

**HIGH COURT OF MADHYA PRADESH: JABALPUR****(Division Bench)****Writ Petition No. 5197/2018****Manoj Sharma** ..... **Petitioner**

- V/s -

**State of M.P. & Others** ..... **Respondents****Present:**

Shri Sanjay K. Agrawal, Advocate for the petitioner.

Shri Amit Seth, Government Advocate for the respondents-State.

*With***Writ Petition No. 6522/2018****Pradeep Kumar Shrivastava** ..... **Petitioner**

- V/s -

**State of M.P. & Others** ..... **Respondents****Present:**

Shri Manoj Sharma, Advocate for the petitioner.

Shri Amit Seth, Government Advocate for the respondents-State.

**CORAM :****Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Vijay Kumar Shukla, Judge****Whether Approved for Reporting : Yes****Law Laid Down:**

- The trade in country/foreign liquor is *res extra commercium* trade. A citizen does not have any fundamental right to deal therewith. The State alone has the exclusive privilege to deal in liquor from manufacture to distribution and from sale to consumption. It is for the State to part with its exclusive privilege for a price.
- The Excise Policy notified in the State Government Gazette on 01.02.2018 permits the existing licensees to seek renewal of licence for the next year on the reserve price. If the existing licensee has not sought

renewal, the policy contemplates the willing persons to seek licence on the reserve price. If 70% of these two categories do not offer to seek renewal on the reserve price, only then the e-auction is contemplated. While determining 70% of the revenue for resorting to e-auction, it is not necessary that a defaulter of payment of the revenue will be excluded in view of the peculiar facts in the current year on account of an order passed by this Court in a writ petition filed by one of the liquor vendor.

**Significant Paragraphs:** 4, 6 to 10

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**ORDER (Oral)**  
**(26.03.2018)**

**Per : Hemant Gupta, Chief Justice:**

The issue raised in both the writ petitions is common, therefore, a common order is being passed. However, for the facility of reference, the facts are taken from W.P. No.5197/2018 (*Manoj Sharma vs. State of M.P. and others*).

2. The present writ petitions have been filed being aggrieved against the action of the State in not putting the licence for Indian Made Foreign Liquor and Country Spirit shops situated in District Betul, Hoshangabad, Khandwa, Seoni, Chhindwara, Sagar and Satna to auction i.e. liquor vends in seven Districts consisting of 180 liquor vends or group of vends. As such 99 liquor vends have been renewed on the reserve price whereas 81 liquor vends have been decided to be allotted by way of auction.

3. The grievance of the petitioner is that the Liquor Policy 2018-19 was published in the M.P. Gazette (Extraordinary) on 01.02.2018. The policy of allotment of the liquor licence is that the licensees for the year

2017-18 can apply for renewal for the year 2018-19 on the minimum reserve price, which is 15% more than the last year's annual licence value. Clause 1.2 contemplates that if the existing licensees are not desirous of renewal then the applications will be invited for allotment of the liquor licence on the reserve price, which will be called as lottery applicants. Clause 1.3 of the Policy contemplates that if the above two categories i.e. licensees, who are desirous of renewal of licence and the applicants, who are desirous of taking the liquor vends on a reserve price, are 70% or more then the same will be allotted by the District Committee and if necessary by renewal/draw of lots. If still any liquor vends remains to be allotted, the same shall be put to auction by e-tender. Clause 2.4 prescribes the time line for the renewal of licence. The process of allotment of vends starts on 05.02.2018 and the applications for renewal or for draw of lots were received up to 9.2.2018. The Committee was to take final decision on the applications for renewal or for draw of lots on the reserve price up to 4.00 pm on 15.02.2018.

4. The argument of the learned counsel for the petitioner is that certain defaulter licensees have been taken into consideration for determining minimum benchmarks for 70% of the reserve price, therefore, the only option with the State is to e-auction the liquor vends. Reliance is placed upon a Full Bench judgment of this Court reported as **2010(2) MPLJ 443 (Chingalal Yadav vs. State of M.P. and others)**. It is further argued on behalf of the petitioner that the Excise Commissioner has issued a circular on 16.02.2018 (Annexure P-2) to take into consideration the willingness of M/s Gulmohar Traders and its sister Concern- the Licensee

in District Burhanpur for the year 2017-18, to determine the minimum benchmarks of 70% of the revenue bids. It may be stated that M/s Gulmohar Traders, a defaulter, filed a writ petition challenging the action of declaring him as defaulter bearing W.P. No.6800/2017 (*M/s Gulmohar Traders vs. State of M.P. and others*). This Court on 8<sup>th</sup> May, 2017 passed an order that no coercive steps shall be taken against the petitioner as the Bank-guarantee stands encashed. However, on 20<sup>th</sup> February, 2018 i.e. after the cutoff date of 15<sup>th</sup> February, 2018, a detailed interim order was passed by the learned Single Bench directing the State to renew the licence of M/s Gulmohar Traders on deposit of 50% of the reserve price for the year 2018-19. Such order was set aside in Writ Appeal No.238/2018 (*Aman Jaiswal vs. State of M.P. and others*) on 05.03.2018. A Special Leave Petition No.6418/2018 filed by M/s Gulmohar Traders against the said order stands withdrawn on 12.03.2018.

5. M/s Gulmohar Traders and its Partners had the large presence of the liquor vends in the State and they had an interim order at an earlier stage and an order of renewal of licence in their favour on 20<sup>th</sup> February, 2018. Because of the interim order passed by this Court on 08.05.2017, a question arose as to whether the willingness by M/s Gulmohar Traders or its Partners can be treated to be a valid offer to consider the benchmark of 70% of the total revenue.

6. We find that it was only by virtue of an order passed by this Court on 05.03.2018, the issue of eligibility of M/s Gulmohar Traders attained finality. While deciding the writ appeal on 05.03.2018, this Court directed the

State to grant licence for liquor shops in Damoh and Satna in terms of the Excise Policy in accordance with law, which liquor vends were ordered to be granted to M/s Gulmohar Traders by virtue of interim order passed earlier on 20<sup>th</sup> February, 2018. The trade in country/foreign liquor is said to be *res extra commercium*. A citizen does not have any fundamental right to deal therewith. The State alone has the exclusive privilege to deal in liquor from manufacture to distribution and from sale to consumption. It is for the State to part with its exclusive privilege for a price.

7. The Excise Policy notified in the State Government Gazette on 01.02.2018 permits the existing licensees to seek renewal of licence for the next year. If the existing licensee has not sought renewal, the policy contemplates the willing persons to seek licence on the reserve price. If 70% of these two categories do not offer to seek renewal on the reserve price, only then the e-auction is contemplated. While determining 70% of the revenue for resorting to e-auction, it is not necessary that a defaulter of payment of the revenue will be excluded.

8. It is pointed out by Shri Seth that percentage of 70% was not met only because of pending writ petition by M/s Gulmohar Traders and if the percentage of default of M/s Gulmohar Traders is excluded, the renewal of the liquor vends on the reserve price cannot be said to be in violation of the policy framed. It is pointed out that in terms of the policy framed, validity of which has been upheld by the Full Bench of this Court in **Chingalal Yadav (supra)**, the State has got the reserve price, which is more than 15% of the revenue of the year 2017-18.

9. The circular dated 16.02.2018 was issued in view of the *status quo* order dated 08.05.2017 granted by this Court in W.P. No.6800/2017 filed by M/s Gulmohar Traders. The decision not to treat M/s Gulmohar Traders as defaulter for determining the benchmark of 70% cannot be said to be unjustified. Firstly; for the reason that there was an order passed by this Court that no coercive steps shall be taken against M/s Gulmohar Traders. Any other interpretation would have led to an allegation that the order passed by this Court has not been complied with. Secondly, after the circular was issued on 16.02.2018, there was an order passed by this Court not only not to treat M/s Gulmohar Traders as defaulter but also to grant liquor licence of Damoh and Satna. Such order was set aside on 05.03.2018. Therefore, on account of uncertain legal situation, the State acted in a *bona fide* manner to avoid complications. Still further, Clause 1.3 of the Excise Policy does not deal with the situation where the previous licensee is defaulter but still he is willing to seek renewal of licence. Therefore, to clarify such grey area, the circular was issued which cannot be said to be any way affecting the right of any person.

10. Still further the petitioners are aware of the circular dated 16.02.2018 and have chosen to invoke the writ jurisdiction of this Court at the fag end of the financial year when the liquor vends have to start soon thereafter from 01.04.2018. The petitioners have not invoked the writ jurisdiction of this Court at the earliest opportunity, it appears that the petitioners are fence-sitters and are being prompted by the competitors to oust the successful licensees who have opted for renewal of the liquor vends.

11. In view of the peculiar facts and the fact that the revenue of the State has not been compromised, we do not find that the writ petitions claiming e-auction of the liquor vends warrant any interference. Consequently, both the writ petitions are **dismissed**.

**(HEMANT GUPTA)**  
CHIEF JUSTICE

**(VIJAY KUMAR SHUKLA)**  
JUDGE

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