
(2013) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 39491 of 2012

A. Sundara Rami Reddy

APPELLANT

Vs

The District Collector, Chittoor District and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2013) 6 ALD 423 : (2013) 6 ALT 297

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : S. Lakshminarayana Reddy, for the Appellant; P. Ram Bhoopal Reddy, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Mandamus to set aside proceedings in RC. No. 156/2012/A1, dated 11.12.2012, of respondent No. 3 permitting respondent No. 5 to shift its shop from ward Nos. 8 and 10 to Ward No. 14 at Door No. 30-1-110 of Peddakapu Street, Tirupati, Chittoor District, as being contrary to Rule 29(3) of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short "the Rules") and consequently direct respondents 1 to 4 not to permit respondent No. 5 to establish liquor shop at Ward No. 14. The petitioner is a retired employee. Respondent No. 5 has participated in tender process for grant of A4 licence. It was selected for establishment of retail liquor shop in Ward Nos. 8 or 10 of Tirupati Urban Mandal. However, the proprietrix of respondent No. 5 has produced a certificate showing Door No. 20-1-196/C of Korlagunta, Tirupati as being located in Ward No. 10. On finding that the said building is actually situated in Ward No. 6, A4 licence of respondent No. 5 was suspended by respondent No. 3 on 15.09.2012. Questioning the said suspension order, respondent No. 5 filed W.P. No. 29708 of 2012. The said writ petition was dismissed by this Court by order dated 24.09.2012, wherein this Court has referred to letter dated 11.09.2012 of the Commissioner of Municipal

Corporation, Tirupati, stating that the said premises falls in the Municipal Election ward No. 6. While rendering a finding that respondent No. 5 cannot be permitted to run the shop at that place, this Court has upheld the order of suspension. However, this Court has given liberty to respondent No. 5 to establish A4 shop in Ward Nos. 8 or 10 and that the impugned order of suspension will not come in its way to establish the shop in either of the said two wards. Interestingly, instead of making efforts to establish a shop in either of the two wards, for which it was selected and granted licence, respondent No. 5 has approached respondent No. 2 through respondent Nos. 3 and 4 for grant of permission to establish the shop at Ward No. 14. After receiving report from respondent No. 4, respondent No. 2 has issued proceedings in Cr. No. 13268/2012/CPE/T1, dated 06.11.2012, wherein it is noted that respondent No. 5 has established shop at Ward No. 6 and that respondent No. 3 has erroneously issued licence on the basis of the certificate issued by the Revenue Officer of Municipal Corporation and that upon noticing the said fact, A4 licence was suspended on 17.09.2012. It is further mentioned therein that the licensee has requested for permission to shift the shop to the premises in Ward No. 14 and that on verification of the said premises, the SHO, Tirupati has reported that the same is in conformity with Rule 25 of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2012. While referring to the observation made by respondent No. 1 in his correspondence that from the fact that no shops are located in Ward No. 14 it is implied that the said Ward is also one of the prohibited wards for location of A4 shops, respondent No. 2 observed that the Wards, which were exempted from location of the shops, were identified in the beginning of the licence period itself and that insistence not to locate shops in the Wards other than those identified will have serious implications on trade and revenue. Respondent No. 2 has requested respondent No. 1 to act accordingly. Thereafter, respondent No. 3 issued proceedings in Rc. No. A1/156/2012, dated 01.12.2012, whereby he has rejected the request of respondent No. 5 for establishing shop in Ward No. 14. Respondent No. 5 has once again approached respondent No. 2 through representation dated 03.12.2012. It has also filed W.P. No. 37480 of 2012 on 04.12.2012 for appropriate direction to the official respondents to implement order, dated 06.11.2012, of respondent No. 2. Interestingly, respondent No. 5 has not referred to order, dated 01.12.2012, of respondent No. 3, let alone questioned the said order in the said writ petition. It has come out at the hearing that the said writ petition was adjourned without passing any order, at the request of the learned Government Pleader for Prohibition & Excise. However, in his proceedings vide Cr. No. 13268/2012/CPE/T1, dated 06.12.2012, respondent No. 2 has stated that Ward No. 14 is not one among the six Wards denotified earlier for establishing the A4 shops and that therefore he has accorded permission to respondent No. 5 to shift its A4 shop to Ward No. 14. Accordingly, he has directed respondent No. 4 to convince respondent No. 1 to implement the order of respondent No. 2 passed on 06.11.2012. On 11.12.2012, respondent No. 3 has issued proceedings granting permission to respondent No. 5 to establish the shop in Door No. 30-1-110 of Peddakapu Street, Tirupati, which

falls under Ward No. 14.

2. At the hearing, learned counsel for the petitioner has advanced two submissions, namely, that neither of the two proceedings dated 06.11.2012 and 06.12.2012 of respondent No. 2 granted clear permission to respondent No. 5 to locate shop in Ward No. 14. Alternatively, he has submitted that neither of the two proceedings contain reasons, much less valid reasons for permitting respondent No. 5 to locate shop in Ward No. 14. He placed reliance on Rule 28(3) of the A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short "the 2012 Rules") and also on a judgment of a Division Bench of this Court in D.R. Sridhar Naidu Vs. Commissioner of Prohibition and Excise and Others, .

3. The learned Government Pleader for Prohibition & Excise fairly conceded that neither of the two proceedings dated 06.11.2012 and 06.12.2012 contain reasons.

4. Mr. P. Rama Bhoopal Reddy, learned counsel for respondent No. 5, valiantly tried to support the order of respondent No. 2. He submitted that since his client has bonafide selected the premises, which was eventually found to be in Ward No. 6, she wanted to locate the shop in a premises, which she was able to secure, for running the liquor shop in Ward No. 14. He further submitted that mere absence of reasons would not vitiate the decision of respondent No. 2.

5. I have carefully considered the respective submissions of the learned counsel for the parties.

6. It is not in dispute that the application of respondent No. 5 was accepted for establishment of A4 shop in either of Ward Nos. 8 or 10. It is also not in dispute that the premises selected by respondent No. 5 earlier was found to be located in Ward No. 6, for which her licence was suspended. When the order of suspension was questioned by respondent No. 5 in W.P. No. 29708 of 2012, this Court while upholding the same has given liberty to respondent No. 5 to locate the shop in either of the two Wards, namely, Ward Nos. 8 or 10. Instead of choosing a premises in one of the said wards, respondent No. 5 has selected the premises in Ward No. 14, which is unconnected with licence granted to it. Surprisingly, respondent No. 2 failed to examine this aspect which is very material.

7. Rule 28(3) of the 2012 Rules, which is relevant in the context of this case, reads as under:

Shifting of the licensed premises may be permitted for valid reasons within the notified area and subject to conditions as may be specified by the Commissioner of Prohibition & Excise, subject to payment of 1% of the licence fee or Rs. 25,000/- whichever is higher.

8. The above reproduced Rule mandates that permission to shift the licenced premises within the notified area must be supported by valid reasons. A Division Bench of this Court, of which I am a Member, in D.R. Sridhar Naidu v.

Commissioner of Prohibition and Excise referred supra, while considering Rule 29(3) of the Rules repealed by the 2012 Rules, which is in pari materia with Rule 28(3) of the 2012 Rules, held that the expression "valid reason" has not been defined in Andhra Pradesh Excise Act, 1968 or the Rules, but the setup in which the said expression has been used makes it clear that the proposed shifting of the licensed premises must be for good and sufficient reasons having bearing on public interest.

9. While both proceedings dated 06.11.2012 and 06.12.2012 are ambiguous, even assuming that under these proceedings, respondent No. 5 was given permission to locate its shop in Ward No. 14, both these proceedings are bereft of any reasons, much less valid reasons. In the light of the admitted facts, whereby the premises selected by respondent No. 5 were found to be in Ward No. 6, the only alternative left for it was to select a suitable premises in one of the two Wards of Ward Nos. 8 or 10. If, for any reason, it was not possible for respondent No. 5 to select a suitable premises in the said two Wards, it was incumbent upon it to come out with valid reasons to choose Ward No. 14. Neither respondent No. 5 has specified any such reasons nor respondent No. 2 has insisted upon such reasons. The entire concentration of respondent No. 2 appears to be on having liquor shop at Ward No. 14 and convincing respondent No. 1 in this regard. Respondent No. 2 has completely lost sight of the mandatory requirement of the provisions of Rule 29(3) of the Rules. Indeed at the cost of repetition, it may be noted that this Court in W.P. No. 29708 of 2012 has given liberty to respondent No. 5 to locate the shop in Ward Nos. 8 or 10. Respondent No. 2 was totally oblivious of this fact in granting permission. Ironically, respondent No. 5, who was accused of producing a false certificate from the Tirupati Municipal Corporation and derived advantage of locating the shop in Ward No. 6, for which the department has suspended its licence, was eventually rewarded by respondent No. 2 by permitting her to locate the shop in a Ward of her choice ignoring the notified area, for which her application was accepted. The action of respondent Nos. 2 and 3 in permitting respondent No. 5 to locate the shop in Ward No. 14 is thus vitiated by total non-application of mind and arbitrariness.

10. For the above-mentioned reasons, the impugned proceedings of respondent Nos. 2 and 3 are set aside. Respondent No. 5 is restrained from running the shop in Ward No. 14. However, liberty is given to respondent No. 5 to locate A4 shop in suitable premises in either of the two Wards, namely, Ward Nos. 8 or 10. The Writ Petition is, accordingly, allowed. As a sequel, W.P.M.P. No. 50151 of 2012, filed by the petitioner for interim relief, is disposed of as infructuous.