

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWP No: 9721 of 2023
Alongwith CWP No: 115 of 2024
Reserved on: 07.04.2026
Pronounced on: 06.07.2026.

CWP No: 9721 of 2023

1. M/s Kanda Wine
Through Sh. Arun Kumar
...Petitioner
- Versus*
- State of Himachal Pradesh & Others
...Respondents

AND

CWP No: 115 of 2024

2. Sanjeev Kumar & Others
....Petitioners
- Versus*
- State of Himachal Pradesh & Others
...Respondents

Coram:

Hon'ble Mr. Justice Vivek Singh Thakur, Judge
Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting ?* *Yes.*

For the petitioner: Mr. H.S. Rana and Mr.
Amrinder Singh Advocates in
CWP No. 9721 of 2023.

For the respondents: Mr. Anup Rattan, Advocate
General with Mr. Sushant
Keprate, Additional Advocate
General, for the Respondents
1 to 4-State.

Respondent No 5 deleted vide
order dated 09.07.2025.

Mr. Subhash Sharma, Senior
Counsel alongwith Mr. Prantap
Sharma, Advocate for the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Respondents 6 to 9 in CWP No 9721 of 2021.

AND

Mr. Subhash Sharma, Senior Counsel alongwith Mr. Prantap Sharma, Advocate for the Petitioners in CWP No: 115 of 2024

Mr. Anup Rattan, Advocate General with Mr. Sushant Keprate, Additional Advocate General, for the Respondents 1 to 4-State.

Mr. H.S. Rana and Mr. Amrinder Singh Advocates for Respondent No 5 in CWP No 115 of 2024.

Ranjan Sharma, Judge

M/s Kanda Wine, through its partner has come before this Court in CWP No 9721 of 2023, assailing the orders dated 22.11.2023 [*Annexure P-1*], passed by the Respondent No 1 -Financial Commissioner (Excise) as an Appellate Authority, exercising powers under Section 68 (2) of the Himachal Pradesh Excise Act 2011 and the order dated 18.11.2023 [*Annexure P-2*], passed by the Respondent No 3-Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise (North Zone) Palampur (HP), cancelling the liquor license of the petitioner by exercising the powers

vested under Section 29 of the Himachal Pradesh Excise Act 2011, on account of non-remission of license fee for the period in question; **and** the connected CWP No. 115 of 2024 has been filed by Mr. Sanjeev Kumar and three others assailing final notice issued on 30.11.2013, [Annexure P-1], by Respondent no 4-Deputy Commissioner State Taxes and Excise Una directing them to deposit the license fee and the penalty amounting to Rs 2,80,60,881/- failing which, said amount was liable to be recovered as arrears of land revenue from them.

FACTUAL MATRIX IN CWP No 9721 OF 2023:

2. In CWP No 9721 of 2023, M/s Kanda Wine, being a partnership firm, has filed the instant writ petition, through its partner Shri Arun Kumar against the State of Himachal Pradesh and others, seeking the following relief(s):

- (i). The impugned orders dated 22.11.2023, 18.11.2023 & order of freezing Accounts if any passed by respondents may kindly be quashed and set aside and the Petitioner may kindly be permitted to operate his vends as per license granted to him with respect

to RETAIL LICENSEE, L-2/L-14/L-14S, UNIT NO. 03, SANTOSHGARH in District Una, HP which consists of Nine liquor vends i.e. L-14 Ajouli, L-2 Santoshgarh, L-14 Udaypur near Tubewell, L-14 Pekhubela, L-14 Sanoli, L-14 Mazara, L- 14 Santoshgarh Border, L-2 Santoshgarh Border, L-14 Santoshgarh, and one sub vend Sanoli Border and justice be done.

- (ii). That the reauction fixed on 23.11.2023 may be quashed and set aside and License given to Respondent No 5 on lower bid may kindly quashed and set aside in the interest to justice and fair play.
- (iii). That the condition no 2.42 of Annual Excise Act 2023-24 (Annexure P-4) may be quashed and set aside being totally arbitrary and unconstitutional and against the principle of natural justice.
- (iv). That direction may be given to Respondent No.1 to initiate inquiry against the Respondent No.3 concerned Authority who has with malafide intention has illegally freezed the accounts of petitioner day before hearing and before the date on which the pending amount is to be deposited as per notice dated 17.11.2023.
- (v). That the direction may kindly be issued to respondents to submit report before the Hon'ble Court against how many defaulter Licensee the similar action of cancellation

as per Rule 2.42 has been taken by the Respondents.

(vi). That the Petitioner may kindly be allowed to continue as per license dated 31.03.2023 and the losses incurred due to illegal action of the Respondents no 3 & 4 may kindly be ordered to be adjusted in the License fees of the Petitioner.

(vii). That the recovery if any should be made from the concerned authority who with malafide intention targeted the Petitioner and in illegal manner cancelled the license of Petitioner.

2(i). Case as set-up by Learned Counsel is that the petitioner-firm, M/s Kanda Wine, has been carrying on business of liquor for the past six years. It is averred that on 18.03.2023, his firm M/s Kanda Wine, was allotted a liquor retail license for the year 2023-24 of L-2/L-14 /L-14-S in Unit No 3-Santoshgarh in District Una, consisting of nine liquor vends and one sub-vend for an amount of Rs Nine Crores and Twenty Lakhs [i.e. Rs 9,20,00000]. It is averred that though petitioner was regular in remitting license fee till June 2023 but from July 2023 his business was adversely affected in view of natural calamity struck the state and the fact

that in bordering area of Punjab, the liquor was sold at lower rates and due to this, petitioner could not deposit-remitt the license fee to State Authorities and for non-remission of license fee, the Respondent no 4-Deputy Commissioner State Taxes and Excise Una forwarded a communication to the Respondent No 3-Zonal Incharge-Collector-cum-Joint Commissioner of State Taxes and Excise (North Zone) Palampur, who in turn passed an order on 18.11.2023 **[Annexure P-2]**, cancelling the liquor license of the petitioner by invoking Section 29 of Himachal Pradesh Excise Act 2011 and Condition No 2.42 of Excise Announcements for the year 2023-2024.

2(ii). Feeling aggrieved against the order of cancelling the license on 18.11.2023 *[Annexure P-2]*, petitioner filed an appeal under Section 68 (2) of the Himachal Pradesh Excise Act 2011 before the Appellate Authority-cum-Financial Commissioner (Excise) vide Appeal No 8 of 2023 and the same was dismissed on 22.11.2023 **[Annexure P-1]**.

It is in this backdrop, the petitioner

has assailed the order passed by Respondent No 3-Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise on 18.11.2023 [**Annexure P-2**] cancelling the license of the petitioner ; *and* the order passed by the Respondent No 1-cum-Appellate Authority on 22.11.2023 [**Annexure P-1**] dismissing the appeal; and the action of State Authorities in reauctioning the liquor unit(s) to the Respondent No 5 by a backdoor procedure on the basis of the fake documents submitted by the aforesaid respondent; *and the* action of the Authorities in freezing his bank account on 17.11.2023 was illegal; *and* has laid a challenge to the Condition No 2.42 of Annual Excise Announcements 2023-24 [**Annexure P-4**] to violative of the principles of natural justice, arbitrary and unconstitutional; *with the prayer* to quash the Impugned Orders and for restoring his liquor license granted on 31.03.2023 and to allow the petitioner to continue his business in terms of the said license.

3. In Reply to CWP No 9721 of 2023,

State Authorities have filed Reply-Affidavit dated 11.03.2024 of Commissioner State Taxes and Excise Himachal Pradesh.

3(i). Perusal of the Reply-Affidavit states that present petition is not maintainable and neither any fundamental right nor any legal right of the petitioner has been violated. It is averred that petitioner was bound to comply with the conditions of license but since the petitioner has failed to remit the license fee as per the terms and conditions of license, therefore, the license was cancelled in-accordance with law and once petitioner had participated in an auction with open eyes and was awarded the contract /tender then, petitioner cannot turn around and resile from the terms and conditions which were accepted with open eyes.

3(ii). Reply states that as per the Condition No 2.42 of Excise Announcements for the year 2023-2024, the license fee was to be remitted in 12 installments by 15th of March of financial year and license fee payable for particular month

was to be deposited in government treasury by 7th day of subsequent month and in case, monthly license fee was not deposited by 7th day of subsequent month, then, the District In-charge was bound to forward a report to Zonal In-charge within three days and in case, the licensee still failed to deposit the license fee thereafter, the Zonal In-charge was to take steps for cancelling the license of the liquor vend /unit within three days positively.

3(iii). Reply-Affidavit states that the petitioner applied for license for retail sale and based on said license, Unit No-III for Santoshgarh in District Una was allotted to the petitioner on 18.3.2023 for an amount of Rs 9,20,00000/- . Reply states that due to natural calamity which struck the State and considering this situation and after due approval of state government, the Respondent no 2-Commissioner of State Tax and Excise issued a communication on 26.09.2023 **[Annexure R-2, not on record but not denied by petitioner in rejoinder also]**, that license-fee

payable in August 2023 should be deposited before 07.10.2023 and license fee payable in September 2023 should be deposited by 07.11.2023 and the license fee for the subsequent months of October 2023 and thereafter was payable in accordance with annual excise announcements.

3(iv). Reply states that the State Authorities afforded adequate opportunity to the petitioner for depositing the pending license fee and he was heard by Respondent No.3 on 09.11.2023, 10.11.2023, 15.11.2023, 16.11.2023 and 18.11.2023 but for non-deposit of license fee, the Respondent No 3-Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise Palampur passed an order on 18.11.2023 [*Annexure P-2*] cancelling the liquor license of the petitioner.

Reply-Affidavit states that even during the appeal, the Respondent No 1-cum-Appellate Authority (Excise) gave an opportunity to the petitioner on 21.11.2023 and on 22.11.2023, for depositing the license fee but for non-deposit of license-fee, the appeal filed under Section 68

(2) was dismissed on 22.11.2023.

So far as, the freezing of accounts is concerned, it was averred that the bank account of the petitioner (Arun Kumar) was freezed to secure State excise revenue. Reply indicates that after cancellation of license of the petitioner, the cancelled unit(s) were re-allotted to the Respondent No 5 in accordance with Condition no 3.26 of Excise Announcements 2023-24 in a transparent manner. Reply further states that Condition No 2.24 and 2.42 of Annual Excise Announcements for the year 2023-2024, **Annexure R-1**, are in conformity with the Excise Act, the Rules and the law.

In this background, the State Authorities have opposed the claim with the prayer to dismiss the writ petition.

4. In rejoinder, the petitioner has reiterated the averments made in the writ petition.

4(i). During the pendency of present writ petition, an application i.e. **CMP No 3630 of 2024**, was filed by one Shri Sanjeev Kumar

and three others seeking impleadment and this application was allowed by this Court vide order dated 26.03.2025 and accordingly, the aforesaid applicants were impleaded as party-Respondents No 6 to 9 in present proceedings. These newly added Respondents 6 to 9 filed Reply-Affidavit dated 27.05.2025, [at page 202 of paper book], with the stand that the petitioner namely Shri Arun Kumar was allotted license on 18.03.2023, but without mentioning about the partnership deed and since these respondents were nowhere reflected as partners in the license therefore, no liability could have been fastened on them by the State Authorities-Respondents, by calling upon by way of a final notice issued on 30.11.2023 **[Annexure R-6/1]** to deposit the amount of Rs 2,80,60,881/- as mentioned in said notice. It is further averred that mere freezing of individual bank account of Shri Arun Kumar [alleged partner] cannot form basis to implicate and cast the liability on Replying Respondents were not partners of the alleged firm, as stated

in Paras 11 and 17 (a) to (i) of Reply Affidavit and the averments made in the counter writ petition i.e. CWP No 115 of 2024, titled as Sanjeev Kumar and others versus State of HP and others, with the prayer to dismiss the writ petition and to quash the final notice issued on 30.11.2023 **[Annexure R-6/1]** which is subject matter of CWP No 115 of 2024.

4(ii). During the pendency of the instant writ petition, vide orders dated 18.06.2025, the name of Respondent No 5 [Gitanjali Dewedi] was deleted from the array of respondents in the instant case.

FACTUAL MATRIX IN CWP No 115 of 2024:

5. In **CWP No 115 of 2024**, the petitioners Sanjeev Kumar and three others [being Respondents 6 to 9 in the connected CWP No 9721 of 2023] have come up before this Court seeking the following reliefs:

- (i). As writ in the nature of certiorari may kindly be issued quashing and setting aside the final notice dated 30.11.2023, Annexure P-1.

(ii). That a writ in the nature of mandamus may kindly be issued to the respondent State for ascertaining the conscious lapses and illegalities committed by various official respondents in wrongly framing the petitioners as partners in M/s Kanda Wine and also to take suitable action against the erring officials, also with the private respondent.”

5(i). Case as set-up by Learned Senior Counsel is that the Respondent No 4-Deputy Commissioner State Taxes and Excise, Una, had issued a final notice on 30.11.2023 [Annexure P-1] pointing out a huge liability of license fee and penalty of Rs 2,80,60,881/- on the petitioners who were alleged to be partners of M/s Kanda Wines. It was averred that the Respondent No 5, namely Arun Kumar, was allotted the liquor license on 18.03.2023 for license fee of Rs 9,20,00,000/- whereas partnership deed allegedly executed on 22.03.2023 [Annexure P-2] was never executed by them and thus the alleged partnership deed was falsely and illegally prepared by Respondent No 5 and same was not binding on the petitioners herein.

5(ii). It is averred that petitioner was allotted

liquor license on 18.03.2023 whereas the partnership deed was executed on 22.03.2023 [Annexure P-2] is highly doubtful, when, as per Condition no 2.46 of the Excise Announcements, the Collector of the zone concerned was bound to incorporate the factum of partnership in the license deed/allotment letter which was not done. It was averred that petitioners herein, were neither aware of any proceedings nor any orders having been passed by the department against the Respondent No 5-Arun Kumar.

In the above backdrop, the petitioners have assailed the final notice issued by Respondent No 4- Deputy Commissioner Sales Tax and Excise Una on 30.11.2023 [Annexure P-1] being Annexure R-6/1 in connected CWP No 9721 of 2023], with the prayer to take action against the Respondent No 5 for having committed illegalities.

6. In **Reply to CWP No 115 of 2024**, State Authorities have filed Reply-Affidavit dated 20-3-2024 of Commissioner State Taxes and Excise Himachal Pradesh, stating that petitioners have not availed the statutory remedy of appeal

under Section 68 of the HP Excise Act, 2011 against order/final notice dated 30-11-2023 [Annexure P-1] passed by Deputy Commissioner, State Taxes & Excise, Una, i.e. the Excise Officer within 30 days before Collector-cum-Joint Commissioner, State Taxes & Excise, North Zone, Palampur and therefore the writ petition was not maintainable.

6(i). Reply-Affidavit further states that the Respondent No 5-Arun Kumar had presented the partnership deed duly signed by all the partners in the office of the Deputy Commissioner, State Taxes & Excise, Una, on 22-3-2023, before the commencement of business which was carried out with effect from 01.04.2023 in the name of M/s Kanda Wines. It is further averred that petitioners being the partners of M/s Kanda Wine did not at any point of time object to or brought to the notice of the authorities that the partnership deed was illegal and they had not affixed their signatures on the aforesaid deed. Reply-Affidavit indicates that reliance placed on Condition No 2.46 of Excise Announcements was not applicable in the instant

case, as it relates to addition or deletion of partners during currency of license period. It was averred that Condition No 2.12 of Excise Announcements 2023-24 all the partners of the firm shall be jointly and severally liable to meet the liabilities. It was averred that the present petition is an afterthought and once the petitioners have enjoyed privileges of liquor business from 01.04.2023 to 30.11.2023 for about eight months but when it came to recovering the license fee and penalty, then, instant petition was filed just to deprive the State of its Government dues.

6(i). *In the rejoinder*, the petitioners have reiterated the claim in the writ petition, with the prayer to allow the writ petition and to quash the final notice dated 30.11.2023 [*Annexure P-1 i.e. Annexure R-6/1 in connected CWP No 9721 of 2023*], with the prayer for taking action against Private Respondent No 5 for having committed illegalities.

7. Based on pleadings and in fact-situation of instant case, [CWP No 9721 Of 2023], following question arises for determination:

“Whether the petitioner after having accepted the contract for liquor business and grant of license can resile from or wriggle out of the express contractual obligations and /or otherwise evade the liability for payment of license fee and penalty etc., upon cancellation of license ?”

8. Heard, Mr. H.S. Rana & Mr. Amrinder Singh Rana, Learned Counsel(s) for petitioner and Mr. Anup Rattan, Learned Advocate General with Mr. Sushant Keprate, Learned Additional Advocate General for the Respondents 1 to 4 in CWP No 1971 of 2023 and vice-versa in the connected writ petition, CWP No 115 of 2024.

STATUTORY PROVISIONS OF THE HIMACHAL PRADESH EXCISE ACT:

9. For appreciating the controversy, it is necessary to have a recap of the provisions of Sections 29, 30, 31, 34 71, 72 and 73 of the Himachal Pradesh Excise Act 2011, as under:

29. Power to cancel or suspend licenses etc:

Subject to such restrictions as the State Government may prescribe, the **authority granting any lease, license,** permit or pass under this Act, **may cancel** or suspend it:

(a). if it is transferred or sublet by the holder

thereof without the permission of the said authority; or

- (b) if any excise duty or countervailing duty or, **other fee payable by the holder thereof is not duly paid; or**
- (c) **in the event of any breach by the holder of such lease, license,** permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass; or
- (d) if the holder thereof is convicted of any offence punishable under this Act or the Himachal Pradesh Value Added Tax Act, 2005, the Central Sales Tax Act, 1956 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 or of any cognizable and non-bailable offence, or any offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985, or under the Trade and Merchandise Marks Act, 1958 or under the Medicinal and Toilet Preparations (Excise Duties) Act 1955 or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, 1860 or any offence referred to in section 135 of the Customs Act, 1962; or
- (e) where a license, permit or pass has been granted on the application of the grantee of a lease under this Act, on

the request in writing of such grantee;
or

- (f) at will, if the conditions of the license, permit or pass provides for such cancellation or suspension.

30. Power to cancel any other license and to recover fee:

- (1) When a license, permit or pass held by any person is cancelled under clauses (a), (b), (c) or (d) of section 29, the authority granting the license **may cancel any other license, permit or pass granted to such person by such authority** within his jurisdiction but if such other license, permit or pass has been granted by any other authority, the Financial Commissioner may cancel or suspend the same.
- (2) In the case of cancellation or suspension of a license under clauses (a), (b), (c) or (d) of section 29, **the fee payable for the balance of the period for which any license would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise revenue.**

31. No compensation or refund claimable for cancellation or suspension of license etc:

When a lease, license, permit or pass is cancelled or suspended under clauses (a), (b), (c) or (d) of section 29 or under section 30, the holder of such lease,

license, permit or pass, as the case may be, **shall not be entitled to any compensation for its cancellation or suspension or to the refund of any fee paid or deposit made in respect thereof.**”

34. No claim in consequence of refusal to renew a license etc.:

No person to whom a lease, license, permit or pass has been granted shall be entitled to claim any renewal thereof and no claim shall lie for damages or otherwise in consequence of any refusal to renew a lease, license, permit or pass on the expiry of the period for which it remains in force.

71. Power to recover license fee etc.:

In the case of cancellation or suspension of a license under clauses (a), (b), (c), (d) or (e) of section 29, the **license fee payable for the balance of the period** for which any license would have been current but for such cancellation or suspension, including any other fee, **may be recovered from such licensee as excise revenue.**

72. Power of Collector to take grants under his management or resell and recover deficiency.:

If **any holder of a license** granted under this Act, or any person to whom a lease has been granted under section 27, makes default in complying with

any condition imposed upon him by such license or lease, the **Collector may take the grant under his management at the risk of the person who has so defaulted**, or may resell it and recover any deficiency in price and all expenses of such resale in the manner specified in section 73 of this Act.

73. Excise revenue to be first charge and recoverable as arrears of land revenue.:

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, **any amount of excise revenue including all other amounts due to the State** Government under this Act from any person **shall be the first charge on the property of such person** including the distillery, brewery, winery, warehouse, shop, premises, fittings, apparatus and all stocks of liquors or materials for manufacture of the same.

(2) All **excise revenue including all other amounts due** to the State Government under this Act, which remain unpaid after the due date, **shall be recoverable as arrears of land revenue** under the provisions of the Himachal Pradesh Land Revenue Act, 1954.

10. For regulating the sale of liquor and license fee, penalty and other duties etc leviable

and the mode and manner for recovery thereof and other provisions therefor, the Respondent-State has notified Annual Excise Announcements for the year 2023-24 vide **Annexure P-4/R-1** and the relevant conditions applicable for the purposes of adjudicating these cases read as under:

“CHAPTER-I: INTRODUCTORY

- 1.1 The **liquor licenses, shall be granted** subject to the provisions of the Himachal Pradesh Excise Act, 2011 and the Rules framed thereunder from time to time. A licensee shall himself be responsible for fulfilling any other obligation under any other law or Rule not specifically mentioned hereinunder in these terms and conditions.
- 1.2 The Commissioner of State Taxes and Excise-cum-Financial Commissioner Excise Himachal Pradesh, **reserves the right to sell all or any of the licenses** by allotment or by auction or by private contract or by calling tenders or by draw of lots or by any other arrangement (including combination of the foregoing modes), **which he may consider expedient in the interest of revenue.** For this purpose, the mode of grant of these licenses may be changed by the Commissioner of State Taxes and Excise, whenever necessary before the actual

grant of the license. The Commissioner of State Taxes and Excise **may also modify the procedure contained in these terms and conditions** to give effect to such mode of grant of license after determining Fixed License Fee, Excise duties or any other levy, in such manner as he may deem fit.

1.3 All the allotments of the vends/units license shall be subject to confirmation by the Commissioner of State Taxes and Excise-cum-Financial Commissioner Excise Himachal Pradesh, who reserves the right to reject any allotment without assigning any reason for doing so.

1.4 All the **licensees shall be bound to comply with all the directions and orders** of the Commissioner of State Taxes and Excise-cum-Financial Commissioner (Excise), Himachal Pradesh and all other Excise Officers, which may be issued from time to time by them.

CHAPTER-II:

MAIN PROVISIONS FOR AUCTION-CUM-TENDER OF RETAIL EXCISE VENDS FOR THE FINANCIAL YEAR 2023-24.

2.1 The **following licenses** will be granted /allotted **by way of Auction-cum-Tender** process for the year 2023-24 **on the terms and conditions as prescribed in the succeeding paras:**

(i) A **license in form L-2** for retail vend of foreign liquor for sale to

the public. The licensee will also be eligible to sell foreign liquor in wholesale to the licensees in form L-3, L-4, L-5, L-3A, L-4A, L-5A, L-3T, L-4T, L-5T, L-10BB, L-12A, L-12B, L-12C etc. for consumption off the premises.

- (ii) A **license in form L-14** for retail vend of country liquor for consumption on and off the premises. Such licensees are also allowed to sell foreign liquor in the rural areas.
- (iii) A **license in form L-14-A** for retail vend of country liquor for consumption off the premises. They are also allowed to sell foreign liquor in rural areas.
- (iv) A **license in form L-20-B** for manufactures and retail sale of Country Fermented Liquor (Jhol).

2.2 The licenses shall be granted by inviting bids/tenders for each vend/combination of vends termed as "Unit". Applications will be submitted in accordance with the procedure prescribed in this chapter. However, all applicants intending to participate in the allotment of vends are required to go through the terms and conditions and fulfill all the requirements before submitting the application.

2.3 The District In-charge in consultation with the Zonal Collector shall also fix the number and size of the units. **The**

Units size should be such that the value of the unit shall be preferably around Rs. 8 Crore. If the condition of non-viability arises, the District Incharge in consultation with Zonal Collector may fix any size and value of the Unit, keeping in view the revenue and geographical conditions, with the prior approval of the Commissioner of the State Taxes and Excise, H.P.

- 2.4 The bid/tender form for allotment shall be available from the office of any Dy. Commissioner of State Taxes & Excise or Asstt. Commissioner of State Taxes & Excise In-charge of the District or from the office of the Addl./Jt. Commissioner of State Taxes & Excise of the Zone, free of cost. **The tender form can also be downloaded from the website of the Department i.e. [www. hptax.gov.in](http://www.hptax.gov.in).** In order to ensure revenue maximization and transparency, it will be duly publicized through advertisement in 2 to 3 leading Hindi and English newspapers.
- 2.5 The **details of location of each retail vend/unit, reserve price, the minimum guaranteed quota of liquor fixed for each vend/unit and other levies** as may be applicable, shall be available with the Dy CSTE/ACSTE In-charge of the District who shall display the same on the office notice board for the

information of the intending tenderers/ bidders one day before the first day fixed for the receipt of the tenders.

- 2.6 ...not relevant...
- 2.7 The **bids/tenders for the allotment can be submitted** by the following:
- (a) an individual; or
 - (b) a body incorporated under the Indian Companies Act; or
 - (c) a society registered under the Himachal Pradesh Co-operative Societies Act; or
 - (d) **a partnership firm**; or
 - (e) a Hindu undivided family.
- 2.8 When a Company or Society or Partnership firm or Hindu undivided family referred to in clauses (b), (c) (d) and (e) of para 7 above, applies for the allotment of a vend/unit, it must authorize an individual to act as an agent on behalf of the applicant, who shall be amenable in full to the Criminal Courts in India.
- 2.9 An **individual applicant** should fulfill the **following conditions to be eligible** to submit bid/tender:-
- (i) He/She should be a citizen of India.
 - (ii). He/She should have attained the age of 21 years on the day of bid/tender.
 - (ii) He/She should not have been blacklisted or debarred from holding an excise license under the provisions

of any Rules made under the Punjab Excise Act 1914, as applicable in the State of Himachal Pradesh/ the Himachal Pradesh Excise Act, 2011. Any person, who has been convicted of any excise offence by any court of law unless finally acquitted, shall be automatically debarred from holding the license.

- (iv) He /She should not be a defaulter of any Government dues and should have cleared all the arrears, if any, due to be paid by him upto the date of filing of application for allotment.
- (v) He/She should possess good moral character and should have no criminal back ground nor should have been convicted of any offence punishable under any taxation statute in Himachal Pradesh.

2.10 The conditions of eligibility mentioned in para 9 above shall apply to **all the partners in case of a partnership firm**, every member of any other association of persons mentioned in Para 7 above, Karta of a Hindu undivided family **and every individual acting as an agent on behalf of the applicant in other cases.**

2.11 The **applicant must fulfill the following conditions:**

- (i). He should be solvent and should have the necessary funds or should have made arrangements for the necessary funds, for conducting the business the details of which shall be made available to the licensing authority, if required and the value of the assets held by him as declared in Form 'A' attached to the application form should be at least 25% of the annual License Fee of the vend/unit for which the application is filed.
- (ii). He will establish the liquor vend in the premises which may be provided by local bodies subject to the approval of the Department failing which he should possess or should have an arrangement for taking on rent suitable premises in the specified locality for opening the shop in accordance with the provisions of **Himachal Pradesh Liquor License Rules, 1986** and that the proposed premises should not have been constructed in violation of any law or Rules.
- (iii). He should agree not to employ any salesman or representative who has criminal background as mentioned in clause (v) of point No 9 above or who suffers from any infectious or contagious disease or is below

21 years of age.

2.12 **All the partners of a firm shall be jointly and severally liable to meet the liabilities.**

2.13 Every tender for the allotment of vend /unit shall be made in the prescribed format. A non-refundable bid/tender fee shall be deposited by every person who wishes to participate in the bid process or file tender. The bid/tender fee may be paid in cash or through Bank Draft at the time of entry into the Auction-cum-Tender hall. An applicant can submit as many tenders as he wants but each such tender must be accompanied by the prescribed tender fee. The tender will be submitted to the Dy. CSTE/ACSTE. In charge of the concerned district within which the vend /unit is situated. A **non-refundable tender fee** shall be as under:

Sr. No	Type of license	Tender Fee
1.	L-2/L-14/L-14A	Rs.1,00,000/-
2.	Country Fermented Liquor	Rs.20,000/-

2.18 The allotment of Units/vends through Auction-cum-Tender shall be made by the District Allotment Committee. The District Allotment Committee shall consist of the Deputy Commissioner of the concerned District Collector (Excise) of the Zone, Dy. Commissioner of State Taxes & Excise /Asstt. Commissioner of

State Taxes & Excise in-charge of the district and any other gazetted officer of the Department nominated by the Commissioner of State Taxes & Excise. In case the Deputy Commissioner of the District is not available due to unavoidable circumstances, then the ADC or ADM of the concerned District shall form part of the District Allotment Committee. The chairman of the Committee will be Deputy Commissioner/ADC/ADM as the case may be.

2.24 If any person who has been allotted vend /unit **fails to make deposit of the amount of license fee/security** or on confirmation of the allotment refuses to accept the license, the license may be resold by any prescribed arrangement and **such allottee** shall not be entitled for refund of any amount he has deposited or **shall not be entitled to any other claim.** Such **defaulting allottee** shall further be **liable to make up the loss of revenue to the government and will be recoverable from him as arrear of Land Revenue.**

2.28 The successful allottee shall also be required to pay 10% of the MVV in case of draw of lots whereas in case of Auction-cum-Tender, the allottee shall be required to pay 10% of the Bid/Tender offered by him as advance fixed license fee through a Demand Draft

drawn on a Scheduled Commercial Banks of India as per the schedule below. This demand draft shall be deposited by the concerned District In-charge latest by 5th April, 2023 after proper verification. This amount shall be adjustable against the monthly license fee payable on lifting of liquor to the extent of @ 6% in the Month of April, 2023 and the balance amount @ 4% in the last month of the financial year i.e. March, 2024.

	Stage	Percentage of amount to be deposited out of the 10% advance fixed license fees
1	At the time of application for allotment of the unit	50%
2	Within 3 days of allotment of the unit	25%
3	Within 6 days of allotment of the unit or 31 st March, 2023 whichever is earlier	25%

The licensee shall be allowed to operate the liquor vends only if the complete advanced fixed license fees above is deposited as prescribed above. In case of failure to deposit the entire advanced fixed license fee, **the allotment of vends /units shall be cancelled** immediately by the Collector of the Zone concerned and **the same shall be put up for re-allotment**. Any advance amount deposited by such licensee shall be forfeited.

- 2.30 All bidders intending to participate in Auction-cum-Tender process of allotment are also expected to go through the Bid/Tender Document and submit the relevant forms, i.e. form A, form B and form in Annexure A, before participating in the Auction-cum-Tender.
- 2.31 Every intending bidder in the Auction-cum-Tender shall bring along with him Eligibility Claim as defined in the Tender process mentioned in forgoing paras. If eligibility claim of a bidder is found to be defective the same shall be rejected with reasons to be recorded in writing.
- 2.32 The Auction-cum-Tender shall be conducted for each unit separately. The Tenders shall be opened for each unit after the completion of bidding process is over and no more bids are forthcoming. However, the Presiding Officer may in very rare circumstances and with the approval of the Financial Commissioner (Excise), auction more than one unit or whole of the district together. Only in the case of an eventuality when an entire district is intended to be put to auction, the Presiding Officer will give the intending bidders an opportunity to also file a tender for the whole district as well at this stage. However, the Auction-cum-Tender process for the whole district shall be resorted

to only once the Auction-cum-Tender process of each unit or more than one unit has been exhausted keeping in view the interest of Government revenue. The Financial Commissioner (Excise) may reject any grouping done by the Presiding Officer.

2.40 If the highest bid or bids in respect of any vend or unit received by the Presiding Officer at the Auction/tender are approved and confirmed by the Financial Commissioner (Excise), the deposit of advance license fee made by the concerned bidder shall be counted towards the License Fee approved in respect of the concerned vend or vends, and adjusted as prescribed and the remaining amount of License Fee shall be paid by the licensee.

2.41 While allotting the retail vends L-2/L-14/L-14A by auction-cum-tender, the Committee constituted for this purpose shall have the final authority to debar any such applicants whom the members of the Committee find out to be immediate family members of the defaulting licensees (whether current or old defaulter) from allotment of retail vends even if he/she is the highest bidder/successful allottee. The committee shall pass a speaking order in the matter and convey the same immediately to the Commissioner of State Taxes and

Excise, H.P. for approval. The concerned District Incharge shall submit a certificate to the Commissioner of State Taxes and Excise, H.P. that no defaulter or his immediate family members have been permitted for allotment of excise units in his jurisdiction. The disqualified applicant/bidder in such cases shall have no right to appeal to the higher authority.

2.42 The **annual license fee** (as per bid /tender offered) shall be divided into twelve installments so that the entire license fee is cleared by 15th March of the financial year. **The license fee payable for a particular month shall be deposited into the government treasury by the 7th day of the subsequent month** failing which the concerned **District Incharge shall send the report to Zonal In-charge concerned within three days.**

The Zonal In-charge shall cancel the license of vend/unit within three days positively in case the licensee fails to deposit the monthly license fee and the advance amount deposited shall be forfeited.

However, if the **licensee deposits monthly license fee, the cancellation proceedings in respect of defaulting unit/vend may be dropped** by the Zonal In-charge by imposing a maximum penalty of

Rs 1,00,000/- and the licensee shall be allowed to continue the operations. The entire process to be concluded by the Collector In-charge within **three days.**

2.47 In the event of death of a sole proprietor or any other case, the Collector (Excise) may allow the legal heir(s) to continue the license for the remaining period, provided that the legal heir(s) are otherwise eligible to hold the license.

2.48 If a license is held by a partnership firm, in the event of death of a partner, the survivor(s) and the legal heir(s) of the deceased or in the eventuality of death of all the partners, their legal heir(s), if otherwise eligible, may be allowed by the Collector (Excise) to hold the license for the remaining period of the financial year.

2.49 to 3.32 ...not relevant.....”

CONTENTIONS OF PETITIONER IN CWP NO 9721 of 2023:

11. Learned Counsel for the petitioner has assailed Impugned Orders, passed by Respondent no 3-Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise (North Zone) Palampur on 18.11.2023 [*Annexure P-2*] cancelling the liquor license of the petitioner under Section 29 of

the Himachal Pradesh Excise Act 2011 for non-remission of license fee for the period in question and orders passed by Respondent No 1-Financial Commissioner (Excise)-cum-Appellate Authority on 22.11.2023 [Annexure P-1], dismissing the appeal under Section 68 (2) of the Act; *on the grounds*, that firstly, the Impugned Orders passed by the State Authorities without complying with principles of natural justice was illegal and unsustainable; and secondly, the action of the State Authorities in passing the impugned orders ignoring that the petitioner has suffered loss in business due to natural calamities and lesser liquor rates in the bordering State of Punjab; and thirdly, the action of the State Authorities in freezing bank account of the petitioner on 17.11.2023 before passing Impugned Orders despite the readiness and willingness of the petitioner to remit the pending license fee was illegal; and fourthly, the State Authorities could not discriminate the petitioner by cancelling his liquor license whereas no action was taken against other defaulters;

and *fifthly*, the action of the Respondents in re-auctioning the vends to the Respondent No 5 by a backdoor procedure on the basis of fake documents submitted by the said respondent was illegal; and *lastly*, Condition no 2.42 of Annual Excise Announcements for 2023-2024 [*Annexure P-4*] was arbitrary, illegal and unconstitutional.

ANALYSIS OF CONTENTIONS OF PETITIONER IN CWP NO 9721 of 2023:

12. Now, this Court proceeds to analyze the contentions of Learned Counsel for the petitioner hereinunder:

PLEA THAT IMPUGNED ORDER CANCELLING LICENSE WAS PASSED WITHOUT HEARING MISCONCEIVED:

13. *First contention* of Learned Counsel for petitioner is that the Impugned Order cancelling the liquor license of the petitioner on 18.11.2023 [*Annexure P-2*], without affording an opportunity of hearing was punitive and violative of principles of natural justice.

The above plea is factually incorrect, misleading and is misconceived in view of the stand taken by the State Authorities in the Reply

-Affidavit, reads as under:

7. That the contents of this para are absolutely wrong and hence denied. The Petitioner was **afforded adequate opportunity for the payment of pending license fees** for the month of September. **Repeated notices were sent to the Petitioner by Respondent No.4 for depositing the pending amount due** but is of no avail despite giving reasonable opportunities failing on account of which a **report was submitted** to Respondent No. 3 vide his office letter No EXN-Una-Excise-2023-24-11862 dated 08.11.2023 pointing out that the **Petitioner/licensee has erred in the payment of license fees for the month of September, 2023** rendering him liable for action under Section 29 & 43 of the H.P Excise Act, 2011 read with condition No 2.42 of the Excise Announcements 2023-24.

It is further submitted that a **notice was served upon the licensee by Respondent No. 3 on 09.11.2023 wherein opportunity of being heard was afforded to him.** The Petitioner/licensee was directed to produce the proof of payment of balance license fee on or before 13.11.2023. Again notice was issued in this regard on 13.11.2023 through Respondent No 4 for appearance on 14.11.2023. However, the Petitioner/licensee did not appear for reasons best know to him. Resultantly,

case was taken up on 15.11.2023
when the Petitioner/licensee intimated
that only an amount of Rs 2,00,000/-
has been deposited. **Last opportunity**
was granted to the licensee to deposit
the remaining dues by 16.11.2023.

However, the Petitioner/licensee failed to
clear the dues for the month of September
2023. Consequently, **the license of the**
Petitioner was cancelled by Respondent
No3 well-reasoned order dated 18.11.2023
(Annexure P-2). Thereafter, the petitioner
/licensee filed an appeal u/s 68(2)
of the H.P Excise Act, 2011 before the
Respondent No.2 on 20.11.2023. On the
request of the Petitioner the matter was
listed for hearing on the date of institution
itself i.e. 20.11.2023. The Petitioner
was given an ample opportunity to clear
the outstanding pending amount due
for the months of September as well
as of October, 2023 as per the explicit
provisions laid down therefor in condition
No. 2.42 of the H.P Excise Announcements
2023-24. However, despite numerous
reminders no deposit was made by the
Petitioner/licensee reasons best known
to him and the **appeal was dismissed**
by Respondent No. 2 after affording due
and ample opportunities to the Petitioner
/licensee to put forth his contention but
is of no avail.

12. That the contents of this para are
wrong hence denied. It is submitted that

the case of the **Petitioner was heard by Respondent No. 3** on dated 09.11.2023, 10.11.2023, 15.11.2023, 16.11.2023 and finally on 18.11.2023. Subsequently, an order of cancellation of license was passed by Respondent No 3 after hearing the Petitioner at length and giving sufficient time to deposit the dues hence the well-reasoned order passed by the Respondent No.3 is sustainable in the eyes of law for all intents and purposes. There is iota of doubt to draw adverse inference while passing the aforesaid order as per law.”

13(i-a). Besides the stand in the Reply Affidavit, a reference is made to Final Notice issued on 17.11.2023 [Annexure P-3] by the Respondent No 3-Collector (Excise)-cum-Joint Commissioner Sales Tax and Excise Palampur (HP) under Section 29 of H P Excise Act, 2011, directing him to deposit /remit the license fee for September 2023, in following terms:

And whereas, in view of the above, the said licensee has become liable for action under Commissioner of State Taxes & Excise, Una, District Una read with condition no 2.42 of the Annual Excise Announcements 2023-24 and notices were issued to you for appearance/ present

your cause/ deposit pending license fee for the said month, and **due opportunity was afforded to you on 09.11.2023, 14.11.2023 and 15.11.2023.**

Whereas you have ample opportunity to appear and deposition of license fee for the month of September, 2023 and you have miserably failed to deposit the same and an amount of license fee Rs.45,85,881 is still pending on the part of you for the said month. At the same time you have not put any forth any sufficient reasons for the failure of deposition of the pending license fee for the month of September, 2023.”

13(i-b). Perusal of the Impugned order passed by Collector-cum-Joint Commissioner on 18.11.2023, *Annexure P-2, **negates the plea of the petitioner*** in view of the fact that petitioner was directed to appear before the Authorities on 09.11.2023 for 13.11.2023 and another notice was issued on 13.11.2023 directing him to appear on 14.11.2023 and then another notice was issued directing him to appear on 16.11.2023 as an amount of Rs 45,85,881/-was due and on said date, petitioner deposited an amount of Rs 2,00,000/ and he was directed to deposit the remaining amount

on 16.11.2023 but despite this, the petitioner did not deposit the balance amount and for this persistent default, a Final Notice was issued on 17.11.2023 vide Annexure P-4, by directing him to deposit the balance amount before 18.11.2023 (morning) and to remit the proof of deposit of license fee. Material on record reveals that the petitioner was heard by the Respondent No 3 on several occasions on 09.11.2023, 10.11.2023, 15.11.2023, 16.11.2023 and finally on 18.11.2023 but for the non-remission/non-deposit of license fee, the Respondent No 3-Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise Palampur (HP) passed an order on 18.11.2023 [*Annexure P-2*], cancelling the license of petitioner after issuing notices and after having afforded an opportunity of personal hearing and after giving sufficient time to deposit the dues.

13(i-c). Feeling aggrieved against the order cancelling the license, the petitioner filed an appeal under Section 68 (2) of the Himachal Pradesh Excise Act before Financial Commissioner

(Excise) vide Appeal No.8 of 2023 and Appellate Authority gave two opportunities on 21.11.2023 and on next day i.e. 22.11.2023, but for non-deposit of license-fee the appeal was dismissed, in following terms:-

The matter was accordingly ordered to be listed on the next day i.e. 21.11.2023 at 12:00 noon. The appellant on 21.11.2023 submitted that it can only deposit ten lakh today. One more opportunity was granted to the appellant and was directed to deposit half of the pending license for the month of September, 2023 on that day itself i.e. 21.11.2023 by 03:00 PM and the remaining half on the next day i.e. 22.11.2023 by 11:00 AM. However, the **appellant expressed its inability to deposit the concerned amount on both the dates.**”

Based on the material on record, it is established that despite issuance of notices and affording personal hearings and grant of several opportunities to deposit-remit the license-fee, the failure to deposit-remit the payable amount has led to passing of Impugned Order on 18.11.2023 [Annexure P-2] by the Respondent No 3-Collector (Excise)-cum-Joint Commissioner Sales Tax and

Excise Palampur (HP) cancelling the liquor license of the petitioner is inaccordance with law. Even during pendency of appeal, the Appellate Authority gave two opportunities to deposit the license fee and since the petitioner expressed his inability to deposit-remit the license fee, therefore, the appeal was dismissed on 22.11.2023 [*Annexure P-1*] inaccordance with law. Nothing has been placed on record with the writ petition or in rejoinder to assert and establish that the notices were not issued/served or that the personal hearings were not afforded by the State Authorities negates the plea of the petitioner.

In above backdrop, the Impugned Order passed on 18.11.2023 [*Annexure P-2*] cancelling the liquor license for failure to deposit-remit the license-fee and the orders dismissing the appeal on 22.11.2023 [*Annexure P-1*], passed after due compliance of the principles of natural justice by issuing notices and after affording personal hearing(s) giving ample opportunities to petitioner to deposit-remit the unpaid license fee but upon

failure to the deposit-remit the license fee, the impugned order passed by the Collector (Excise), which was also upheld by the Appellate Authority. Accordingly, the plea of Learned Counsel for the petitioner that Impugned Orders are punitive and violative of the principles of natural justice is misconceived and therefore, the Impugned Orders do not suffer from the vice of perversity, infirmity or illegality.

PETITIONER HAVING ACCEPTED TERMS OF CONTRACT CANNOT WRIGGLE OUT:

14. Second contention of Learned Counsel contented that non-deposit of license fee was due to recession in business suffered on account of natural calamity in July 2023 and also the lesser rate of liquor in bordering/adjoining areas in the State of Punjab and the Impugned Orders cancelling the license on 18.11.2023 [Annexure P-2] and in dismissing the appeal of the petitioner on 18.11.2023 [Annexure P-2], by ignoring these aspects reveals unreasonableness, unfairness and arbitrariness in State action.

The above contention cannot sustain on

facts as well as law, in view of the discussion made in succeeding paras :-

A. SANCTITY OF TERMS AND CONDITIONS OF CONTRACT IN LIQUOR TRADE:

14(i-a). The plea is misconceived, *for the reason*, that *firstly*, once the State Authorities decided to auction the liquor trade by inviting bids and petitioner participated in auction and voluntarily offered his bid with open eyes, for grant of license and acceptance of his bid culminated into a contract then, the contractual obligations arising from contract were binding; and *secondly*, after having participated in the auction and the acceptance of bid and grant of license, the petitioner was bound by the terms and conditions under HP Excise Act, HP Liquor License Rules and the Excise Announcements for the year 2023-2024, including the mode and manner of depositing-remitting the license fee as prescribed therein; and *thirdly*, mutual rights and liabilities of parties were to be governed by the terms and conditions of contract (license) and the law; and *fourthly*, the petitioner after having freely and

voluntarily participated in an auction and having been granted license by State Authorities cannot invoke the doctrine of fairness and reasonableness against another contracting party (i.e. the State in the instant case) for purpose of altering or adding to the terms and conditions of contract or license after its acceptance; and fifthly, once the petitioner had taken advantages, benefits and profits from the contract (grant of license) then, in the event of losses, the petitioner is bound to fulfil its obligations by depositing-remitting the license fee and failure to deposit-remit license fee shall estop the petitioner from challenging orders for recovery of license fee; and sixthly, the petitioner has no right to invoke and plead waiver or non-deposit of license fee due to loss-recission in business, for the reason that in cases of contracts entered freely and voluntarily, the State Authorities does not guarantees profit to licensee nor does it encompasses warranty against incurring losses and earning of profit or incurring loss is not the concern of the State

Authorities; and seventhly, after having accepted the contract as a whole (and grant of license voluntary and free will in open auction), then, the petitioner cannot accept beneficial part of contract while abandoning that part which may turn out to be not favorable or not suitable. The petitioner cannot blow hot and cold and the principle of approbation and reprobation and the doctrine of election disentitles the petitioner from claiming exemption, immunity or to waive off the license fee; eighthly, in matters relating to commercial contracts, as in this case, petitioner has no right to invoke doctrine of unconscionable bargaining is not attracted and is inapplicable; and ninthly, after having accepted the terms and conditions of contract, the petitioner had no right to wriggle out of contractual obligations and the hardships or difficulties in enforceability of contract or terms being onerous cannot be a ground for claiming non-performance or non-remission of license fee, becoming due and payable under the terms and conditions, which were duly accepted

by the petitioner; tenthly, even the events which were not relatable to the terms and conditions of contract will not entitle a party for petitioner for pleading non-performance by not depositing or not remitting the license fee payable by the petitioner to the State Authorities, when, State Authorities had placed all its cards on the table {i.e. terms and conditions of contract, contained in bid document, in terms of Chapter-II and Clause 2.4 of the Excise Announcements for the year 2023-2024, (Annexure R-2) and petitioner having knowledge of same, voluntarily and of his free will chose to offer his bid with open eyes, which was duly accepted, then after acceptance of bid and grant of license, the petitioner-licensee has no right to assail the orders cancelling the liquor license under Section 29 of the HP Excise Act, for failure to deposit-remit the license fee. In these circumstances, the non-performance or non-enforceability of contractual conditions due to loss in business or due to events not expressly covered by the terms and conditions of contract

do not confer a legally enforceable and tenable ground to seek indulgence under Article 226 of the Constitution of India. It is beyond the purview of the Court to adopt a convenient methodology by resorting to a liberal approach so as to rewrite the contract either by substituting the existing conditions or by carving out new terms outside the express terms and conditions of the contract-license and the petitioner-licensee herein, cannot be permitted to dilute the sanctity of contract or to wriggle out of the contractual obligations including liabilities (payment of license fee etc.), for the period in issue, as referred to above.

MANDATE OF LAW: TERMS OF CONTRACT CANNOT BE PERMITTED TO BE WRIGGLED OUT:

14(i-b). While dealing with contractual obligations in liquor business between the State and licensee who had offered the bid with open eyes, which was duly accepted then, the terms and conditions of contract cannot be wriggled out or contractual obligations cannot be impeached by a licensee by giving a go-bye to the terms and conditions

of contract were binding *inter-se* the parties, as mandated by the Constitutional Bench of the Hon'ble Supreme Court in ***Har Shankar and others vs The Deputy Excise and Taxation Commissioner and others***, (1975) 1 SCC 737, in following terms:-

16. Those interested in running the country liquor vends offered their bids voluntarily in the auctions held for granting licences for the sale; of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of conditions governing the auctions were in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the Government. The Government's acceptance of those bids was the acceptance of willing offers made to it. **On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them.** The successful bidders were then granted licenses evidencing the terms of contract between them

and the Government, under which they became entitled to, sell liquor. The licensees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of the trading transactions. **Those who contract with open eyes must accept the burdens of the contract along with its benefits.** The powers of the Financial-Commissioner to grant liquor licenses by auction and to collect license fees through the medium of auctions cannot by writ petitions be, questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. **Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.**

21. On the preliminary objection it was fin-ally urged by the appellants that the objection was misconceived because there was, in fact, no contract between the parties and therefore they were not attempting to enforce any contractual

rights or to wriggle out of contractual obligations. The **short answer** to this contention is that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The conditions of auction become the terms of the contract and it is on those terms that licenses are granted to the successful bidders in Form L. 14-A of the Rules. As stated in Chesbire and Fifoot's 'Law of Contract' (Eighth Ed., 1972; P. 24),

"In order to determine whether, in any given case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of offer and acceptance. in other words, the court examines all the circumstances to see if the one party may be assumed to have made a firm, offer" and if the other may likewise be taken to have 'accepted" that offer. These complementary ideas present a convenient method of analysing a situation, provided that they are not applied too literally and that facts are not sacrificed to phrases."

Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is

not an appropriate remedy for impeaching contractual obligations.”

CONTRACTUAL CANNOT BE RESILED ON PLEA OF CONDITION BEING INCONVENIENT ONEROUS OR BEING HARSH :

14(i-c). Plea of liquor-licensee that the terms of contract prescribing the mode of payment of license fee and consequences thereof were onerous or that conditions of license led to inconvenient consequences or were harsh was repelled by the Three-Judges of the Hon’ble Supreme Court, in case of ***Panna Lal and others vs State of Rajasthan and others***, (1975) 2 SCC 633, in following terms:

20. The license fee stipulated to be paid by the appellants is the price or consideration or rental which the Government charges from the licensees for parting with its privilege in stipulated lump sum payment and is a normal incident of a trading or business transaction. This Court in the recent decision in ***Nashirwar and Ors vs State of Madhya Pradesh and ors*** and in the unreported decision ***Hari Shanker vs Deputy Excise and Taxation Commissioner*** held that the State has exclusive right to manufacture and sell liquor and to sell the said right

in order to raise revenue. The nature of the trade is such that the State confers the right to vend liquor by farming out either by auction or by private treaty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. Rental is neither a tax nor an excise duty. Rental is the consideration for the agreement for grant of privilege by the Government.

21. The **licences in the present case are contracts between the parties.** The licensees voluntarily accepted the contracts. They fully exploited to their advantage the contracts to the exclusion of others. **The High Court rightly said that it was not open to the appellants to resile from the contracts on the ground that the terms of payment were onerous.** The reasons given by the High Court were that the licensees accepted the licence by excluding their competitors and it would not be open to the licences to challenge the terms either on the ground of inconvenient consequence of terms or of harshness of terms.”

COMMERCIAL DIFFICULTY-HARDSHIP CANNOT BE INVOKED WHEN TERMS ACCEPTED WITH OPEN EYES:

- 14(i-d).** Plea by a liquor-licensee that terms

and conditions of contract had caused commercial difficulty or inconvenience or hardship etc., in performance cannot be a justification for not complying with the terms of contract which were accepted with open eyes, as mandated by the Three Judges of the Hon'ble Supreme Court in ***State of Haryana and others versus Jageram and others***, (1980) 3 SCC 599, in following terms:

16. The Writ Petitions filed by the respondents in the High Court in the instant case are open precisely to the same objection which was upheld by this Court in Har Shankar (supra). They entered into a contract with the State authorities with the full knowledge of conditions which they had to carry out in the conduct of their business, on which they had willingly and voluntarily embarked. **The occurrence of a commercial difficulty inconvenience or hardship in the performance of those conditions, like the sale of liquor being less in summer than in winter, can provide no justification for not complying with the terms of the contract which they had accepted with open eyes.** The respondents could not therefore invoke the writ jurisdiction of the High Court to avoid the contractual

obligation incurred by them voluntarily.
On this ground alone, the State is
entitled to succeed in this appeal.”

**UNFAVOURABLE CONDITIONS & UNEXPECTED
DEVELOPMENTS NOT A GROUND TO WRIGGLE
OUT OF THE CONTRACTUAL OBLIGATIONS:**

14(i-e). Plea of a licensee in liquor business to relieve him of the obligations arising under contract due to unexpected developments and other unfavourable conditions causing loss cannot be a ground to allow such licensee to wriggle out contractual obligations and the duty to act fairly cannot be invoked so as to modify or alter express conditions of a contract or to create an obligation upon the State which do not exist in the contract, has outlined by the Three-Judges of the Hon’ble Supreme Court in the case of **Assistant Excise Commissioner and Others vs Issac Peter and Others**, (1994) 4 SCC 104, in following terms :

23. Maybe these are cases where the licensees took a calculated risk. Maybe they were not wise in offering their bids. But in law there is no basis upon which they can be relieved of the obligations undertaken by them

under the contract. **It is well known that in such contracts which may be called executory contracts there is always an element of risk.** Many an unexpected development may occur which may either cause loss to the contractor or result in large profit. Take the very case of arrack contractors. In one year, there may be abundance of supplies accompanied by good crops induced by favorable weather conditions; the contractor will make substantial profits during the year. In another year, the conditions may be unfavourable and supplies scarce. He may incur loss. **Such contracts do not imply a warranty or a guarantee of profit to the contractor. It is a business for him profit and loss being normal incidents of a business. There is no room for invoking the doctrine of unjust enrichment in such a situation.** The said doctrine has never been invoked in such business transactions. **The remedy provided by Article 226 or for that matter, suits, cannot be resorted to wriggle out of the contractual obligations entered into by the licensees.**

26. Learned counsel for respondents then submitted that doctrine of fairness and reasonableness must be read into contracts to which State is a party. It is submitted that the State cannot

act unreasonably or unfairly even while acting under a contract involving State power. Now, let us see, what is the purpose for which this argument is addressed and what is the implication? The purpose, as we can see, is that though the contract says that supply of additional quota is discretionary, it must be read as obligatory at least to the extent of previous year's supplies by applying the said doctrine. It is submitted that if this is not done, the licensees would suffer monetarily. The other purpose is to say that if the State is not able to so supply, it would be unreasonable on its part to demand the full amount due to it under the contract. In short, **the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract.** We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as

principles of natural justice ensure fair decision where the function is quasi-judicial, **the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties.** This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract or rather more so. It is one thing to say that a contract every contract must be construed reasonably having regard to its language. But this is not what the licensees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in converse case, i.e., where the State has abundant supplies and wants the licensees to lift all the stocks. The licensees will undertake no obligation to lift all those stocks even if the State suffers loss. **This one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate.** The decisions cited by the learned counsel for the licensees do not support their proposition. In **Dwarkadas Marfatia vs Board of Trustees of the Port of**

Bombay it Was held that where a public authority is exempted from the operation of a statute like **Rent Control Act**, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine. It may be noted that though the said principle was affirmed, no relief was given to the appellant in that case. *Shrilekha Vidyarthi vs State of U.P.* was a case of mass termination of District (Government Counsel in the State of U.P. It was a case of termination from a post involving public element. It was a case of non-government servant holding a public office, on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned counsel. We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of

the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. ***In law, it is entitled to its money under the contract.*** It is not as if the licensees are going to pay more to the State in case they make substantial profits. We reiterate that what we have said hereinabove is in the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by negotiation. It is not necessary to say more than this for the purpose of these cases. What would be the position in the case of contracts entered into otherwise than by public auction, floating of tenders or negotiation, we need not express

any opinion herein.”

**PETITIONER CANNOT TURN AROUND
AND ASSAIL CONDITIONS OF CONTRACT
AFTER ACCEPTANCE:**

14(i-f). While negating the claim of a licensee in liquor business, who had failed to deposit license fee but had filed a writ petition, seeking deferment or enlargement of time for payment of license fee was repelled by the Hon’ble Supreme Court in case of **State of Orissa & Others vs Narain Prasad and Others, (1996) 5 SCC 740**, by mandating that after accepting the terms and conditions of contract and upon commencement of work, such person-licensee cannot be permitted to turn around, pleading non-performance by invoking the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, in the following terms:

21. The approach adopted in this decision has to be borne in mind in every such case. It is also to be kept mind that while the decisions referred to hereinbefore are by smaller Benches, this decision is by a Constitution Bench. **A person who enters into certain contractual obligations with his eyes**

open and works the entire contract, cannot be allowed to turn round, according to this decision, and question the validity of those obligations of the Rules which constitute the terms of the contract. The extra-ordinary jurisdiction of the High Court under Article 226, which is of a discretionary nature and is exercised only to advance the interests of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in their favour.

36. Lastly, we may also invoke the holding in **Har Shankar** and **Jageram** that the writ petitioners, having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extra-ordinary discretionary Article 226 of the Constitution in aid of such licencees.”

PETITIONER HAS NO INHERENT RIGHT TO CARRYING LIQUOR BUSINESS DEHORS THE TERMS OF CONTRACT:

14(i-g). While negating the plea of a liquor-licensee for renewal of license or continuity, the Three Judge Bench of the Hon'ble Supreme Court

in the case of **Secretary to Government, TN and Another versus K Vinayagamurthy**, (2002) 7 SCC 104, mandated that in matters relating to trade in noxious or dangerous goods, no citizen can claim an inherent right to sell intoxicating liquor by retail or claim any privilege for such trade and State can impose reasonable restrictions to regulate such trade, including augmentation of excise revenue.

PLEA THAT MODE OF PAYMENT OF LICENSE FEE VIOLATED IS WHOLLY UNTENABLE:

14(i-h). The plea of the petitioner that action of the State Authorities in cancelling the license for non-deposit of license-fee prematurely was contrary to condition no 2.42 of the Excise Announcements, whereby, license fee was payable in twelve instalments.

The above plea cannot sustain, *for the reason, firstly*, the petitioner has misconstrued Condition no 2.42 of the terms and conditions as contained in Excise Announcements for the year 2023-2024; and *secondly*, the first part of condition no 2.42 expressly provides that the

“annual license fee” (as per bid /tender offered) shall be “divided into twelve instalments”, so that entire license fee is cleared by 15th March of the financial year; and *thirdly*, the second part of condition no 2.42 prescribes the mode of payment of the aforesaid twelve instalments, by mandating that the “license fee payable for a particular month” shall be deposited in government treasury by the seventh day of the subsequent month”. The terms and conditions of contract prescribe the mode and the manner of payment of annual license fee spreading over 12 instalments, but with the added rider that license fee payable for particular month, would be deposited by 7th day of the subsequent month and in above backdrop, the petitioner had failed to deposit the license fee which became due for the month of September 2023 and became payable before 7th of October 2023 and likewise, the petitioner had failed to deposit the license fee for the month of October 2023 which became due and payable before 7th November 2023 and

license fee for the period thereafter till 08.11.2023. ,
Based on these facts, Deputy Commissioner
Sales Tax and Excise Una sent a report to
Zonal Incharge-Collector-cum-Joint Commissioner
at Palampur, who issued notices and afforded
opportunity of personal hearing directing him
to deposit unpaid license fee, as the failure to
deposit the license fee was a gross violation of
the terms and conditions of contract as spelt
out in Annual Excise announcements. Plea of
the petitioner that the license fee could not
be deposited or remitted due to sufferings in
business, was held not to be a ground, for
showing indulgence for the reason, that the
terms and conditions were binding and the
State is entitled to its money inaccordance with
the mode of deposit of license-fee stipulated
under the contract and the mutual rights and
liabilities of the parties are governed by terms
of contract and mere non-performance due to
extraneous reasons which did not exist in the
contract and the petitioner-licensee has no right

to seek alteration or modification of the express terms of contract providing for the nomenclature and mode of payment of licensee-fee etc, in view of the broader principle mandated by the Hon'ble Supreme Court in the case of *State of Madhya Pradesh and others versus Lalit Jaggi*, (2008) 10 SCC 607.

B. TERMS AND CONDITIONS OF CONTRACT ARE SACROCANT:

14(i-i). In executory contracts, the core principle is that if a contract is silent about consequences for non-performance then, further performance can be excluded but, in case, a contract spells out the consequences for non-performance then, in such eventuality, the doctrine of frustration / impossibility or plea of risk due to unforeseen circumstances is not applicable, for the reason, that a contracting party after having accepted the terms and conditions of contract can neither take shelter of non-performance nor can such a licensee invoke the plea of fairness or reasonableness, so as to seek amendment or

alteration or variation in the expressed terms of contract between the parties, as outlined by the Hon'ble Supreme Court in the case of ***Mary vs State of Kerala and Others***, (2014) 14 SCC 272, in following terms:

15. From a plain reading of the aforesaid provision it is evident that on the failure of the auction purchaser to execute the agreement whether temporary or permanent, the deposit already made by auction purchaser towards earnest money and security money shall be forfeited. Undisputedly, the appellant was declared as auction purchaser and, in fact, she had deposited 30% of the bid amount, that is, 7,68,600/- in terms of Rule 5(10) of the Rules. It is further an admitted position that the appellant did not execute a permanent agreement or for that matter, did not execute the privilege. Hence, in terms of sub-rule (15) of Rule 5, the money deposited by her is liable to be forfeited. However, as stated above, the **appellant's plea** is that it was due to the facts beyond her control that she could not derive benefit from the privilege granted to her and hence did not run the shop. Therefore, the security amount deposited by her is not fit to be forfeited. In view of the aforesaid, what falls for

our determination is as to **whether the appellant could invoke the doctrine of frustration or impossibility or whether she will be bound by the terms of the statutory contract.** In other words, in case of a statutory contract, will it necessarily destroy all the incidents of an ordinary contract that are otherwise governed by the Contract Act, 1872?

18. The **doctrine of frustration excludes** ordinarily further performance where the contract is silent as to the position of the parties in the event of performance becoming literally impossible. However, in our opinion, a statutory contract in which **party takes absolute responsibility cannot escape liability** whatever may be the reason. **In such a situation, events will not discharge the party from the consequence of non-performance of a contractual obligation. Further, in a case in which the consequences of non-performance of contract is provided in the statutory contract itself, the parties shall be bound by that and cannot take shelter behind Section 56 of the Contract Act...**”.

24. We have given our most anxious consideration to the submission advanced and we do not find any substance in the submission of the learned counsel

for the appellant and the decision relied on by her, in fact, carves out an exception in case of a commercial transaction. The duty to act fairly is sought to be imported into the statutory contract to avoid forfeiture of the bid amount. The doctrine of fairness is nothing but a duty to act fairly and reasonably. It is a doctrine developed in the administrative law field to ensure rule of law and to prevent failure of justice where an action is administrative in nature. Where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action. **But, in our opinion, it certainly cannot be invoked to amend, alter, or vary an express term of the contract between the parties.** This is so even if the contract is governed by a statutory provision i.e. where it is a statutory contract.”

14(i-j). While dealing with the case relating to cancellation and resumption of plots for failure to pay installments or license fee, the action of the Respondent-Authority was upheld, by the Hon’ble Supreme Court in the case of **Smitra Jain vs Haryana Urban Development Authority and Another**, (2020) 13 SCC 465, in following

terms:

15. We also agree with the High Court that the Estate Officer did not commit any illegality by resuming the booth site because the petitioner had persistently failed to pay the instalments of price despite the notices issued to her under Sections 17(1), (2) and (3). **A ranked defaulter like the petitioner is not entitled to relief under Articles 226 or 227 of the Constitution.** This is also the ratio of the judgments of this Court in Municipal Corpn., Chandigarh vs. Shanti kunj Investment (P) Ltd., State (UT of Chandigarh) v. Amarjeet Singh and Haryana State Agricultural Mktg. Board v. Raj Pal....”.

14(i-k). Based on the factual matrix and the discussion made hereinabove and the principles outlined by the Hon’ble Supreme Court in the cases of ***Har Shankar, Panna Lal, Jageram, Issac Peter, Narain Prasad, K. Vinayagamurthy, Lalit Jaggi, Mary and Smitra Jain (supra)***, this Court has no hesitation to hold that the Impugned Orders passed by the Respondent No 3- Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise Palampur, in cancelling

the liquor license of the petitioner on 18.11.2023 [Annexure P-2], for not-depositing the license fee for the months of September 2023 and October 2023, which were payable before 7.10.2023 and 7.11.2023 respectively and non-deposit of license fee thereafter till 08.11.2023 despite the issuance of notices and having been afforded personal hearing, by giving him opportunities to deposit the unpaid license fee, being violative of Condition no 2.42 of the terms and conditions of the statutory contract contained in the Excise Announcements and being violative of Section 29 of the Himachal Pradesh Excise Act 2011 is legal, valid and is in accordance with law. Even, the orders passed by the Respondent no 1-Appellate Authority on 22.11.2023 [Annexure P-1] dismissing the appeal, under Section 68(2) of Himachal Pradesh Excise Act 2011 after giving opportunity to petitioner to deposit the license fee [even during appeal as mentioned in Para 4 of order] is legal and valid and these orders do not suffer from any infirmity or illegality.

The Question formulated [in Para 7 of judgement] as to whether the petitioner after having accepted the contract for liquor business, can resile from or wriggle out of the express contractual obligations and /or otherwise evade liability for payment of license fee and penalty etc., upon the cancellation of liquor license; is answered in the negative, for the reason, that the action of the petitioner in not adhering to the terms and conditions of contact in not remitting or not depositing license fee as per schedule, on account of hardships or unexpected developments or any other unfavourable conditions causing loss [lesser liquor rates in bordering State of Punjab] or recission in business cannot be a ground for the petitioner to wriggle out or resile from its contractual obligations and the plea of the petitioner that State Authorities were bound to act fairly and to consider these aspects is untenable. The plea of fairness cannot be invoked so as to modify or alter the stipulated conditions of contact. Accepting the plea of the

petitioner shall lead to rewriting of contract or would tantamount to introducing new conditions is impermissible and same is outside the purview of this Court. The petitioner has no right to seek creation of an obligation, upon the State which does not exist in the contract. Once the petitioner has voluntarily, freely and with open eyes participated in an auction and acceptance of bid had culminated into a contract and the contract expressly spells out the consequences for non-performance [i.e. cancellation of license for not depositing the license fee]. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of contract and in case, such a test is applied, then, no contract could ever have a binding force. Going by the prudence of a party, contrary to express mandate of a contract shall certainly defeat the “sanctity attached to the terms and conditions of contract”, can “neither be put to a naught nor defeated on the mere

pretext of some events or difficulties, falling outside the express conditions” mandated in a contract. In an executory contract, there is no guarantee for profits and no warranty against losses. A party, after having accepted the contract, cannot be permitted to blow “hot and cold” by enjoying the profits under the contract but in questioning the terms and conditions when it comes to suffering losses. This plea cannot sustain, in view of the principle of “approbation and reprobation.” Executory contracts originate from the “doctrine of election”, whereby, a person voluntarily and out of his free will and with open eyes, having knowledge of the terms and conditions contained in the bid document [as reflected in Annual Excise Announcements], and upon acceptance of bid and grant of license, commences execution of work, then, the petitioner is bound to fulfil its obligations, by remitting or depositing license fee. Failure to deposit the license fee has validly led to the cancellation of license of the petitioner, for the reason, that

in executory contracts, the State is entitled to its money (being excise revenue) in terms of the contract. Failure to deposit the license-fee has validly resulted in cancelling the license on 18.11.2023 [Annexure P-2], in the light of Section 29 of the Himachal Pradesh Excise Act 2011 and the Condition no 2.42 of the Excise Announcements is inaccordance with law and the orders passed by Respondent no 1-Appellate Authority on 22.11.2023 [Annexure P-1] dismissing the appeal, under Section 68(2) of the Himachal Pradesh Excise Act, 2011 after affording two opportunities to the petitioner to deposit the license fee [even during appeal as mentioned in Para 4 of the order] speaks volumes of non-performance and inaction of the petitioner, and therefore, the contention of Learned Counsel for the petitioner is misconceived and is turned down. Accordingly, the Impugned Orders do not suffer from any perversity, infirmity and illegality and both the orders are upheld.

PLEA OF FREEZING ACCOUNTS UNTENABLE:

15. Third contention of Learned Counsel is that Respondents froze the bank account of the petitioner on 17.11.2023, in an unfair and illegal manner.

The above plea cannot sustain, for the reason, that firstly, petitioner has not assailed alleged action of freezing of bank account by Respondent no 4-cum-Deputy Commissioner Sales Tax and Excise before the Respondent no 3-Collector-cum-Joint Commissioner Sales Tax and Excise (NZ) Palampur under Section 68 of HP Excise Act within the stipulated period of 30 days; and secondly, even while assailing the orders dated 18.11.2023 of cancelling the liquor license before Appellate Authority-cum-Respondent no 1-cum-Financial Commissioner in an appeal [Appeal No 08 of 2023], the petitioner has chosen not to assail the order of freezing his bank account; and thirdly, the petitioner after having chosen not to assail the alleged order of freezing of account before the statutory authorities

under the Statute disentitles the petitioner from raising this plea in the instant proceedings; and fourthly, even otherwise and notwithstanding the above aspects, the petitioner failed to establish that the action of freezing the bank account has prejudiced the petitioner by depriving him of his right to deposit the license fee {due for the months of September 2023 and October 2023 till the date of cancellation of license on 18.11.2023; and fifthly, nothing has been placed on record in instant proceedings to assert and establish that though petitioner had adequate amount-funds in his bank account but freezing of bank accounts has deprived the petitioner of his right to deposit the unpaid license fee for the period in question; sixthly, even the conduct of the petitioner disentitles him for discretionary relief in instant proceedings, for the reason, that a perusal of the appellate order dated 22.11.2023 [Annexure P-1], reveals that though the appellate authority had granted two opportunities to the petitioner to deposit

the license fee but the petitioner had expressed his inability to deposit the license-fee and the petitioner had nowhere asserted and established (by placing material on record) that his inability to deposit the license fee was solely due to freezing of bank account(s) ; and seventhly, the plea of freezing bank account appears to be an afterthought, when, on query by this Court, Learned State Counsel has apprised this Court that bank accounts, allegedly freezed temporarily, have very meagre amount. Pertinently, in case alleged freezing of accounts had adversely affected him or had come in the way of the petitioner to deposit the license fee and the petitioner really intended to deposit the arrears of license fee, in that eventuality, the petitioner would have come up clean and clear before this Court by showing his bonafides, undertaking to deposit the license-fee liability but for alleged freezing of accounts. Absence of these material aspects and the conduct of the petitioner disentitles him for discretionary relief in writ proceedings;

and eighthly, it is admitted case of the petitioner that he was allotted Unit No 3 Santoshgarh, for a total license fee of Rs 9,20,00,000/- for financial year 2023-24 on 18.03.2023 and though the petitioner has remitted the license fee till June 2023 but the license fee for the month of September 2023 payable before 7.10.2023 and license fee for month of October 2023 payable before 7.11.2023 and the license fee thereafter till 08.11.2023 remained unpaid. Material on record indicates that the petitioner was given personal hearing by the Respondent No 3 on 9.11.2023, 10.11.2023, 15.11.2023 and 16.11.2023, directing him to deposit the unpaid license fee to the State Authorities and lastly, the action of the State Authorities in freezing the bank account, in peculiar fact-situation of the instant case, as so as to safeguard the “excise revenue” in the teeth of Sections 71 and 73 and to protect “interests of the State” and for attaining the objective of HP Excise Act/Rules and Excise announcements and the terms of contract-license,

due to the *non-cooperative attitude and conduct of the petitioner in not discharging his contractual obligation, by not depositing the unpaid amount of license fee, for which, the State Authorities had issued various notices and afforded personal hearings and granted opportunities to deposit the license fee, but in vain.* In these circumstances, the action of the State Authorities being fair and valid does not warrant any interference, in instant proceedings.

PLEA OF NOT TAKING ACTION AGAINST OTHER DEFAULTERS UNTENABLE-NEGATIVE PARITY-IMPERMISSIBLE:

16. Fourth contention of the Learned Counsel for the petitioner is that the State Authorities have discriminated the petitioner as no action was taken against other defaulters in Una District and elsewhere who have not deposited the license -fee.

The above plea, is devoid of any merit, *for the reason,* that the contractual obligations arising out of the contract are binding *inter-se* the parties. Plea of the petitioner that no action

was taken against other alleged similar defaulters who had not deposited license fee cannot be sustain, in view of the fact that the equality in Article 14 of the Constitution of India does not envisage negative equality. Illegality cannot be permitted to be perpetuated. In contracts, reciprocal rights and obligations of the parties inter-se are strictly governed by the terms and conditions of contract. Article 14 cannot apply in a negative manner. The contention of Learned Counsel for the petitioner is not tenable in view of the mandate of the Hon'ble Supreme Court in **State of Orissa and Another vs Mamata Mohanty**, (2011) 3 SCC 436, in following terms:-

56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief..."

16(i). While dealing with plea on cancellation of license or allotment for failure to pay the

installments or license fee, without taking action against other defaulters, the claim for equality was repelled, by the Hon'ble Supreme Court in ***Dalip Singh and Others v. State of Haryana and Others***, (2019) 11 SCC 422, in the following terms:

19. All the judgments relied upon by the appellants are distinguishable on facts. **Even assuming that for some other allottees, order of resumption of plot had been quashed/cancelled, the appellants cannot claim equality of treatment. Article 14 is a positive concept and cannot be enforced by a citizen in a negative manner.** In *State of Orissa and another v. Mamata Mohanty* (2011) 3 SCC 436....”

56. It is a settled legal proposition that **Article 14 is not meant to perpetuate illegality** and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.

AFTER CANCELLATION OF LICENSE SAME WAS ALLOTTED TO ANOTHER ILLEGALLY -MISCONCEIVED:

17. Fifth contention of Learned Counsel for the petitioner that after the cancellation of liquor license of the petitioner on 18.11.2023, the State Authorities have allotted/re-allotted the retail license to the Respondent No. 5 illegally, by a backdoor procedure.

The above plea cannot sustain, for the reason, that a perusal of Paras 17 (D) & (E) of the Reply-Affidavit negates this contention as Condition no 3.26 of Excise Announcements 2023-24 indicates that in the event of cancellation of retail license during the currency of the year, the Collector Excise may re-allot it to an eligible allottee, and therefore, in this backdrop, Respondent No 5 was re-allotted the unit just to prevent loss in government revenue by adopting a transparent manner as per procedure, in the following terms:

17D. That the facts of this sub-para are unsubstantiated and contrary to the provisions of the law hence denied. As per condition No. 2.42 of the Excise Announcements for the year 2023-24 the Zonal In-charge has power to cancel

the license within three days positively in case licensee fails to pay the monthly license fee in time i.e. by the 7th day of the subsequent month. Further as per Condition No. 3.26 of the Excise Announcements 2023-24 in the event of cancellation of retail license during the currency of the year the Collector (Excise) may re-allot it as per the directions of the Financial Commissioner (Excise). Therefore, the cancellation of license granted to the petitioner and its **further re-allotment to Respondent No. 5 has been carried out as per the mandate of the Excise Act, 2011 and the policy framed thereunder.** It is also submitted that the trade in liquor is not a fundamental right of the Petitioners and the Government has exclusive privilege to make rules regarding the trade in liquor. For each Financial Year, the Excise Policy is approved by the Cabinet and Excise Announcements are issued by the State Government for grant of liquor license. All the types of levies to be paid by the licensee to the State Government are lucidly delineated in the announcements alongwith the timelines for payment thereof. The Petitioner is bound to have gone through the contents of the Excise Announcements before opting, on their own volition, to run the Excise Vends and once they have been granted the license, it becomes mandatory for them to comply with all the terms and

conditions laid therefor in the Excise Announcements for the Year 2023-24.

E. That the averments made in this sub-para are not legally tenable, hence denied. **The license cannot be permitted to play with Government Revenue on the pretext that he is suffering losses.** The re-allotment of Unit allotted to the petitioner in favor of Respondent No.5 was done as per the provisions of law. **The claim of the petitioner that respondent No. 5 was given back door entry on a lower bid is totally frivolous** done with a purpose to hoodwink this Hon'ble Court. The unit was re-allotted by auction-cum-tender as per the procedure prescribed in a completely transparent manner."

In these circumstances, the action of the State Authorities in re-allotting the Unit No 3 of Santoshgarh to Respondent No 5 in terms of Condition No 3.26 of the Excise Announcements *Annexure P-4 /R-1*, does not suffer from illegality or infirmity. Moreover, during the pendency of the instant petition, the petitioner has chosen to delete the Respondent no 5, and that being so, petitioner is estopped to lay challenge to the reallotment of unit to Respondent no 5 behind

her back. Accordingly, this plea is bound to fail and ordered accordingly.

CHALLENGE TO CONDITION NO 2.42 OF EXCISE ANNOUNCEMENTS MISCONCEIVED:

18. Contention of Learned Counsel for the petitioner that Condition no 2.42 of Annual Excise Announcements for 2023-2024 [Annexure P-4] is arbitrary, illegal and unconstitutional is wholly misconceived and same cannot sustain, when, the petitioner has failed to point out as to why and on what basis, the aforesaid condition is arbitrary, illegal and unconstitutional. Bald averments cannot be a ground to sustain such challenge. In absence of any manifest arbitrariness or inherent illegality or unconstitutionality, the challenge to this condition cannot sustain, and moreso, when, the petitioner has accepted such conditions and has commenced performance and has deposited the license fee as per schedule but the inability to deposit the license fee from September 2023 and October 2023 and thereafter, due to hardships, inconvenience or loss-recission

in business or any other like factors, outside and beyond the express terms and conditions of contract cannot be a ground to show indulgence in the instant case. Accordingly, this plea also fails.

CONTENTIONS OF LEARNED STATE COUNSEL:

19. Per contra, the matter was argued by Mr Anup Rattan, Learned Advocate General, assisted by Mr. Sushant Keprate Learned Additional Advocate General, who has supported the Impugned Orders passed by statutory authorities inaccordance with law, by referring to the various provisions of the Act, the Excise announcements and the mandate of law as has been discussed here-in-above.

CONCLUSION IN CWP No 9721 of 2023:

20. Sequel to above discussion, the orders dated 18.11.2023 [Annexure P-2], passed by the Respondent no 3- Collector (Excise)-cum-Joint Commissioner of State Taxes and Excise, North Zone, Himachal Pradesh, Palampur, in cancelling the liquor license granted in Form L-2/L-14/

L-14S to the petitioner; and the order dated 22.11.2023 [Annexure P-1], dismissing the appeal filed under Section 68(2) of the Himachal Pradesh Excise Act 2011 and the order freezing the bank account; and action of reallothing the cancelled unit and the challenge to condition no 2.42 of Excise Announcement [Annexure P-4] does not suffer from any perversity, infirmity or illegality; and the Impugned Orders and actions of the State Authorities are upheld.

ANALYSIS OF CONTENTIONS IN CWP No 115 of 2024

21. Sanjeev Kumar and three others, **have assailed the final notice** issued by the Respondent No 4- Deputy commissioner Sales Taxes and Excise **issued on 30.11.2023 [Annexure P-1]** pointing out a liability on account of license fee and penalty of Rs 2,80,60,881/, in the capacity of them, being partners of M/s Kanda Wines (petitioner in connected CWP No 9721 of 2023, M/s Kanda Wine vs State of Himachal Pradesh and others}. It was averred that the Respondent No 5, namely Arun Kumar, (in present writ petition} was allotted liquor license

on 18.03.2023 for a license fee of Rs 9,20,00,000/-
whereas partnership deed alleged to have been
executed on 22.03.2023 [Annexure P-2] was never
executed by the petitioners and alleged partnership
deed was falsely and illegally prepared by the
Respondent No 5 and same was not binding on
petitioners herein. It was averred that as per the
Condition no 2.46 of the Excise Announcements,
Collector of the zone was bound to incorporate
factum of partnership in the license deed/allotment
letter which was not done. It was averred that the
petitioners were neither aware of any proceedings
nor any orders having been passed by department
against the Respondent No 5, Arun Kumar.

22. Per contra, based on the stand in the
Reply-Affidavit dated 20-3-2024 of Commissioner
State Taxes and Excise Himachal Pradesh, Learned
Advocate General stated that petitioners have not
availed statutory remedy of appeal under Section
68 of the HP Excise Act, 2011 against the final
notice dated 30.11.2023. [Annexure P-1], passed by
Deputy Commissioner, State Taxes & Excise, Una,

i.e. Excise Officer within 30 days before Respondent no 3 i.e. Collector-cum-Joint Commissioner, State Taxes & Excise, North Zone, Palampur and therefore the writ petition was not maintainable.

22(i). Learned Advocate General based on reply, further submits that Respondent No 5-Arun Kumar had presented the partnership deed duly signed by all partners in office of Deputy Commissioner, State Taxes & Excise, Una on 22.03.2023, before the commencement of business which was carried out with effect from 01.04.2023 in the name of M/s Kanda Wines. It is submitted that petitioners did not at any point of time object to or brought to the notice of the authorities that the partnership deed was illegal and they had not affixed their signatures on the aforesaid deed.

22(ii). Learned Advocate General further submits that reliance placed by the petitioner on Condition No 2.46 of Excise Announcements was not applicable in the instant case, as it relates to addition or deletion of partners during the currency of license period. Learned Advocate General further submits

that in terms of Condition No 2.12 of Excise Announcements 2023-24, all the partners of the firm shall be jointly and severally liable to meet the liabilities. It was submitted that petition is an afterthought and once the petitioners have enjoyed privileges of the liquor business from 01.04.2023 to 30.11.2023 for about eight months but when it came to recovering the license fee and penalty, then, instant petition was filed just to deprive the State of its Government dues.

CONCLUSION IN CWP 115 of 2024

23. Considering contentions of Mr. Subhash Sharma. assisted by Mr. Prantap Sharma and Mr. Anup Rattan Learned Advocate General assisted by Mr. Sushant Keprate for the Respondents-State and Mr. H S Rana Learned Counsel for the Respondent No 5 (Arun Kumar), this Court in view of the discussion made hereinafter; is of the considered view, that ***seriously disputed questions of facts and law are involved, which cannot be conclusively adjudicated,*** without enabling the parties to assert and establish a right

(by adducing evidence or otherwise) inaccordance with law, *for the reason, firstly*, it is the case of the petitioners that partnership deed dated 22.03.2023 [Annexure P-2] was never executed by them but the said deed been falsely executed prepared by the Respondent no 5 (Arun Kumar); and *secondly*, partnership *deed dated 22.03.2023 being falsely prepared by respondent no 5* was not binding on the petitioners; and *thirdly*, the fact as to whether a person (Respondent no 5- Arun Kumar) who bids in an individual capacity after acceptance of bid can be allotted the tender -license in the capacity of a partnership deed, as done in instant case, behind the back of the petitioners and that too when, *partnership deed is disputed*; and *fourthly*, whether the State Authorities could grant the liquor license to partnership firm i.e. M/s Kanda Wine {petitioner in connected writ petition, CWP No 9721 of 2023 through Shri Arun Kumar Respondent no 5 in CWP No 115 of 2024] without intimating the factum of grant of license to them in capacity

of partners, [in the light of Rule 4 (d) and Rule 6 of Himachal Pradesh Liquor License Rules 1986 and Condition no 2.9 of Excise Announcements] behind their back; and fifthly, the validity of the alleged partnership deed dated 22.03.2023 needs to be looked into; and sixthly, though Learned State Authorities have taken a stand in reply that once the petitioners after having reaped the fruits of the partnership deed dated 22.03.2023 [Annexure P-2] then, they cannot turn around and question the same, cannot be accepted on its face value, when, nothing has been placed on record by the State Authorities to indicate that the petitioners in capacity of partners have accepted and reaped the fruits of partnership. In these circumstances, these disputed questions of facts and law, need to be ascertained and established in appeal ; and seventhly, unless and until the veracity of the alleged partnership deed is adjudicated upon, Final Notice dated 30.11.2023 [Annexure P-1] cannot be permitted to operate, as it would lead to travesty of justice, by making

the petitioners to face huge liability of license fee in lastly, in facts of instant case, even the State authorities have taken an objection that the petitioners have a remedy of appeal under Section 68 of the Act against the issuance of Final Notice dated 30.11.2023 [Annexure P-1] and enabling the petitioners to file an appeal, so that the factual and legal issues, as indicated above, were adjudicated by the appellate authority, inaccordance with law.

24. Consequently, for the reasons in Para 23 (supra) and the **seriously disputed questions of facts and law, {in CWP No 115 of 2024}**, this Court disposes of the present writ petition, with the direction to the petitioners to file an appeal, if so desired, before the Appellate Authority under Section 68 of Himachal Pradesh Excise Act, against issuance of Final Notice 30.11.2023 [Annexure P-1]; and in case, such an appeal is filed within 30 days from today; the Appellate Authority shall decide the appeal, on merits, after associating the petitioners as well as the

Respondents 1 to 5 and all others, if any, inaccordance with law on or before 15.10.2026; and Till the decision as aforesaid, the State Authorities shall not take any coercive action against the petitioners {in CWP No 115 of 2024} pursuant to the Final Notice dated 30.11.2023 [Annexure P-1], in view of interim orders passed by this Court on 09.01.2024.

25. No other point was argued/raised.

DIRECTIONS:

26. In view of above discussion and for reasons recorded hereinabove, the writ petition, CWP No 9721 of 2023 ***is dismissed*** ; and the connected writ petition, CWP No 115 of 2024 ***is disposed of***, in following terms:

- (i). Civil Writ Petition, CWP No 9721 of 2023, titled as M/s Kanda Wine versus State of Himachal Pradesh and others, ***is dismissed***;
- (ii). Impugned Orders dated 18.11.2023 [Annexure P-2] passed by Respondent no 3, cancelling the liquor license of the petitioner and orders dated 22.11.2023 [Annexure P-1] passed by

Appellate Authority-Respondent no 1 dismissing the appeal, **are upheld;**

- (iii). Challenge to the freezing orders and condition no 2.42 of Annual Excise Announcements [Annexure P-4] being devoid of merit, **are declined;**
- (iv). Upon dismissal of CWP No. 9721 of 2023, the State Authorities are at liberty to proceed against the petitioner, M/s Kanda Wine, if so desired, for the recovery of unpaid license-fee in accordance with Section 71 of the Himachal Pradesh Excise Act and law, hereinafter;
- (v). Civil Writ Petition, CWP No 115 of 2024, titled as Sanjeev Kumar and others, **is disposed of;**
- (vi). Sequel to direction no (iv), petitioners in CWP No 115 of 2024, are directed to file an appeal, if so desired, under Section 68 of the Act, against the Final Notice dated 30.11.2023 [Annexure P-1], within 30 days from today; and
- (vii). Upon filing of appeal, the Appellate Authority shall decide the same, on merits, and in accordance with

law, on or before 15.10.2026, after associating the petitioners as well as the Respondents 1 to 5 and all concerned, if any;

(viii).Needless to say, that till decision of appeal, the Final Notice dated 30.11.2023 [Annexure P-1], shall be kept in abeyance [refer Para 23] and orders dated 09.01.2024 passed by this Court;

(ix). Subject to outcome of appeal as in directions no (iv) to (vi) supra, State Authorities shall be free to proceed against the petitioners in CWP No 115 of 2024, inaccordance with law;

(x). Parties shall bear respective costs ;

In the aforesaid terms, both the writ petitions and all the pending applications, if any, shall accordingly, stand disposed of.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

July 06, 2026.
[Shivender]