

Jammu & Kashmir High Court

Manmohan Kour vs Ut Of Jammu And Kashmir And Others on 17 November, 2022

Sr. No. 82

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) 1833/2022

Manmohan Kour

..... petitioner (s)

Through :- Mr. Yasser Tak Advocate

V/s

UT of Jammu and Kashmir and others

.....Respondent(s)

Through :- Mr. K.D.S.Kotwal Dy.AG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGEMENT (ORAL)

1 The petitioner is aggrieved of and has called in question Order No. 161-EC of 2022 dated 23.08.2022 passed by the Excise Commissioner, J&K, whereby the bid of the petitioner for grant of liquor vend (JKEL-2) at Panchayat Sountha, Tehsil and District Udhampur has been rejected and bid amount forfeited.

2 Briefly stated, the facts leading to the filing of this petition are that the petitioner participated in the auction of liquor vend in question for which the process was initiated by respondent No. 2 on 09.03.2022. The allotment of retail liquor vend by way of auction was in pursuance of the Excise Policy 2022-23 notified by the Government vide S.O No. 71 dated 22.02.2022. The petitioner emerged as the highest bidder and deposited the bid amount to the tune of Rs.1,15,50,000/- with the respondents. This was, in addition, to the participation fee and earnest money of Rs 7,25,000/-. The petitioner completed all the requisite formalities and obtained no objection certificate required under J&K Liquor Licence and Sales Rules, 1984 ['Rules of 1984'], but the license in favour of the petitioner was not issued. The petitioner approached the respondents to know the reasons therefor. The petitioner was informed that he was disqualified to hold the licence of retail vend (JKEL-2) for being holder of a licence for bottling (JKEL-6). A formal order in this regard has been passed by the Excise Commissioner on 23.08.2022 which is impugned in this petition. 3 The petitioner has challenged the impugned order, inter alia, on the ground that under the J&K Excise Act Svt., 1958 ['the Act of 1958'] and the Rules framed there under, there is no prohibition for holding JKEL-2 along with JKEL-6 and, therefore, the petitioner has not attracted any disqualification.

4 Per contra, Mr. K.D.S. Kotwal, learned counsel for the respondents submits that, in terms of Rule 19(1) read with Rule 39(6) of the Rules of 1984, the petitioner is disqualified to hold the license JKEL-2 in conjunction with the bottling license i.e. JKEL-6. It is submitted that because of the

aforesaid disqualification, the petitioner's bid has been forfeited. 5 Having heard learned counsel for the parties and perused the material on record, it is necessary to notice the relevant provisions of the Act of 1958 and Rules framed thereunder.

6 The Act of 1958, in particular, Chapter IV deals with manufacture, possession and sale of liquor and intoxicating drugs. Under Section 11 of the Act, no liquor, or intoxicating drug can be manufactured, possessed or sold except under the authority and subject to the terms and conditions of a licence granted by the Excise Commissioner in that behalf. It further provides that no distillery or brewery or other place for the manufacture of liquor of any kind shall be constructed or worked except under the authority and subject to the terms and conditions of a licence granted by the Excise Commissioner in that behalf.

7 The Act of 1958, nowhere, provides that a person cannot hold two licences of different type together and simultaneously. This is, however, left to be regulated by the Rules, to be framed by the Government under Section 25 of the Act. The Government, in the exercise of powers conferred upon it by Sections 3A, 12, 20, 25 of the Act, has framed the rules known as 'J&K Liquor License and Sales Rules, 1984'. Rule 4 enumerates the classes of licences that can be issued under the Rules.

8 Apart from others, the licence JKEL-2 pertains to retail vending of foreign liquor to the public only and the Competent Authority to issue the licence is the Excise Commissioner. JKEL-6 pertains to bottling of foreign liquor and the Competent authority to issue it is also the Excise Commissioner.

09 Rule 18, which is relevant for considering the controversy raised in the present petition, provides as to which class of licence cannot be held in conjunction with other class or classes of licences. Rule 18, to appreciate it better, is set out below:

"18. No licence shown in column 2 of the subjoined table shall be held by persons holding or in any way connected in interest with the persons holding any of the licences shown against them in column 3 except where it has been specifically provided that it may be held with the special sanction of the Excise Commissioner.

S.No.	A license in form	My not be held in conjunction with
1	JKEL-1	A licence in Form JKEL-1A, JKEL2, JKEL-3, JKEL-4 and JKEL-7
2	JKEL-1-A	No other licence.
3	JKEL-2	JKEL-1A, JKEL-4, JKEL-12, JKEL-13, and JKEL-7
4	JKEL-2, JKEL-3, JKEL-4 and JKEL-7	A licence in Form JKEL-1, JKEL-1A
5	JKEL-8, , JKEL-9	A licence in form JKEL-1, JKEL-1A
6	JKEL-10, JKEL-11	JKEL-12, JKEL-12 and JKEL-14
7	JKEL-12	A licence for any dealings in country liquor or the vend of foreign liquor or rectified spirit

10 From a reading of Rule 18, it clearly transpires that a licence in

Form JKEL-2 cannot be held by a person in conjunction with a licence in Form JKEL-1A, JKEL-4, JKEL-12, JKEL-13 & JKEL-7. There is, thus, no prohibition contained in Rule 18 with regard to holding of JKEL-2 license in conjunction with JKEL-6 licence.

11 Rule 19, which has been relied upon by the Excise Commissioner to declare the petitioner disqualified and for forfeiture of his bid, reads thus:

"19(1). No person holding a licence for a distillery may hold any licence made under these rules except a licence in form JKEL-A. (2) No person holding a licence for a brewery shall hold any licence under these rules".

12 From a plain reading of Rule 19, it is abundantly clear that the said rule deals with a person, who is holding a licence for the distillery and provides that such person shall not hold any other class of licence issued under the rules except a licence in Form JKEL-8. There is, however, no prohibition for holding a licence in Form JKEL-2 in conjunction with licence in form JKEL-6. Rule 39 (6) is also a provision which has been pressed into service by the Excise Commissioner to declare the petitioner disqualified to hold the licence in Form JKEL and, therefore, needs to be reproduced hereunder:

"39(6). Licence in Form JKEL-6.

The licensee shall comply with all the provisions of the Jammu and Kashmir Distillery Rules in so far as they are applicable to the bottling and maintenance of accounts of Indian Made Foreign Liquor."

13 From a plain reading of Rule 39(6), it is abundantly clear that the provision only places obligation on the licensee holding the licence in form JKEL-6 (bottling) to comply with all the provisions of Jammu and Kashmir Distillery Rules insofar as these are applicable to the bottling and maintenance of accounts of Indian Made Foreign Liquor.

14 A quick look at the Distillery Rules framed by the Government in exercise of the powers conferred by Sections 11, 20 and 25 of the Jammu and Kashmir Excise Act, 1958 would reveal that there is no such prohibition in respect of holding of JKEL- 2 licence in conjunction with JKEL-6 licence. 15 From a plain reading and understanding of the Rules as they stand, there is hardly any scope for placing the interpretation as is sought to be placed by the respondents on Rule 19(1) read with Rule 39(6).

16 The licence for establishment of distillery is dealt with separately by the J&K Distillery Rules and the licence issued for distillery is in Form D-

2. The Rules of 1984, however, do not make any reference to the licence in Form D-2. Had the

intention of the Rule making Authority been to provide that a person holding a distillery or bottling licence may not hold the licence in JKEL-2, the same could have been spelt out in Rule 19 itself. The Rules of 1984, reproduced above, clearly provide classes of licences which cannot be held in conjunction with the other class or classes of licences. Neither, licence in the form D-2 is indicated in the Rule 18, nor Rule 18 prohibits the holding of licence in form JKEL-2 in conjunction with licence in form JKEL-6. What is prohibited is clearly contained in Rule 18. When the Rule is clear and unambiguous, the same has to be read, understood and applied as it is. No Executive Authority howsoever high, it may be, can substitute or subtract anything from the rule which is otherwise clear and unequivocal. The Rules of 1884 are statutory in character having been framed in the exercise of powers conferred by Section 3-A, 12, 20 and 25 of Excise Act and every Authority including the Excise Commissioner is bound to give effect to the Rules as they are, without adding or subtracting anything.

17 In view of the aforesaid clear and unambiguous position emerging from a reading of entire Excise Act and the Rules framed thereunder, in particular, Rule 19 (1) and Rule 39(6), I am of the considered view that the Excise Commissioner has proceeded totally on a wrong premise and has passed the impugned order which is clearly not sustainable in law. The Rules, to reiterate, do not provide for any prohibition for holding the licence in form JKEL-2 in conjunction with Form JKEL-6 and, therefore, the very premise, on which the petitioner has been disqualified and his bid amount forfeited, is illegal and contrary to law.

18 In the premises, this petition is, accordingly, allowed and the order impugned is set aside. The respondents, in particular, the Excise Commissioner, J&K is directed to immediately and forthwith, allow the petitioner to operate his vend by issuing the requisite licence in his favour within a period of two weeks from the date copy of the judgment is served upon them.

19 Had the petitioner not been disqualified in terms of the impugned order and issued the licence in time and permitted to operate his vend, he would have commenced his business w.e.f 01.04.2022. In this way, the petitioner has lost 2/3rd of the period of licence. The petitioner is, therefore, entitled to refund 2/3rd of the bid amount which shall be released in his favour within a period of four weeks from the date of receipt of copy of this judgment.

(SANJEEV KUMAR)
JUDGE

Jammu
17.11.2022
Sanjeev

whether order is speaking:Yes