
(2014) 06 AP CK 0136

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15088 of 2014

G. Kistaiah

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 17, 28, 29, 31, 72

Citation : (2014) 4 ALD 502 : (2015) 2 ALT 306

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : O. Manohar Reddy, Advocate for the Appellant

Judgement

Nooty Ramamohana Rao, J.—The petitioner, who was granted a licence in Form 2B for running a bar and restaurant, challenges the orders passed by the Prohibition & Excise Superintendent, Narasaraopet, Guntur District, through his proceedings dated 22.10.2013, cancelling the said licence with immediate effect. For passing this order, the Prohibition & Excise Superintendent, Narasaraopet has invoked the power available u/s 31 of the Andhra Pradesh Excise Act, 1968.

2. Heard Sri O. Manohar Reddy, learned counsel for the petitioner and learned Government Pleader for Prohibition & Excise, who has accepted notice on behalf of Respondents 1 to 4 herein and suggested that issuance of notice to these respondents can be waived in view of the legal question involved for determination in this case. Accordingly, issuance of notices to Respondents 1 to 4 is dispensed with.

3. Section 31 of the Act clearly sets out that the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates. It is appropriate to notice the crucial expressions used in sub-section (1) of Section 31 are: "the authority granting any licence". Therefore, the question that has to be determined is who is the competent authority to grant a licence for running a bar. For the said purpose, we need to

examine the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005. These Rules have been framed by the Governor exercising the power available to him u/s 72 read with Sections 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968. The expression "Bar" has been defined in Rule 3(1)(b) as meaning "a privilege granted under this Act to an establishment where food is served, for sale of Indian Made Foreign Liquor and Foreign Liquor, in loose for consumption on the licensed premises". Rule 4 has clearly set out that a licence in Form 2B may be granted to an establishment licensed by the local authority to serve food such as a Hotel or a Restaurant, for the sale of Indian Made Foreign liquor and Foreign liquor in glasses or pegs for consumption within the licensed premises but not for sale of Indian Made Foreign liquor and foreign liquor for removing it out of the licensed premises. Rule 5 dealt with all aspects relating to application for grant of licence. Sub-rule (2) thereof specifies that the Commissioner of Excise having due regard to requirement and other factors may grant a prior clearance in Form 2A to such of the applicants and thereafter the holder of Form 2A may apply in Form 1B for grant of licence for a bar to the concerned Prohibition & Excise Superintendent where the applicant's premises is to be licensed. The application in Form 1B will be enquired into by the Prohibition & Excise Superintendent under sub-rule (5) thereof to ascertain the bona fides of the applicant and verifying the particulars furnished in the application and the suitability of the premises for granting the licence for a bar and then he should forward the application to the Deputy Commissioner of Prohibition & Excise of the division along with his report. Sub-rule (6) of Rule 5 is very crucial which reads as under:

(6) The Deputy Commissioner, after causing such enquiry as he may deem fit, may grant the licence.

4. Therefore, it is the Deputy Commissioner of the Excise Division who is the competent authority to grant the licence/privilege to run a bar in Form 2B but not the Excise Superintendent. Rule 11 of these Rules made the position further clear by declaring that the Deputy Commissioner shall be the competent authority to grant the privilege to run a bar. Hence, it is more than clear that the competent authority for invoking the power to cancel or suspend a licence granted in Form 2B in terms of sub-section (1) of Section 31 of the Act is the Deputy Commissioner of the Excise Division but not the Prohibition & Excise Superintendent. Therefore, the order passed by the Prohibition & Excise Superintendent, Narasaraopet in this case is without any power or jurisdiction. It is rather hard for me to believe that a Prohibition & Excise Superintendent could not have known, by now, that he lacks the competence to grant a licence in Form 2B. An uncomfortable feeling is always left behind in cases of this nature in the minds of the Courts that a patently illegal order is passed only with a view to extend the necessary help to the defaulter, so that a good legal ground exists for securing necessary relief from the Court. Therefore, the conduct of the Prohibition & Excise Superintendent, Narasaraopet in passing a patently illegal order deserves to be examined as to how far he is justified and as to whether he

acted bona fide in the matter and that is for the Commissioner of Prohibition & Excise to take care, being the Head of the Department. It is time that the authorities who passed patently illegal orders are held accountable and pulled up and necessary discipline is administered, so that the purposeful and deliberate orders of this nature would not get repeatedly passed.

5. The impugned order is therefore, set aside for sheer want of power in the hands of the Prohibition & Excise Superintendent, Narasaraopet and the matter shall stand remitted for consideration afresh by the Deputy Commissioner of Excise Division, Guntur, who shall forthwith examine the entire matter and pass appropriate orders within one week from the date of receipt of a copy of this order.

6. The Writ Petition stands disposed of in the above terms. No costs.

7. Consequently, the miscellaneous applications, if any shall also stand disposed of.