashtra and Uttar Pradesh for the year 2024-25, the petitioner could not have been deprived of a similar licence for the State of Punjab.

19. A prayer therefore, has been made to quash the orders dated 10.04.2024 and 17.05.2024, and direct the respondents to grant licence for the remaining licensing year at a pro-rata licence fee payable for the remaining licensing period i.e. up to March, 2025 or as extended month.

20. Learned Senior counsel for the petitioner has placed reliance upon the following orders, office notice and judgments:-

1. ***P. Bhima Reddy vs. State of Mysore [(1969) 1 SCC 68]***
2. ***Ramana Dayaram Shetty vs. International Airport Authority of India [(1979) 3 SCC 489]***
3. ***State of M.P. vs. Nandlal Jaiswal [(1986) 4 SCC 566]***

4. ***Shrilekha Vidyarthi (Kumari) vs. State of U.P. [(1991) 1 SCC 212]***
5. ***Monarch Infrastructure (P) Ltd. vs. Ulhasnagar Municipal Corporation [(2000) 5 SCC 287]***
6. ***Reliance Energy Limited vs. Maharashtra State Road Development Corporation Limited [(2007) 8 SCC 1]***
7. ***Gwalior Distilleries (P) Ltd. vs. State of Madhya Pradesh [(2020) 12 SCC 690]***
8. ***M/s Down Town Temptation Pvt. Ltd. and another vs. Additional General Secretary, Finance Department, Government Of W.B. and others [2023 SCC OnLine Cal 141].***
9. ***Bangalore Turf Club Limited vs. State of Karnataka and others***

   [Order dated 18.06.2024 passed by Karnataka High Court at Bengaluru in W.P. Nos.13503, 13528, 13575, 14556 and 15294 of 2024]
10. ***Adharv Enterprises vs. Government of NCT of Delhi [W.P.(c) No.13668/2021] Delhi High Court dated 09.12.2024***

21. *Per contra,* learned counsel appearing for the respondents submits that the orders passed by the respondents do not warrant any interference, and relies on Section 43 of the Punjab Excise Act, 1914, to submit that no entitlement is available to a person to claim renewal of licence, permit or pass.

The Punjab Liquor Licence Rules, 1956 also does not create any right in favour of the petitioner for seeking renewal of fresh licence by way of mandamus from this Court.

22. It is submitted that the Government has taken a policy decision, not to grant licence if criminal case is registered and the same cannot be said in any manner to be unjustified. It is submitted that the case registered against the petitioner is with relation to the excise policy at Delhi, and therefore, the petitioner has been denied L-1 licence. The case of the petitioner is distinctly differentiated from the cases concerning other entities.

It is further submitted that the petitioner – company has been asked to file an affidavit and as per the application form, the petitioner has self-declared that in case any other formalities required to be completed in the due course, it would undertake to comply with the same. Upon submission of the affidavit, the petitioner was found to be ineligible and accordingly, L-1 licence was not granted to the petitioner. It is stated that there has been a proper application of mind in passing the orders and the petitioner's allegations are baseless.

23. Learned counsel for the respondents has further relied upon the judgment passed by Supreme Court in the case of ***"Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574"*** to submit that no one can claim, as against the State, the right to carry on trade or business in any intoxicants, nor the State can be compelled to part with its exclusive right or privilege of sale, manufacture or storage of liquor.

He further relies upon the judgment passed by the Supreme Court in the case of ***R. Muthukumar vs. The Chairman and Managing Director TANGEDCO, 2022 SCC OnLine SC 151,*** to submit that there can be no negative equality, merely because the petitioner has been granted licence in other States would not mean that he has a right or entitlement for licence in the State of Punjab and submits that the present writ petition be accordingly dismissed.

24. We have carefully considered the submissions addressed by counsel for both the parties and noticed as above as well as the judgments cited at bar.

25. During the course of arguments, index of compilation of various cases registered against the various licence-holders under the Excise Policy 2024-25 was handed over to the Court, which included FIR relating to Excise Policy of Delhi. The said aspects were not denied by the respondents.

26. The question before this Court arises whether the denial of L-1 licence to an existing company who was already holding L-1 licence in the State of Punjab for the previous two years and were eligible as per the Excise Policy of 2024-25 can be said to be justified and what relief can be granted to the petitioner.

27. Perusing Punjab Intoxicants Licence and Sales Orders, 1956 reflects that under Clause 7, a licence for the vend of liquor or drugs may not be given in following circumstances:-

> *"(a) to any person, who has been finally convicted of any non- bailable offence by a criminal court;*
>
> *(b) to any person whether a former licensee or not, who has been convicted, or reasonably suspected of committing or conniving at the commission of any offence under the Punjab Excise Act, 1914 or the East Punjab Opium Smoking Act, 1948, or the East Punjab Molasses (Control) Act, 1948 or the Indian Power*

Alcohol Act, 1948, or the Narcotics Drugs and Psychotropic Substances Act, 1985.

(c) to any person who has held a licence in Punjab for the sale of any intoxicant has had that licence cancelled for failing to pay his licence fees, and has subsequently not paid the arrears demanded, unless he has been especially exempted by an order of the Financial Commissioner.

(d) to any person who does not produce a valid income tax clearance certificate and a valid clearance certificate about the tax leviable under the Punjab General Tax Act, 1948."

So far as L-1 licence is concerned under the Excise Policy, it is provided that for granting L-1 licence, following terms and conditions have been laid down, which are reproduced as under:-

*"**(i)** L-1 license granted for the Excise Policy for the year 2023-24 shall not be renewed i.e. L-1 license shall be granted afresh in the year 2024-25.*

***(ii)** The whole-sale license in form L-1 is meant for sale of Punjab Medium Liquor (PML), Indian Made Foreign Liquor (IMFL)/ IFL, Beer, Wine, cider, RTD and other liquor products.*

***(iii)** L-1 (PML) is meant for the sale of Punjab Medium Liquor (PML) only.*

***(iv)** L-1 (IMFL/IFL) & L-1 (Others) are meant for the sale of Indian Made Foreign Liquor (IMFL), Imported Foreign Liquor (IFL), Beer, Wine, Ready to drink (RTD) alcoholic beverages, Cider and other liquor products etc. but excluding PML.*

***(v)** Further, one entity can be granted only one type of L-1 out of L 1(IMFL/IFL), L-1 (Others) and L-1 (PML).*

***(vi)** After the grant of L-I license, a manufacturing entity or entities, as the case may be, can choose L-1 licensee for distribution of its products, subject to the terms and conditions mentioned below:*

***(vii)** In this Excise Policy, in order to eliminate any possibility of nexus amongst the manufacturer, wholesaler and retailer of liquor and also to promote the availability of quality brands and further to have a seamless supply chain, it is envisaged that the L-1* *license will be granted only to the person/firm/company/Joint Venture/ any other form of legal entity:*

a. *having a requisite experience of at least 2 years in the whole sale distribution of liquor in India and a minimum annual turnover of Rs 30 crores in whole sale distribution of liquor business in each year of at least 2 years out of immediately preceding 5 years in a State/UT of India. In case of Joint Venture, at least one of the Joint Venture entity es should individually have the afore-mentioned experience and turnover in wholesale distribution of liquor. The turnover and experience of the Joint Venture entities will not be added for the purpose of qualifying the minimum eligibility criteria. For the purpose of qualifying the eligibility criteria, only the turnover of entire wholesale distribution business consisting of all types of Liquor will be counted.*

b. *An applicant entity shall neither have license for manufacturing of liquor anywhere in India or outside India nor retail sale liquor license in Punjab through any L-2/L-14A license. Vice-versa conditions shall also apply. Further, in case of joint venture entity, this condition shall apply to all the partners in the joint venture entity. The applicant shall submit a declaration in the form of affidavit and a certificate to the aforesaid effect, as per books of accounts, duly certified by Chartered Accountant."*

28. Upon perusal of the said policy, it is reflected that while L-1 licence shall be granted '**afresh**' for the year 2024-25 and there shall be no renewal. The conditions laid down for grant of L-1 licence nowhere reflect any condition of denying licence on the ground of registration of FIR against any Director of the company.

29. It is a settled principle of law that the company holds an independent entity and is a separate person. A criminal case registered against any Director would therefore not automatically treat the company to be involved in criminal activities unless it is also named in the FIR. From the perusal of the FIR, we find that the name is of the Director of the company and it is not an allegation that the company was in any manner involved in the criminal case.

30. In the judgment titled as "***Gwalior Distilleries Private Limited vs. State of Madhya Pradesh and others, (2020) 12 SCC 690,*** the Supreme Court noticed as under:-

> *"This Court in State of M.P. & others v. Nandlal Jaiswal (1986) 4 SCC 566 has held that no one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. The Appellant's request for grant of a CS-1 license requires to be considered strictly in accordance with law."*

31. The petitioner had placed on record Annexure P-13, which is a list of licensees for the licence year 2023-24. From the perusal of the said

list and contentions raised by learned Senior counsel for the petitioner, it is apparent that L-1 licence was granted to Rajwinder Singh against whom criminal case was registered. Similarly, L-1 licence was granted to Anant Wines & Spirits L-1 IMFL/IFL Village Dugri, Tehsil Payal, Ludhiana; Bottling plant was granted to M/s Pernod Ricard India Pvt. Ltd. at Rajasthan Liquors Ltd., Haripur Hindua, Derabassi, M/s Rock & Storm Distilleries Pvt. Ltd., Village Chhajli, Sangrur, BWH-2, M/s Pernod Ricard India Pvt. Ltd. at S.D. Beverages Pvt. Ltd., M/s Pernod Ricard India Pvt. Ltd. Village Ghollumajra, Derabassi, M/s Empire Elcobrew Pvt. Ltd. village Jaula Khurad, Dera Bassi, and M/s ADS Spirits Private Limited Vill-Basoli, Tehsil-Dera Bassi; and distillery was granted to M/s Oasis Distilleries Limited, Ferozepur.

32. So far as the petitioner is concerned, no criminal case is registered against the petitioner – company, and against the Director while an FIR has been registered, charge-sheet has not been filed. Thus, the criteria of a criminal case being registered against the applicant to deny him a licence, has neither been followed, nor adopted. The petitioner alone appears to have been chosen differently.

33. In view of the observations made by the Supreme Court in the case of **Gwalior Distilleries (supra),** we are satisfied that it is a case of violation of Article 14 of the Constitution of India, and it is a clear case of discrimination and arbitrary 'pick and choose' treatment. The conditions outlined in terms of the excise policy also do not require an affidavit regarding Director's involvement in any criminal case where the applicant is a company.

34. We are, therefore, of the firm view that the petitioner has been arbitrarily deprived of getting a fresh licence for L-1.

35. We also noticed that the criminal case was registered during the pendency, when the petitioner was having L-1 licence. The said licence was renewed for the next year too, during the pendency of the criminal case. No new circumstances can be said to have been made out for denying the petitioner the said benefit of grant of licence and continuing his business. The petitioner also possesses L-1 licence in other States too. The yardstick adopted for denial of licence to the petitioner is thus, found to be whimsical and based on unjustified principles, with no basis in law.

36. From the perusal of the order passed in appeal, we find that the concerned Appellate Authority designated to decide the appeal, has failed to perform its duty in accordance with law. The reasons put forth for rejecting the application are without any basis and lacks any substantial legal support. The decision making process of the Appellate Authority is found to be flawed with aberration and misinterpretation of the provisions of law.

37. Taking into consideration that almost nine months have elapsed, we propose to direct the respondents to consider the case of the petitioner for awarding L-1 licence during the continuance of the excise policy of 2024-25 until it is replaced by the new policy. This should be done on pro rata basis, with the licence fee payable for the remaining licensing period i.e. up to March, 2025 or any extension thereof. The petitioner would be free to deposit the amount accordingly for the grant of L-1 licence.

38. Accordingly, this writ petition is allowed. The order passed by the respondents dated 17.05.2024 denying the grant of L-1 licence to the

petitioner is quashed and set aside with further direction to consider the case of the petitioner for allotment of L-1 licence in terms of the conditions as noticed above.

39. No costs.

40. Pending miscellaneous application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

10.01.2025
Lavisha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*