

(1997) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13500 of 1997

B. Laxmi Narasimha Rao

APPELLANT

Vs

Commissioner of Excise and Prohibition, A.P. Hyd. and Others

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 23, 30(1), 31
Constitution of India, 1950 — Article 14

Citation : (1998) 3 ALD 164 : (1998) 3 AnWR 16 : (1998) 2 APLJ 143

Hon'ble Judges : Y. Bhaskar Rao, J; K.B. Siddappa, J

Bench : Division Bench

Advocate : Mr. K.V. Simhadri, for the Appellant; Government Pleader, for Excise, for the Respondent

Judgement

K.B. Siddappa, J.—This writ petition is filed for issuance of a writ or order of direction in the nature of mandamus to declare the action of Respondents 1 to 4 in granting licence in favour of the 6th respondent as illegal, arbitrary and violative of Article 14 as the same is not with the permission or an agreement of lease with the petitioner to run the business and consequently to direct the Respondents 1 and 4 to prevent the 6th respondent to carry out the business in Door No.6-1-1060, Lakdikapul, Hyderabad, and for such other orders.

2. The petitioner stated in his affidavit that he is the owner of premises bearing Door No.6-1-1060, 1061/A and B, totally called as Hotel Dwaraka complex. The petitioner is having number of shops on the ground floor facing the main road. The mulgies were leased out to various tenants. The mulgi in question was leased out to one Smt. Seetha Mahalaxmi, w/o. Radha Krishnaiah to run a business of Photo copying under the name and style "Insta Images" from 1-8-1977 on certain conditions for a period of 2 years initially. However, the lease was extended from time to time orally. To his surprise, a wine shop in the name and style of "City Wines" came up suddenly on 9-6-1997 in the said premises. The petitioner objected for such business. However, the 6th respondent told

orally that he got licence to run the wine shop. The petitioner on the next day issued a telegram notice to the respondents to take appropriate action against the 6th respondent as the shop was opened without his knowledge and consent. There is no lease agreement between the petitioner and the 6th respondent. Therefore, the Respondents 1 to 5 should not have granted licence without the consent or no-objection of the petitioner. The notice was received by Respondents 4 and 5 on 6-10-1997. But no action is taken to prevent the 6th respondent to run the business. Thereupon, the petitioner issued another notice in writing to all the official respondents on 21-6-1997 asking them to interfere in the matter. They said that the lease was granted to the 6th respondent and no action can be taken. The 6th respondent put up a regular sign board. The premises is very close to educational institutions, mosque and schools. Even on this ground also, the licence should not have been granted. The "City Wines" was started unauthorisedly on the basis of licence given by Respondents 1 to 5. It is creating nuisance. Police enter into the hotel compound. The 6th respondent has no right to carry on the said business on the strength of the licence granted by the authorities.

3. Under the Excise Act it is essential to furnish under Rule 30(1) of A.P. Indian Liquor Foreign Liquor Rules, 1993, Form Fb-11, the details of premises to be licensed for the purpose of business and under Rule 31, a procedure is contemplated to grant licence by the 4th respondent. However, the 4th respondent did not properly verify the particulars furnished by the 6th respondent. The authorities did not verify -whether the 6th respondent was holding a valid agreement of lease. They ought to have called for no-objection from the petitioner who is the owner of the premises. Therefore, granting of licence by the 4th respondent is illegal and there is no sanctity to the licence granted. Hence, the writ petition.

4. Respondents 1 to 4 filed counter stating that the allegations in the writ petition are not correct. The District Collector issued a notification of disposal of I.L. Shops of Hyderabad District. The District Gazette contains all the details and descriptions about the shops and their location. The Commissioner of Prohibition and Excise, approved and sanctioned 218 I.L. Shops for Hyderabad District. Tenders were called for. The tender of the 6th respondent was accepted by the District Collector who is the auctioning authority for Rs. 17,00,999/-. He completed all the required formalities as per rules. He selected the place in Venkateshwara Lodge complex, bearing Door No.6-1-73/5. However, this shop was confirmed in favour of one S. Pundarikasha Rao. Therefore, the tender of the 6th respondent for the said premises was rejected and he was directed to select another premises as per Gazette notification. The 6th respondent gave premises bearing Door No.6-1-1060/8, Dwaraka Hotel Complex. The local officers made enquiries and recommended for grant of licence at the above place. Hence, the licence was granted on 7-6-1997 in the prescribed form as per Rules. The allegations in paras 2 to 4 are not correct. The 6th respondent submitted tender for an I.L. Shop and this was accepted by the auctioning authority. The 6th

respondent also enclosed a partnership deed dated 7-6-1997 executed between Smt. Yarlagadda Seetha Mahalaxmi w/o. Radhakiishnayya and the 6th respondent himself. The Field Officers enquired the proposals and they recommended to grant licence at the said premises. Therefore, licence was granted. The licensee (6th respondent) submitted the lease deed executed between himself and the tenant Smt. Seetha Mahalaxmi. On that basis only, the licence was granted. After receiving the telegram of the petitioner, the Field Officer made enquiries and submitted a report. The 6th respondent is running his business, at Door No.6-1-1060/8, Lakdikapul, under valid licence. His activities cannot be stopped as there is no violation of the provisions of the Excise Act and the Rules. The Deponent of the counter affidavit himself, who is Assistant Prohibition and Excise Superintendent, Hyderabad, stated that he himself after enquiry issued the licence in accordance with the Rules. The licence does not cause any nuisance to neighbours as it is on the main road in a commercial complex. The licence was issued after due enquiry. The lease agreement between the 6th respondent and Smt. Seetha Mahalaxmi was taken into consideration. There is no question of the 6th respondent committing any illegal activities. There is alternative remedy in a way of Appeal to the Deputy Commissioner of Prohibition and Excise and also further Appeal. The writ petitioner did not exhaust those remedies. Hence, the writ petition is liable to be dismissed.

5. A reply affidavit was also filed by the petitioner. He stated that there is no authorisation to the tenant Smt. Seetha Mahalaxmi to enter into lease agreement with the 6th respondent. He is the owner of the premises. He never granted no-objection letter. The petitioner is aggrieved by the action of the authorities in granting the licence. There is no proper enquiry conducted in this matter. The authorities did not closely scrutinise the validity of the lease agreement between the 6th respondent and Smt. Seetha Mahalaxmi. They did not see on which date the said lease agreement was executed. In pursuance of notices dated 10-6-1997 and 21-6-1997, no action was taken by the respondents. In Form FL-24, the details of the premises should be mentioned. Rule 23(x) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 also is clear on this aspect. The authorities cannot grant licence wherever the prospective licensee shows the place. The licensee should lawfully possess the premises to be eligible for grant of licence.

6. The learned Counsel appearing for the writ petitioner in his arguments reiterated the contents of the affidavit and reply affidavit. After considering the affidavit and counter filed by the Assistant Prohibition and Excise Superintendent, we are constrained to observe that granting of licence to the 6th respondent without ascertaining whether the proposed premises was legally owned by the licensee, to say the least, is atrocious. Simply because the lease agreement was produced by the licensee (6th respondent) purported to have been executed by Smt. Seetha Mahalaxmi in his favour licence is granted. The authorities during enquiry should have ascertained whether Smt. Seetha Mahalaxmi is the owner, or for that matter, who is the owner of the premises. This elementary precaution

was not taken by the authorities in this case. The authorities hurried in granting licence to the 6th respondent. They did not open their eyes even after the petitioner issued a telegram on 10-6-1997 and another notice on 20-6-1997, which were served on the respondents. A make-belief enquiry was conducted and they blindly accepted the lease deed produced by the 6th respondent for the said premises. The ownership question was not looked into and the claim of the petitioner was not enquired into. The Assistant Prohibition and Excise Superintendent, uncharitably says that the 6th respondent is granted the licence and therefore his activities in running the business cannot be termed as violative of the provisions of the Excise Act and the Rules. This statement is very irresponsible and repugnant to judicial conscience. The authorities cannot grant licence to run the business in the premises belonging to a third party. In the Form FL-24 the details of the premises for the licence should be mentioned. When the premises is mentioned it is the duty of the authorities to ascertain whether the possession of the proposed premises is proper or not. This not done in this case. The authorities caused unnecessary annoyance to the real owner of the premises even after his protest and constrained him to approach this Court, which the authorities could have avoided if they enquired into the question of ownership of the premises. Therefore, the writ petition has to be allowed with exemplary costs.

7. Accordingly, the writ petition is allowed, with costs of Rs.5,000/- (Rupees five thousand only).