

(2008) 07 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14561 of 2008

Amrutha Wines and Krishna Sai Wines

APPELLANT

Vs

The Commissioner of Prohibition and Excise, Government of
Andhra Pradesh, The Prohibition and Excise Superintendent,
The Inspector of Prohibition and Excise and Maruthi
Restaurant and Bar

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Citation : (2008) 5 ALD 707 : (2008) 6 ALT 485

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

**Advocate : B. Sai Ram Goud, for the Appellant; GP for Respondents 1 to 3 and
P. Venugopal, for the Respondent**

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—The three petitioners are existing licensees for the sale of Indian Made Foreign Liquor and Foreign Liquor by shop license in Form A4 operating from different premises in Ward No. 10, Periyavaram Cross Road, Venkatagiri-II, Nellore District. The 4th respondent is an existing licensee having a Form IIB license under the provisions of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of License) Rules, 2005 (for short "the Bar Rules") viz., a Bar and Restaurant. The licensed premises of the 4th respondent is in D. No. 16-15, Ward No. 17, Venkatagiri town, Nellore District. The 4th respondent appears to have applied for shifting of the premises to Ward No. 10, Venkatagiri town. Aggrieved that such shifting will adversely impact the petitioners' business, the petitioners appear to have made representations to the Excise officials on which the Deputy Commissioner of Prohibition and Excise, Nellore called for a detailed report from his subordinates. The Prohibition and Excise Superintendent, Gudur by a letter dated 02-04-2008 sensitized the Assistant Commissioner of Prohibition & Excise, State Task Force, Hyderabad that the 4th respondent was conducting the licensed business in the licensed

premises till 15-01-2007; thereafter the Excise Inspector, Venkatagiri had received information that the furniture in the 4th respondent's licensed premises was shifted to a new premises and that the 4th respondent was intending to pursue the business at a premises which was not authorized. On such information, the Inspector concerned visited the existing premises of the 4th respondent and found the same to be closed. He thereafter visited the proposed premises and found that furniture and other items were shifted from the licensed premises to the new premises. The Inspector thereafter warned the 4th respondent that shifting the premises without prior permission of the 1st respondent would be illegal and action would be initiated. The Excise Inspector however found on inspection that there was no liquor either in the licensed premises or in the new premises. He thereupon sent up a report stating that the 4th respondent was conducting business neither in the licensed premises nor in the new premises, but is intending to shift the premises.

2. At this stage, apprehensive that the 4th respondent would secure permission for shifting of the premises, the writ petition is filed as a preemptive measure to stall the grant of approval for shifting of the premises by the 4th respondent from Ward No. 17 to Ward No. 10 of Venkatagiri town.

3. Sri Sairam Goud, the learned Counsel would strenuously contend that shifting of business under Form IIB license from Ward No. 17 to Ward No. 10 would pejoratively impact the petitioners' business under Form A2 license. On behalf of the petitioners it is contended that each of the petitioners had paid huge amounts for obtaining licenses for vending liquor by shop and that if the 4th respondent were permitted to start a Bar and Restaurant in Ward No. 10, pursuant to the 1st respondent's granting relevant permission for shifting of the premises from Ward No. 17, the 4th respondent would become a competitor to the petitioners' business and would adversely impact their profit margins.

4. The 4th respondent has filed a counter affidavit. To the extent relevant and material, the 4th respondent contends that the licenses granted to the petitioners on one hand and the 4th respondent on the other are under different statutory regimes. While the petitioners have been granted Form A4 licenses under Shop Rules, the 4th respondent has been granted license under Form IIB under the Bar Rules. There is nothing either in either of the two sets of Rules which references the number of licenses that may be granted under one set of Rules with the number of licenses granted under the other set of Rules. The licenses under the Bar and Shop Rules presumptively operative in different orbits. The licenses granted under the Shop Rules is to cater to customers who do not consume liquor in the licensed premises, but carry away the liquor in the permitted containers for consumption elsewhere. The customers of the Form IIB licencees however consume the liquor within the licensed premises. The rule making authority therefore presumptively did not consider it appropriate to dovetail the two sets of regulations with a view to incorporating an anti competition device/ceiling on licenses, between the two sets of licenseees. It is

not within the province of this Court to incorporate a regulatory mechanism in a context the appropriate authority has considered none to be warranted.

5. There is no material on record to disclose that the 4th respondent is pursuing the business of vending liquor under a Form IIB license in Ward No. 10. If he has stopped vending liquor at the licensed premises at Ward No. 17 and such stopping of business does not violate any law, then such conduct of the 4th respondent may not be actionable. From the report dated 02-04-2008 of the Prohibition and Excise Superintendent, Gudur addressed to the Assistant Commissioner of Prohibition & Excise, State Task Force, Hyderabad, to which reference has been made by the learned Counsel for the petitioners, it is clear that no liquor was found either in the licensed premises in Ward No. 17 or in the proposed premises in Ward No. 10. What has been found is merely that the 4th respondent has shifted his furniture from his licensed premises to the new premises. Such a shifting of furniture is not shown to be prohibited by any law. There is no law prohibiting mere shifting of furniture relating to a Bar and Restaurant nor is there any law brought to the notice of this Court which prohibits any citizen from merely installing any furniture relevant to a Bar and Restaurant business. It is a settled principle of jurisprudence that all human conduct is permissible unless prohibited by law.

6. The petitioners are rival traders even by their contentions. It is an equally settled principle that in the absence of any anti competition regulation or legislation, a rival trader cannot maintain a lis to scotch competition.

7. On the aforesaid analysis, there are no merits. The writ petition is dismissed. The interim order dated 08-07-2008 stands dissolved. No costs.