

(2010) 06 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13762 of 2010

Chinta Vijaya Kumar Reddy

APPELLANT

Vs

The Station House Officer, Prohibition and Excise and Others

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence)
Rules, 2005 — Rule 23A, 27

Citation : (2010) 5 ALD 742 : (2010) 6 ALT 483

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : P. Nagendra Reddy, for the Appellant; G.P. for the Respondent Nos. 1 to 4 and K. Ratangpani Reddy, for the Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Writ Petition has been filed by Chinta Vijaya Kumar Reddy with a prayer to issue any writ, order or direction, more particularly, one in the nature of writ of Mandamus declaring the action of the respondents 1 to 4 in permitting the respondents 5 and 6 to shift their business premises near to the business premises of the petitioner at Appaipally X Roads, Kamalapuram, Kadapa District, as arbitrary and illegal.

2. The Collector and District Magistrate, Kadapa, issued notification on 27.05.2010 calling for tenders for the lease period from 01.07.2010 to 30.06.2012 in respect of various shops situated in Kadapa District. The petitioner submitted tender for Shop No. 1 of Kamalapuram and he became the highest bidder having offered Rs. 96,00,000/- . Respondents 5 and 6 also participated in the auction and became the highest bidders for Shop Nos. 2 and 3 respectively of Kamalapuram. The 5th respondent became the highest bidder for Shop No. 2 having offered Rs. 95,22,999/- . The 6th respondent became the highest bidder for Shop No. 3 having offered Rs. 90,22,999/- . It is the grievance of the petitioner that the respondents 1 to 4 are permitting the respondents 5 and 6 to

establish their shops at Door No. 15/40/2 Appaiahpally X Roads, Kamalapuram, which is very nearer to his shop. According to the petitioner, the upset price has been fixed taking into consideration of the location of the shops during the excise period 2008-2010. Since the upset price in respect of Shop No. 1 has been fixed at Rs. 78,08,499/- in view of its location in Appaiahpally X Roads, Kamalapuram, the shop Nos. 2 and 3 cannot be located at Appaiahpally X Roads, Kamalapuram, as the upset prices fixed in respect of those two shops are Rs. 54,05,114/- and Rs. 50,60,114/- respectively. For better understanding of the grievance of the petitioner, I deem it appropriate to refer paras. 3 to 6 of the affidavit filed in support of the writ petition, which read as follows:

3. The respondents fixed the upset price. The Shop No. 1 is situated at Appayapalli X Roads and whereas the shop No. 2 is situated at Railway Gate with distance of more than 3 K.Ms. By considering the lifting for the earlier lease period, the respondent fixed the upset price as follows:

The allotment of shops is by way of secret tenders. The tender has to be filed by quoting the rates more than the amount specified the above for each shop. I have also enquired about the situation of the shops. The respondent informed that wherever the shops are situated, for the next year also the business has to be conducted in the same location. By considering the locality of the shops, the upset price has been fixed.

4. By considering the business and location of the shop, I filed tender for shop No. 1 for Rs. 96,00,000/- and accordingly, I became the highest bidder. The respondents 5 and 6 are the successful bidders for shop Nos. 2 and 3 respectively. The 2nd respondent issued provisional licence in my favour with direction to commence the business. Since the Shop No. 1 is located on the highway at Appayapalli X Roads, Kamalapuram, it proposed to commence the business in the same locality. The 5th and 6th respondents have to commence the business near the existing shop location.

5. Whereas, I came to know that the 5th and 6th respondents have colluded together and planning to shift one shop near to my shop. If the shop is established nearby my shop, my business will be affected and it creates unhealthy competition and also I cannot reach for the target fixed by the authorities for lifting the stock. Therefore, I requested the authorities to direct the respondents 5 and 6 to establish their shops in the location near the existing shops. But there is no response from the respondent authorities and at the same time, the respondents 5 and 6 are preparing to establish the shop at Door No. 15/40/2 Appaiahpally X Roads, Kamalapuram, which is very near to my shop.

6. Since the respondent authorities quoted upset price with a difference of about Rs. 24,00,000/- between the shop Nos. 1 and 2 and Rs. 28,00,000/- between the Shop No. 1 and 3. Therefore, the tenders are filed by considering the existing business and location of the shops, the authorities have to maintain the same location of the shops. As the upset price has been fixed by considering the earlier

lease period amount, the action of the authorities in permitting the 5th and 6th respondents to establish their business premises near to my shop at Appayapalli X Roads, Kamalapuram as arbitrary, illegal.

3. Rule Nisi came to issued on 18.06.2010. An interim direction came to be issued to the respondents 1 to 4 not to permit the respondents 5 and 6 to locate their business premises within the area of Shop No. 1 in Kamalapuram, Kadapa District.

4. 6th respondent entered appearance through a counsel and filed WPMP No. 2550 of 2010 with a prayer to vacate the interim order dated 18.6.2010 passed in WPMP No. 17339 of 2010. 2nd respondent also filed WPMP No. 2657 of 2010 with similar prayer.

5. When the vacate stay petitions came up for consideration, with the consent of the learned Counsel appearing for the parties, the writ petition itself is taken up for disposal.

6. Heard Sri P. Nagendra Reddy, learned Counsel appearing for the petitioner; leaned Government Pleader for Prohibition and Excise appearing for the respondents 1 to 4 and Sri K. Ratangapani Reddy, learned Counsel appearing for the 6th respondent.

7. Sri P. Nagendra Reddy, learned Counsel appearing for the petitioner submits that for the years 2008-2010, location of Shop Nos. 1 to 3 were indicated and keeping in view of the location and business turnover of the shops for the years 2008-2010, upset price for the licence period 2010-2012 has been fixed. In a way, learned Counsel submits that the authorities have taken into consideration the location of the existing shops while fixing the upset price. Learned Counsel took me to the letter emanating from the Commissioner of Prohibition and Excise, Hyderabad, vide Cr. No. 3600/2010/CPE/G2, dated 05.05.2010. Much emphasis has been made on the guidelines issued to all the Prohibition and Excise Superintendents and all the Deputy Commissioners of Prohibition and Excise in the State. The guidelines are read as hereunder:

1. The upset price of each A4 shop has to be fixed by adding 15% to the lease amount fetched by the shop for 2008-10.
2. All the A4 shops shall be proposed for auction in the places/Wards/Divisions, as the case may be, in which they are existing as on 1-5-2010.
3. Relocation may be proposed, but such number should be the barest minimum, subject to scrutiny by the Committee comprising Senior Officers at the Commissionerate.
4. Notification of one A-4 shop in two or more places/Wards/Divisions may be avoided so as to prevent litigation at the time of establishment of the shop.
5. If the old Wards/Divisions are replaced by new Wards/Divisions, shops have to be proposed in new Wards/Divisions only.

By referring the above guidelines, learned Counsel submits that the upset price for the three shops has been fixed keeping in view their location and in which case, it is impermissible for the respondents 1 to 4 to permit the respondents 5 and 6 to shift their shops to Appaiahpally X Roads, Kamalapuram, Kadapa District, where the shop of the petitioner is located.

8. Learned Government Pleader for Prohibition and Excise appearing for the respondents 1 to 4 submits that the notification is very clear that the three shops are to be located in Kamalapuram and the highest bidders are at liberty to locate the shop anywhere at Kamalapuram and such is the notification, it is impermissible for the petitioner to contend that the respondents 5 and 6 cannot locate their shops at Appaiahpally X Roads, Kamalapuram.

9. Sri K. Rathangapani Reddy, learned Counsel appearing for the 6th respondent also submits his arguments on the same lines as that of the learned Government Pleader for Prohibition and Excise appearing for the respondents 1 to 4. Learned Counsel appearing for the 6th respondent refers Rule 27 of the A.P. Excise (Lease of Right of Selling liquor and Conditions of Licence) Rules, 2005 (for short "the Rules, 2005"), which reads as hereunder:

27. Selection of Premises: (1) The successful tenderer subject to the approval of the Prohibition and Excise Superintendent, shall select suitable premises for sale of IL and FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be as notified in the District Gazette. It shall be at least 100 meters away from the places of Public worship, Educational Institutions, Hospitals and 50 meters away from Highways except in Municipal Corporations and 5 kms belt area of the periphery of Municipal Corporations.

Explanation: For the purpose of this rule:

(a) "Place of public worship" means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf;

(b) "Educational Institutions" means any Primary School, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law;

(c) "High Way" means National High Way or State Highway and shall not pass within the limits of Municipal Corporation, Municipal Council or the Gouthan in any village or Panchayat area;

(d) "Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of, at least thirty (30) beds.

(2) The holder of Licence in Form A-4 may be permitted to have a permit room in Form A-4(B) located in a place whose population is 5,000 and above;

Provided that no such permit room will be granted in Municipal Corporations and within a belt area of 5 Kms. from the periphery of such Municipal Corporations, Municipalities and within a belt area of 2 Kms. from the periphery of such Municipalities and in notified Tourism centers;

Provided further that the premises selected for permit room must be adjacent to the existing A-4 Licensed premises and it must have a minimum plain area of 10 Sq. mts. with facilities of sanitary such as wash basin, water closet and drinking water;

Provided also that the selected premises is at least 100 meters from the places of public worship, educational Institutions, high ways and hospitals.

(3) The distances referred above shall be measured from the mid-point of the entrance of the Licensed premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/ place of public worship.

(4) The boundaries of the premises shall be indicated in the Licence.

(5) There shall be a single door for entry and exit and sales shall be conducted through without giving entry to the customers inside the premises.

Learned Counsel also refers Rule 23-A of the Rules, 2005, which reads as hereunder:

"23-A. Bar on claim of renewal: No person to whom a lease has been granted under these Rules shall have any claim to the renewal of such lease.

10. To resolve the controversy, I deem it appropriate to refer the notification dated 27.05.2010 issued by the Collector and District Magistrate, Kadapa. Col. No. 4 of the notification deals with location of the shop. At S. Nos. 187 to 189 of the notification, Shop Nos. 1 to 3 of Kamalapuram are indicated. A reading of the Notification does not give any ambiguity that the three shops are to be located in Kamalapuram. The entire Kamalapuram has been treated as one area. The successful bidder can locate his shop at any place in Kamalapuram, subject to the restrictions imposed in Rule 27 of the Rules, 2005. Therefore, the contention of the petitioner that the upset price has been fixed keeping in view the location of the shops in the lease period 2008-2010 has no relevance. It may also be noted at this juncture that so far as the lease period 2010-2012, the bid amount for all the three shops is almost equal. The petitioner became the highest bidder for Shop No. 1 having offered Rs. 96,00,000/-; the 5th respondent became the highest bidder for Shop No. 2 having offered Rs. 95,22,999/- and the 6th respondent became the highest bidder for Shop No. 3 having offered Rs. 90,22,999/-.

11. In that view of the matter, I find that the respondents 5 and 6 can locate

their shops at any place in Kamalapuram, Kadapa District, subject to the restrictions imposed in Rule 27 of the A.P. Excise (Lease of Right of selling by shop and conditions of licence) Rules, 2005.

12. Accordingly, the Writ Petition is devoid of merits and it is hereby dismissed. The interim order dated 18.06.2010 passed in W.P.M.P. No. 17339 of 2010 is hereby vacated. No costs.