

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 25777 of 2012 (O&M)

DATE OF DECISION : MARCH 18, 2014

Arrive Safe Society of Chandigarh

..... PETITIONER

VERSUS

National Highway Authority of India and others

..... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

PRESENT: Mr. AK Jain, Advocate, for the petitioner.
Mr. Chetan Mittal, Sr. Advocate, with
Mr. Varun Issar, Advocate (Amicus Curiae).
Mr. SK Sahore, Advocate, for respondent Nos.1 to 3.
Mr. HS Sethi, Additional Advocate General, Punjab, for
for respondent No.4.
Mr. Kamal Sehgal, Additional Advocate General,
Haryana, respondent No.5.
Mr. Harsh Aggarwal, Advocate.
Mr. Hemant Bassi, Advocate.
Mr. Vivek Singla, Advocate.

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SANJAY KISHAN KAUL, CJ.

CM 3318 of 2014

Allowed subject to just exceptions.

CM 3319 of 2014

Leave granted to place on record joint status report of
National Highway Authority of India and State of Punjab and the
application is allowed.

CM 3370 of 2014

Leave granted to place on record Excise Policy for the

years 2013-2015 as Annexure A-1, in view of Special Leave Petition filed against the order of this Court dated 17.12.2013, which was dismissed on 10.3.2014, and the application is allowed.

CM 3371 of 2014

The petitioner has filed this application seeking a direction that the amendment to the Liquor Policy by incorporating clause 1.2.5 (b) does not serve the purpose and a new Liquor Policy ought to be framed.

We are not inclined to accept this prayer though we have examined the draft of Policy placed before us with the object of subserving the objectives with which this petition was filed to avoid the dangerous cocktail of drinking and driving.

The application stands disposed of.

CWP 25777 of 2012

The present petition styled as a Public Interest Litigation has been filed seeking directions against the respondent-authorities to comply with the mandate of The Control of National Highways (Lands and Traffic) Act, 2002 and consequently for removal of liquor vends situated on the highways. Directions were also sought against the Excise and Taxation Policy permitting installation of liquor vends on the highways and road side and restraining them from issuing licences.

We have passed orders from time to time to check the mal-practice of drinking and driving. We have been able to get both the States of Punjab and Haryana along with the

National Highway Authority of India on board for checking the menace arising out of the vends being easily accessible from the highways for which also directions were issued from time to time.

The problem was aggravated on account of the fact that the State of Haryana came up with the Policy for two years for the first time when the lis was already pending before this Court and we were of the view that the endeavour was to avoid the possible rigors of the orders which may be passed in these proceedings, especially as the State of Haryana had been taking time on more than one occasion to file response. We were, thus, influenced by the fact that the Liquor Policy for the State of Haryana purported to be for a period of two years and taking cue from what was stated by the State of Punjab, we were willing to give concession also to the State of Haryana till 31.3.2014 so that a new regime came into play with effect from 1.4.2014. As noticed above, the endeavour of the State of Haryana to challenge the said direction passed by this Court before the Hon'ble Supreme Court of India has not been successful.

We have analysed the new Policy, a copy of which has been placed on record by the State of Haryana. The amendments made to the Policy have been carried out in bold letters. The relevant clause for our purpose is para 1.2.5, which reads as under:-

**"1.2.5 RESTRICTION OF LOCATION ON SCHEDULED
ROADS ETC:**

- (a) The retail liquor outlets on National Highway/ State Highways (except in case of retail liquor outlets located in the areas of Municipal Committees/ Municipal Corporations/ Councils/ Housing Boards or any other local authority/ Urban Estates/ the areas developed by the colonizers with the approval of the Government) shall be located at a distance as stipulated in the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963).
- (b) No liquor vend shall be located along the National Highways. They shall not be accessible and preferably not visible from the National Highways or the service lane running along such highways.

Note :- It shall be the personal responsibility of the DETC (Excise) of the district concerned to ensure the strict compliance of the above stipulated restrictions.”

It has been pointed out both by learned counsel for the petitioner and learned Additional Advocate General for the State of Haryana that the aforesaid clause (b) has to be read in the context of clause (a) of the same paragraph. Thus, while clause (a) refers to retail liquor outlets on National Highway/State Highways, in clause (b) the reference is only to the National Highways. It has been explained by the learned Additional Advocate General for the State of Haryana that exceptions have been carved out qua retail liquor outlets located in the Municipal Committees/Municipal Corporations/Councils/Housing Boards, etc. as the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of

Unregulated Development Act, 1963 will not apply to the said areas. He, however, submits that clause (b) takes care of those areas also.

It emerges from the submissions that clause (b) undoubtedly needs some modification to the extent that the reference made at two places to 'National Highways' should be both for 'National Highways' as well as 'State Highways' and such vends should not be visible from the highways. The phraseography used "preferably not visible" would not suffice and the word 'preferably' has to be deleted. These modifications have been made with the concurrence of the learned counsel for the National Highway Authority of India, who has obtained instructions in this behalf. Clause (b), thus, will have to be read as under :-

“(b) No liquor vend shall be located along the National Highways/State Highways. They shall not be accessible or visible from the National Highways/State Highways or the service lane running along such highways.

Note :- It shall be the personal responsibility of the DETC (Excise) of the district concerned to ensure the strict compliance of the above stipulated restrictions.”

We are unable to accept the plea of the learned Additional Advocate General for the State of Haryana that in substance the issue raised was only qua National Highways. It was both for National Highways and State Highways and it can hardly be contended that driving and drinking is not permissible on National Highways but that shall do no harm on State

Highways !

We, thus, direct the State of Haryana to incorporate the aforesaid necessary amendments in the amended Liquor Policy to be published.

A submission which is also sought to be raised before us by the learned counsel for the petitioner as well as certain counsels representing the liquor vend owners is that what was envisaged by this Court was a new Liquor Policy and the State of Haryana having issued Liquor Policy for two years, was not appreciated.

While this may be true, the reason for this Court not taking kindly to the two years Liquor Policy was that the aspects which were to be gone into in the present proceedings were sought to be precluded from being examined by making the Policy applicable for two years. Once those are addressed, we cannot say that the amendment to the Policy cannot achieve the same objective.

The liquor vend owners seek also to assail the other amendments made in para 2B of the Liquor Policy. This arises from the contractual rights inter-se the liquor vend licensees and the State Government. The State Government has shown certain concession arising from the shifting of the liquor vends by not enhancing the licence fee in those cases and also giving a gateway to walk out qua that vend if it is found not feasible as business proposition by that licensee. In this behalf, vide our order dated 13.9.2013, we had directed that the State Government would be required to refund proportion of the fee

collected from the licensees as they could not be made to suffer any financial loss. However, once again, this amounts to reading a part of the order as the observations made therein were in the context of the Court's directions to close down the liquor vend forthwith but ultimately, on account of various administrative exigencies of the State, a longer period was made available to achieve the basic objective of the petition by seeking to bring forth the necessary preventive measures from 1.4.2014.

The last point arising is a plea of the liquor vend licensees that what the State Government seeks to do is to give an option only qua the particular vend while licences are issued in groups. It is their submission that the option should be to walk out of all the liquor vends in that group.

We are, however, not examining this aspect of the Policy as it is not an issue before us. We make it clear that all that we have examined is the issue of location of liquor vends close to National/State Highways and how to prevent the same. Our order does not amount to an interpretation of the Liquor Policy as a whole, one way or the other.

As far as State of Punjab is concerned, it appears that the necessary affidavit has been filed in CWP 11391 of 2012. We have examined the same. It is pointed out that the only amendment required qua the issue raised before us is, once again, of making it applicable even for State Highways and service lanes and not confined to National Highways. The published Excise Policy also will make the necessary changes and ensure incorporation of model clause (b) as aforesaid.

The petition is, accordingly, disposed of with the hope that better sense will prevail over the driving public by creating an impediment in any matter of mixing drinking and driving – a deadly cocktail best avoided.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

March 18, 2014
Kang

(ARUN PALLI)
JUDGE