
Before D.K. Jain, C.J. and Hemant Gupta, J.

SANJEEV BHANDARI—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 19895 of 2004

10th November, 2005

Constitution of India, 1950—Art. 226—Punjab Liquor Licence Rules, 1956—Rls. 36(1)(b) & 36(5)—High Court issuing directions for re-auction of liquor vends in accordance with Rules, 1956 finding the same contrary to Rl. 36(5)—Supreme Court dismissing S.L.P. while issuing some directions to complete the auction and directing the petitioner to make good revenue loss suffered due to re-auction of the liquor vends—Re-auction of liquor vends—Government failing to determine the minimum licence fee before the auction—Challenge thereto—Rl. 36(1)(b) provides the Collector shall, each year, before the annual auction determine in respect of country liquor vends the quantum of quota in proof litres for the period for which licence is to be granted and on the basis thereof the minimum annual licence fee not below the incidence of Rupees (seventy five) per bottle of 50 degree under proof at which each vend may reasonably be licenced—Plea that since auction was to be conducted for smaller groups in a district therefore the minimum licence fee could not be fixed is showing utter disregard to rules as well as to the orders passed by the High Court—No record to show that such licence fee could not be fixed for any reason—Minimum licence fee as announced at the time of auction does not satisfy the requirement of R. 36(1)(b)—Action of respondent in conducting auction with minimum licence fee is nothing but arbitrary and wholly unreasonable and in total breach of the 1956 Rules—Loss suffered in re-auction cannot be recovered from the petitioner—Petition allowed with costs.

Held, that the minimum licence fee as announced at the time of auction does not satisfy the requirement of Rule 36(1)(b) of the Licence Rules, 1956. The exercise to fix the minimum licence fee in terms of Sub-rule (1) has to be “before the annual auction”. The said annual auction in the context of the present case has to be read as

the auction for the remaining period. Still further, the incidence of Rs. 75 per bottle is not the minimum licence fee. In fact, there is an embargo that minimum licence fee cannot be fixed below the said level. Therefore, the exercise of determining the minimum licence fee has to be carried out before conduct of auction. Still further, the incidence chart circulated contains proportionate licence fee for 137 days on the basis of auction for the year 2003-04. It can be inferred that the said proportionate licence fee can form basis of minimum licence fee.

(Para 16)

Further held, that no reasons are recorded to justify the change in the minimum licence fee fixed for auction on 4th March, 2004. The auction of the respondents in conducting auction with minimum licence fee of Rs. 75 per bottle is nothing but arbitrary and wholly unreasonable and in total breach of the Licence Rules, 1956. The argument that it was an open auction, therefore, the fixation of minimum licence fee is immaterial as the bidders were competent to bid for the higher bid without any limitation is without any force. Record of the last 4 years produced, in fact, shows that the difference between the successful bidder and the reserved price is of few thousands rupees. Therefore, the pivot in the entire auction process is the fixation of minimum licence fee. Thus, Rs. 75 as minimum licence fee is a deliberate attempt by the authorities to cause loss to the State. It appears that the minimum licence fee of Rs. 75 was announced to show that the orders passed by the Courts have caused loss to the State. The authorities have failed to carry out the duty cast upon them by the statute.

(Para 17)

Mohan Jain, Advocate, *for the petitioner*.

Arun Palli, Advocate General, Punjab, *for respondent No. 1 to 5*.

Anil Khetarpal, Advocate, *for respondents No. 6 to 8*.

JUDGMENT

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the auction of liquor vends of Jalandhar-I, Jalandhar-II, Nawanshahr and Hoshiarpur Excise Districts held on 5th November, 2004 and to absolve the petitioner from the recovery of so-called short fall arising out of

the said auction as the auction is alleged to have been conducted in violation of Punjab Liquor Licence Rules, 1956 (for short the Licence Rules, 1956) and contrary to the directions given by this Court in the earlier writ petitions filed by the petitioner on 31st March, 2004 and 3rd November, 2004. The petitioner has also claimed refund of Rs. 6.07 crores deposited by him in compliance with the orders passed by this court.

(2) Before adverting to the respective contentions of the parties, certain undisputed facts are that earlier the State Government auctioned liquor vends of excise districts Jalandhar-I, Jalandhar-II, Nawanshahr and Hoshiarpur, on 4th March, 2004. The said auction became the subject-matter of challenge before this Court in CWP No. 3628 of 2004 at the instance of the petitioner. The excise districts Jalandhar-I and Nawanshahr were clubbed at a predetermined price with Jalandhar-II. It was Jalandhar-II which was put to auction. This Court found that under Sub-rule 5 of Rule 36 of Licence Rules, 1956, the Presiding Officer with the prior approval of the Excise Commissioner can auction liquor vends after forming groups situated either in the same village, town or area located in a circle or in a group of circles subject to ceiling of Rs. 15 crores. The Excise Commissioner can seek extension of the limit of Rs. 15 crores with the approval of the Government. Still further, while interpreting sub-rule (5-A) of Rule 36 of the Licence Rules, 1956, it was found that a vend or a group of vends was required to be auctioned first. In exceptional circumstances, the vend or a group of vends can be attached at a predetermined licence fee. Such mode of grant of licence at a predetermined licence fee is a last resort and therefore, it was found that auction of Jalandhar-II with predetermined licence fee in respect of Jalandhar-I and Nawanshahr is against the Licence Rules, 1956 and auction announcements and auction notice. However, the auction in respect of excise district of Hoshiarpur was vitiated on facts.

(3) Special Leave Petition against the said order was dismissed. However, the State was directed to complete the auction at the earliest and all the legal formalities to be complied with urgently so that licencees are in a position to open the shops by 15th November, 2004. The order of the Supreme Court reads as under :—

“Heard learned counsel for the parties.

We are not inclined to interfere with the impugned judgment.
The special leave petitions are dismissed.

As per the directions of the High Court, the re-auction had to be done within a period of ten days from the date of the pronouncement of the judgment. We extend the period for conducting the auction. The State Authorities shall publish the necessary notification and conduct the auction at the earliest. These matters relate only to the L-2 and L-14A licence in respect of shops in Jalandhar-I, Jalandhar-II, Nawanshahr and Hoshiarpur districts. For the remaining period, the auction shall be conducted at the earliest and all the legal formalities in respect of fresh auction shall be complied with urgently and the licencees shall be in a position to open their shops by 15th November, 2005. In case the state suffers any revenue loss due to re-auction, the respondent — Sanjeev Bhandari shall make good such loss to the State and the amount already deposited by the said respondent shall be utilised for the said purpose and if any further amount is to be recovered from the said respondent, the State would be at liberty to do so.

If the bid amount is not higher than the existing bid amount, the previous successful bidder of the impugned auction for the group of shops shall be given the right to conduct/run the shops for the remaining period of the licence. The petitioner in SLP (C) No. 6711 of 2004, namely M/s A.R. Traders and the petitioner in SLP (C) Nos. 16971-16972 of 2004 M/s J.K. Traders are entitled to get refunds of the money deposited by them within two weeks from today.

The High Court shall dispose of all the pending writ petitions at an early date.”

(4) The State Government published auction notice on 28th October, 2004 to conduct auction on 5th November, 2004. The petitioner herein challenged condition Nos. 5 and 7 of the auction notice in CWP No. 17069 of 2004. This Court passed an order on 3rd November, 2004 holding that the revenue loss due to re-auction of the liquor vends, can be made good from the petitioner in respect of re-auction in Nawanshahr and Hoshiarpur districts only and that the amount deposited by the petitioner shall be adjusted towards the security required to be deposited at the time of fall of hammer. The said order passed by this Court is subject-matter of SLP(C) No. 2381 of 2004 before the Hon'ble Supreme Court.

(5) On 23rd September, 2005, the petitioner herein mentioned before the Hon'ble Supreme Court in the aforesaid SLP that the present writ petition on similar issues is pending before this Court. On such prayer having been made, the Supreme Court sought an early disposal of the present writ petition.

(6) In the auction conducted on 5th November, 2004, the State Government suffered revenue loss to the tune of Rs. 17,79,73,000 in respect of auction of four excise districts. In terms of the order passed by the Hon'ble Supreme Court, an offer was given to the highest bidder of auction held on 4th March, 2004. M/s J.K. Associates accepted the offer of the Government in respect of Hoshiarpur district reducing the loss of the State Government by Rs. 4,87,95,000. M/s A.R. Traders accepted the offer of the State Government in respect of Jalandhar-I and reduced the loss to the State by Rs. 1,13,21,000. In terms of the order dated 3rd November, 2004 passed earlier, the revenue loss in respect of Hoshiarpur and Nawanshahr alone can be recovered from the petitioner. Since the State Government has not suffered any revenue loss in respect of Hoshiarpur, the revenue loss in respect of Nawanshahr amounting to Rs. 2,94,18,000 is allegedly recoverable from the petitioner. Consequently, the revenue loss in respect of Jalandhar-II amounting to Rs. 8,84,39,000 suffered by the State Government remains unbridged.

(7) It is the case of the petitioner that the auction conducted on 5th November, 2004 was not in accordance with the Licence Rules, 1956 and not in terms of the conditions of auction announced earlier on 4th March, 2004. It is alleged that 4th March, 2004 auction was held on the minimum licence fee at the rate of Rs. 102 per bottle whereas the auction on 5th November, 2004 has been conducted with the minimum licence fee Rs. 75 per bottle. It is alleged that once licence fee has been determined for auction on 4th March, 2004, the same could not be modified or varied in any manner, particularly when there is no change of daily quota of each of the liquor vends. It is further argued that in terms of Rule 36(1)(b) of the Licence Rules, 1956, the Collector is to determine the minimum licence fee before the auction. Such minimum licence fee cannot be less than Rs. 75 per bottle. Since the Collector has not carried out any exercise to determine the minimum licence fee, the auction conducted as minimum licence fee of Rs. 75 is wholly illegal and arbitrary. It is the case of the petitioner that fixation of minimum licence fee is, in fact, an important step as in the past no auction has gone below the minimum licence fee nor gone substantially higher than the such licence fee.

(8) On the other hand, it is the stand of the respondents that the procedure was properly adopted. The proportionate quota for the period to be auctioned in respect of each group was announced. The minimum licence fee was at the rate of minimum acceptable incidence of Rs. 75 per bottle in accordance with the Excise Policy and the Licence Rules, 1956. It was argued that by fixation of minimum licence fee, the option for the bidders to bid for any higher amount is not foreclosed. It was pointed out that there was difference in the circumstances of auction held on 4th March, 2004, which was for the entire financial year. The auction held on 5th November, 2004 was for the remaining period of the year. In the first auction the districts were clubbed together, by attaching some districts at the fixed price and putting one district to auction but in the second auction, the different groups were to be auctioned separately in accordance with the directions of the court. As the potential of one group varied from another group, it was not possible to determine minimum licence fee for the remaining part of the year for each group on the basis of minimum licence fee determined for the district as a whole. The State Government crystalized its stand in para No. 6 (a) of the written statement which reads as under :

“There were two reasons for determining the minimum licence fee. Firstly the auction was held for remaining period of 137 days and not for a full year. Secondly, no corresponding previous licence fee was available for the remaining period of the year with respect to small groups, which were made in accordance with the directions of this Hon’ble Court in the judgment dated 31st March, 2004. As per the orders Hon’ble Supreme Court the vends had to start functioning with effect from 15th November, 2004 it was essential that all the vends are auctioned in one go as no time was left for second re-auction. It is respectfully submitted that the minimum annual licence fee determined at the time of auction dated 4th March, 2004 could not be treated as a bench mark because auction on 4th March, 2004 was held for a period of 12 months i.e. a period of one year. Still further, the auction held on 4th March, 2004 was for all the vends as a unit in a Excise District whereas the re-auction held on 5th November, 2004 was for remaining period of the year i.e. 137 days and that also for small groups formed in a district.

(9) Mr. Palli, learned Additional Advocate General, Punjab has admitted during the course of arguments on the basis of instructions of Mr. S.K. Ralhan, Additional Commissioner, Excise and Taxation, that there is no record available determining the minimum licence fee at the rate of Rs. 75 per bottle by the Collector or of any direction of the Excise Commissioner. However, it is stated that such minimum reserved licence fee was announced at the time of auction.

(10) During the course of arguments, learned counsel for the petitioner produced incidence chart for the year 2004-05 for Excise, District Nawanshahr. The said incidence chart was also produced in the earlier writ petition No. 3628 of 2004. The incidence chart circulated for auction on 5th November, 2004 has also been produced. The said chart would show that in the Nawanshahr district there are total 108 L-14A vends. 19 L-14A vends were included in an auction held on 4th March, 2004 in Nawanshahr Circle i.e., one of the five groups. The daily quota of bottles was 2543. Still further, the daily quota of bottles of each of the vends is also mentioned in the said chart. The licence fee for the year 2003-04 was Rs. 938.35 lacs. However in incidence chart for the auction held on 5th November, 2004, such 19 L-14A vends forming part of Nawanshahr Group have been bifurcated into two groups. The Group-I consisted of 10 vends and Group-II that of 9 vends with same daily quota of bottles in respect of each of the vends. The relevant extract reads as under :

For 4th March, 2004 auction :

S. No.	Name of the Circle	No. of PML Vends	Licence Fee 2003-2004 in lacs.	Quota of PML for the Year 2004-2005		
				Daily Bottles	Annual Bottles	Annual P.L.'s
1	Nawanshahr	19	938.35	2543	928152	348057
2	Rahon	17	551.65	1857	677712	254142
3	Banga	24	856	2514	917592	344097
4	Behram	20	567	1633	596232	223587
5	Balachaur	28	846	2302	840312	31517
Total		108	3759	10849	3960000	1485000

Group-I Nawanshahr Circle

S. No.	Name of PML Vend	Licence Fee 2003-2004 in lacs	Quota of PML for the Year 2004-2005		
			Daily Bottles	Annual Bottles	Annual P.L.'s
1	Chandigarh Chowk	114.65	231	84360	31635
2	Langroya	72.85	200	73008	27378
3	Jadla Village	67.39	185	67536	25326
4	Truck Union	80.84	222	81024	30384
5	Mirpur Jattan	21.84	60	21888	8208
6	Adda Jadla	25.5	70	25560	9585
7	Karimpur	21.84	60	21888	8208
8	Begampur Adda	21.84	60	21888	8208
9	Saloh	32.78	90	32856	12321
10	Chandigarh Road near CSD Canteen	-----	50	18240	6840
11	Garhshankar Road Nsr.	92.89	255	93096	34911
12	Banga Road Nsr.	85.59	235	85776	32166
13	Railway Road	89.23	245	89424	33534
14	Karyam	71	195	71160	26685
15	Chuhrpur	25.48	70	25536	9576
16	Danamandi Nsr.	49.11	135	49224	18459
17	Bheen	29.14	80	29208	10953
18	Malpur Arkan	18.19	50	18240	6840
19	Mubarkapur	18.19	50	18240	6840
Total		938.35	2543	928152	348057

**For 5.11.2004 auction
Group No. 1 Nawanshahr Circle**

S. No.	Name of PML Vend	Licence Fee 2003-2004	Proportionate L.fee for 137 days	Daily Bottles
1	Chandigarh Chowk Nsr.	114.65	43.03	231
2	Langroya	72.85	27.34	200
3	Jadla Village	67.39	25.29	185
4	Truck Union NSR	80.84	30.34	222
5	Mirpur Jatta	21.84	8.2	60
6	Adda Jadla (Chd. Road)	25.5	9.57	70
7	Karimpur	21.84	8.2	60
8	Begampur Adda	21.84	8.2	60
9	Saloh	32.78	12.3	90
10	Chandigarh Road Nsr (CSD Canteen)	0	0	50
Total		459.53	172.47	1228

Group No. 2

S. No.	Name of PML Vend	Licence Fee for 2003-2004	Proportionate L.fee for 137 days	Daily Bottles
1	Garhshankar Road Nsr.	92.89	34.87	255
2	Railway Road Nsr.	89.23	33.49	245
3	Karyam	71	26.65	195
4	Chuharpur	25.48	9.56	70
5	Dana Mandi, Nsr.	49.11	18.43	135
6	Bheen (Gujjarpur Kalam Road)	29.14	10.94	80
7	Malpur Arkan	18.19	6.83	50
8	Mubarakpur	18.19	6.83	50
Total		478.82	179.73	1315

(11) Mr. Palli, learned Additional Advocate General, Punjab has also produced chart of groupwise incidence per bottle for the year 2001-02 to 2004-05. The relevant extracts in respect of Nawanshahr district reads as under :

No. & Name of the Group	2001-02		2002-03		
	Incidence at reserve price	Incidence final bid	Incidence reserve price	Incidence at final bid	
G-1 Nawanshahr	90.82	90.93	92.51	94.65	
G-2 Rahon	75.82	75.82	77.47	77.47	
G-3 Banga	84.23	84.34	96.99	99.83	
G-4 Behram	90.93	91.11	95.05	95.05	
G-5 Balachaur	94.1	94.22	90.44	90.44	
Total	0	87.51	Total 90.92	93.04	
	2003-04		2004-05		
G-1 Nawanshahr & Rahon	91.77	92.08	Auction date 5-11-2004		
G-2 Banga	93.29	92.29	G-1 Chd Chowk	75.48	75.54
G-3 Behram	95.1	95.1	G-2 G/Shankar Road	75.52	75.57
G-4 Balachaur	96.99	100.68	G-3 Banga & Rahon	75.2	75.22
			G-4 Behram	75.08	75.16
			G-5 Balachaur & Rahon	75.09	75.11
Total	93.72	94.63	Total	75.18	75.22

(12) In view of above respective stands of the parties, the question which arises is in respect of scope of Rule 36(1)(b) of the Licence Rules, 1956 which reads as under :

“36. The following procedure is prescribed for the grant of licences by auction :—

- (1) Subject to any direction made by the Excise Commissioner in this behalf, the Collector shall, each year, before the annual auction determine.
 - (a) in respect of licences in Form -2 and Form L-10, the licence fee at which each vend may be reasonably licenced ;
 - (b) in respect of country liquor vends the quantum of quota in proof litres for the period for which licence is to be granted and on the basis thereof the minimum annual licence fee not below the incidence of Rupees (seventy five) per bottle of 50 degree under proof at which each vend may reasonably be licenced.”

(13) A perusal of the details produced by the State shows that the incidence per bottle for an auction for the year 2001-2002 varied from Rs. 75.82 to Rs. 94.10. The same varied from Rs. 77.47 to Rs. 96.99 for the auction held in 2002-2003, and that from Rs. 91.77 to Rs.96.99 for auction held for the year 2003-04. The same was Rs. 95 for an auction held on 4th March, 2004 but for an auction held on 5th November, 2004 it was from Rs. 75.08 to Rs. 75.48 per bottle. Thus, it is apparent that for every auction, the Collector has carried out exercise of determining minimum licence fee which is invariably higher than the licence fee for the previous year. Learned counsel representing the State has not produced any records even when asked for, the process of determining the minimum licence fee for the remaining period i.e. for 137 days. The reasons as to why minimum licence fee was not determined is given in the written statement for the first time. The reason given is that as the auction was for 137 days and that no corresponding previous licence fee was available for the remaining period of the year with respect to small groups. Still further, it is pointed out that auction held on 4th March, 2004 was for all the vends as a unit in an Excise District whereas re-auction was for the remaining period and that also for smaller groups.

(14) The said stand of the respondents is nothing but its unwillingness to proceed with the auction in accordance with the Licence Rules, 1956. The Licence Rules, 1956 contemplate auction of each vend but in the given circumstances, the vends could be clubbed together by forming group. Therefore, to advance reason that since the auction was to be conducted for smaller groups in a district, therefore the minimum licence fee could not be fixed, in fact, shows the utter disregard to the Rules framed by the State Government as well to the orders passed by this Court directing the State Government to auction vends in accordance with the Licence Rules, 1956. Still further the basic unit for determining the minimum licence fee is the daily quota of bottles in respect of each vend. The details extracted above do not show any variation in respect of daily quota of bottles in respect of any of the vends in a group or in a district. Since the minimum licence fee was being fixed in earlier years, there is no reason as to why the exercise to fix such minimum licence fee could not be undertaken for the remaining period of the year 2004-2005 as well. It appears that the sole objective of the officers conducting the auction was to show that on account of the orders passed by this Court as affirmed by Hon'ble Supreme Court, the State Government has suffered loss. Such line of action cannot be countenanced in any manner.

15. The reasoning advanced that no corresponding previous licence fee was available is a lame excuse to run away from the responsibility of determining minimum licence fee. As mentioned earlier, the daily quota of each of the vends has not undergone any change. Therefore, it is immaterial that earlier no auction for 137 days was held. As a matter of fact, the incidence chart circulated by the respondents as produced by the petitioner goes to show the proportionate licence fee was circulated for 137 days on the basis of licence fee for the year 2003-2004. No record has been produced to show that such licence fee could not be fixed for any reason as now sought to be advanced in the written statement. It is well settled that legality or otherwise of an order passed by statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. Reference may be made to **Mohinder Singh Gill versus The Chief Election Commissioner (1)** and

Indian Red Cross Society versus New Delhi Municipal Committee and others (2) Still further in **Nandkishore Ganesh Joshi versus Commissioner, Municipal Corporation of Kalyan and Dombivali and others (3)** it has been held that the statutory authority when it acts in terms of a statute is bound by its action. It cannot supplement or supplant the reasons later on by way of an affidavit. Therefore, in the absence of any record as to why the minimum licence fee was fixed at the rate of Rs.75/- per bottle, the reasons given in the affidavit filed in the present writ petition cannot be supplement or supplanted.

(16) The minimum licence fee as announced at the time of auction does not satisfy the requirement of Rule 36 (1)(b) of the Licence Rules, 1956. The exercise to fix the minimum licence fee in terms of Sub-rule (1) has to be "before the annual auction". The said annual auction in the context of the present case has to be read as the auction for the remaining period. Still further, the incidence of Rs. 75 per bottle is not the minimum licence fee. In fact, there is an embargo that minimum licence fee cannot be fixed below the said level. Therefore, the exercise of determining the minimum licence fee has to be carried out before conduct of auction. Still further, the incidence chart circulated contains proportionate licence fee for 137 days on the basis of auction for the year 2003-04. It can be inferred that the said proportionate licence fee can form basis of minimum licence fee.

(17) No reasons are recorded to justify the change in the minimum licence fee fixed for auction on 4th March, 2004. The action of the respondents in conducting auction with minimum licence fee of Rs. 75 per bottle is nothing but arbitrary and wholly unreasonable and in total breach of the Licence Rules, 1956. The extract from the chart reproduced above shows that the final bid incidence is slightly higher over the minimum licence fee fixed at least in the last four years. The argument that it was an open auction, therefore the fixation of minimum licence fee is immaterial as the bidders were competent to bid for the higher bid without any limitation is without any force. Record of the last 4 years produced, in fact, shows that the difference between the successful bidder and the reserved price is of few thousands rupees. For the year 2003-2004, the incidence at reserved price was Rs. 93.72, whereas the final bid was Rs. 94.63.

(2) (2003) 5 S.C.C. 545

(3) (2004) (11) S.C.C. 417

Therefore, the pivot in the entire auction process is the fixation of minimum licence fee. Thus, Rs.75 as minimum licence fee is a deliberate attempt by the authorities to cause loss to the State. It appears that the minimum licence fee of Rs.75/- was announced to show that the orders passed by the Courts have caused loss to the State. The authorities have failed to carry out the duty cast upon them by the statute.

(18) It may be noticed that it is the assertion of the petitioner in the replication that in re-auction, the liquor vends were given to the firms managed by respondent No.8 by causing loss to the State exchequer by change of Sarkari Boli to the minimum level. The beneficiaries are the firms of M/s Inderpreet Chadha/M/s/Ponti Chadha who were given all the four districts i.e. Hoshiarpur, Nawanshahr, Jalandhar-I and Jalandhar-II either in the name of their other partners or their workers meaning thereby that principally the old persons who were running the vends for 8 and a half months managed to get auction on lesser price for the remaining period. The said averments in the replication reads as follows :

“Surprisingly, in the re-auction, the liquor vends were given to the firms managed by respondent No. 8 by causing loss to the State exchequer by way of changing the Sarkari boli to the minimum level. The beneficiaries are the firms of M/s Inderpreet Chadha/M/s Ponti Chadha who were given all the four districts i.e. Hoshiarpur, Nawanshahr, Jalandhar-I and Jalandhar-II, either in the name of their other partners or their workers meaning thereby that principally the old persons who were running the vends for 8 and half months managed to get re-allotment on lesser price.

(19) The successful bidder of auction of 4th March, 2004 has opted to run excise district Jalandhar-I and Hoshiarpur. In respect of Jalandhar-II, the successful bidder in auction held on 4th March, 2004 was M/s A.R. Traders consisting of partners Inderpreet Singh, son of Sh. Charanjit Singh, (2) Ashok Wadia, s/o Sh. Krishan Lal Wadia, (3) Tajinderpal Singh, s/o Sh. Gurbax Singh, (4) Rattan Lal, son of Shri Ram Rakha, (5) Manmohan Walia, son of Shri Ram Kishan Walia, The successful bidders in respect of Jalandhar-II in an auction held on 5th November, 2004 of Group No. 1, II, IV, V and VI are the same persons as partners of M/s A.R. Traders, whereas in respect of Group III it is Inderpal Singh, son of Harbans Singh

Sandhu and in respect of Group No. VII it is Anil Kumar, son of Asa Nand. The successful bidders in auction conducted on 5th November, 2004 in respect of Nawanshahr are Ganesh Saxena, Arvind Gupta, Parwinder Sharma, Inderpal Singh Sandhu and Manjit Singh. Inderpal Singh Sandhu is also successful bidder of one of the groups in Jalandhar-II. The participation of such bidders in Jalandhar-II, where earlier partners are the successful bidders in most of the groups substantially support the assertion of the petitioner that successful bidders of 4th March, 2004 auction are, in fact, continuing even after the fresh auction at a lesser price.

(20) In view of the above discussion, we do not feel the necessity to examine the argument raised by learned counsel for the petitioner that his bid for Rs. 40 crores in respect of liquor vends in Excise District Nawanshahr was available and therefore, the petitioner cannot be made liable for any loss even on account of non-participation of the petitioner in the re-auction.

(21) If there was no successful bidder at the minimum licence fee at the rate fixed for 4th March, 2004 auction, only then, one can assume that there was loss to the State exchequer. By changing minimum licence fee in an arbitrary and illegal manner, one cannot attribute loss to the State exchequer at the instance of the petitioner. Since the auction had been conducted in breach of the Rules, by not even fixing the minimum licence fee, it shall be open to the State Government to take appropriate action against the officers of the State who have failed to carry out the mandate of Licence Rules, 1956 and to safeguard the interest of the State. It is for the State Government to decide whether such action or inaction was with a view to patronize a person or group or what action is required to be initiated and against whom for the loss caused to the State.

(22) Thus, we find that the action of the respondents in conducting re-auction is not in accordance with the mandate of Rule 36 (1)(b) of the Licence Rules, 1956 inasmuch as the respondents have not fixed minimum licence fee required to be fixed under the aforesaid Rule. Thus, the loss suffered in re-auction cannot be recovered from the petitioner. We direct that a sum of Rs. 6.07 crores lying in deposit in pursuance of the orders passed by this Court earlier be remitted to the petitioner alongwith accrued interest thereon.

(23) Resultantly, the writ petition is allowed in the terms mentioned above with costs which is quantified at Rs. 5,000/-.

R.N.R.