(2007) 04 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 810, 1295 and 4895 of 2007

K. Hanmanth Rao and Another — APPELLANT

Vs

Commissioner of Prohibition and Excise, Government of A.P. and Others — RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Andhra Pradesh (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 — Rule 18, 19, 21, 27, 27(1)

Andhra Pradesh Excise Act, 1968 — Section 13, 15, 17, 23

Citation : (2007) 4 ALT 711

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : P. Naveen Rao and V. Sree Ranga Rao, for the Appellant; G.P. for Respondents 1 to 3 and M. Subrahmanyam, for the Respondent

Judgement

V. Eswaraiah, J.—K. Hanmanth Rao and A. Thirupathi filed W.P.Nos.810 and 1295 of 2007 respectively for the self same relief seeking a Writ of Mandamus to declare the action of the Excise officials in granting licence in favour of one P. Vamshidhar Rao to establish retail outlet outside the main village of Teegalaguttapally pursuant to the proceedings in Rc. No. 54/06/ P&EI/KNR(R) dated 03-01-2007 as illegal and arbitrary and contrary to the directions of this Court in W.P. No. 15704 of 2006 dated 14-08-2006 as confirmed by the Division Bench in W.A. No. 898 of 2006 dated 30-08-2006.

2. The said P. Vamshidhar Rao filed W.P. No. 4895 of 2007 seeking a Writ of Mandamus to declare the proceedings in R.C. No. 454/P&Ex/2006/A2 dated 07-02-2007 of the Excise Superintendent, Karimanagar as illegal and arbitrary and to grant retail outlet liquor shop in IML-A4 licence for D. No. 4-69/27/B, Teegalaguttapally Village, Karimnagar Rural Mandal, Karimnagar District.

3. It is the case of the petitioners in W.P.Nos.810 and 1295 of 2007 that they are the auction purchasers of the retail outlet for sale of Indian Made Foreign Liquor

(IMFL) in form A4 at the premises bearing Nos.3-6-8 and 3-3-142/1 respectively situated at Mancherial Chowrasta, Karimnagar. The said Vamshidhar Rao is the successful bidder to establish the retail outlet for sale of IMFL at Teegalaguttapally village, which is adjacent to Karimnagar Town and he was required to establish the retail outlet in the said village to cater to the needs of the residents of the said village. However, with an oblique motive of cornering the business pertaining to Karimnagar Town and to create unethical competition with the retail outlets established in Karimnagar Town, he proposed to establish a outlet on the borders of Karimnagar Town and far away from the main village. The respondents 1 to 3 did not accept the request made by Vamshidhar Rao in this regard, as the Department found that establishing a retail outlet outside the main village is not permissible and defeats the very purpose of sanctioning a retail outlet for the village. The Department also opined that establishing a retail outlet close to Karimnagar Town would also create law and order problem. Aggrieved by the decision of the respondents 1 to 3, Vamshidhar Rao filed W.P. No. 15704 of 2006 but the same was dismissed on 14-08-2006, which order was upheld by the Division Bench in W.A. No. 898 of 2006. Assailing the same, he filed S.LP. No. 20291 of 2006 before the Hon''ble Supreme Court, in which notice was issued on 15-12-2006 and the same is pending. They further submit that due to the pressure exerted by him the official respondents favourably considered his request to establish a retail outlet near to Karimnagar Town and therefore, their action in proceeding to consider his request to establish a retail outlet outside the main revenue village of Teegalaguttapally is illegal and unconstitutional. If any permission is granted in his favour serious prejudice would be caused to them and to other retail outlet owners of Karimnagar Town. It is further stated that pursuant to the observations of the Division Bench the Commissioner of Prohibition and Excise issued guidelines and clarifications in Cr. No. 10639/2006/CPE/G4 dated 17-01-2007, but contrary to the said guidelines the licencing authority is going to consider favourably the request of Vamshidhar Rao. Accordingly, both the petitioners question the action of the Prohibition and Excise Superintendent in recommending the case of Vamshidhar Rao vide his proceedings Rc. No. 54/06/P&EI/Knr(R) dated 03-01-2007.

4. W.P. No. 810 of 2007 was filed on 09-01 -2007 and when the matter came up for admission on 11-01-2007 at the request of the learned Counsel for the petitioner it was adjourned to 17-01 -2007 and on 22-01 -2007 it was adjourned for two weeks. On 06-02-2007, it was admitted and as it was stated that a similar writ petition has been filed, it was directed to be posted along with W.P. No. 1295 of 2007. W.P. No. 1295 was filed on 23-01-2007 for the self same relief and this Court while admitting the writ petition granted interim direction in WPMP. No. 1646 of 2007 directing the official respondents not to grant licence in favour of Vamshidhar Rao outside Teegalaguttapally village limits contrary to Rule 27 of the Andhra Pradesh (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short ''the Shop Rules''). On 06-02-2007 the petitioner obtained another modification order in WPMP. No. 1901 of 2007

directing the official respondents not to grant any licence in favour of Vamshidhar Rao outside the Teegalaguttapally main village limits contrary to the Shop Rules. The said Vamshidhar Rao filed a vacate stay petition to vacate the said interim order in WPMP. No. 1646 of 2007 and also filed WP. No. 4895 of 2007.

5. The undisputed facts are that Karimnagar Municipal Corporation limits are prescribed and it has got a definite area of operation divided by several wards and circles and the Teegalaguttapally is a revenue village of Karimnagar Rural Mandal outside the Karimnagar Municipal Corporation limits. Different shops have been established in particular areas, wards and localities of Karimnagar Municipal Corporation Limits and similarly in Karimnagar Rural Mandal different shops have been established. One such shop was notified at SI. No. 25 at Karimnagar Rural Mandal in the village limits of Teegalaguttapally. The said Vamshidhar Rao became the highest bidder in respect of the said shop on yearly lease amount of Rs. 54 Lakhs as against the upset price of lease amount fixed at Rs. 35,55,235/- whereas the highest lease amount offered by the petitioners in other two writ petitions is much less than that offered by Vamshidhar Rao and the difference would be around Rs. 10 Lakhs.

The said Vamshidhar Rao deposited a sum of Rs. 9,00,000/- towards 1/6th of the lease amount immediately on the date of auction under Rule 18 and furnished bank guarantee for the remaining amount as required under Rule 19 and the second installment of Rs. 9,00,000/- was also deposited in the month of October 2006 though no licence has been granted in his favour. There is no dispute that the petitioners in the other two writ petitions have been granted licences for the excise year 2006-07 to 2007-08 for two years lease period from 01-07-2006 to 20-06-2008.

6. Initially, Vamshidhar Rao selected premises bearing N0.5-5A, Teegalaguttapally Village in conformity with Rule 27 of the Shop Rules but the Prohibition & Excise Superintendent has not approved the same. His request to grant licence was rejected by proceedings dated 21 -07-2006 on the ground that the premises selected by him is at a distance of 150 metres from the border of Karimnagar Municipal Corporation limits and 2 KMs away from Teegalaguttapally village. Questioning the same he filed W.P. No. 15704 of 2006, which was dismissed and the same was confirmed in W.A. No. 898 of 2006 against which an SLP is pending. Without prejudice to his rights in the pending SLP he has selected another premises bearing D.N0.4-69/27/A, Teegalaguttapally Village but it was also not approved by the Prohibition & Excise Superintendent vide proceedings dated 06-11 -2006 on the ground that the premises selected by him is at a distance of 400 metres away from Karimnagar Municipal Corporation limits and 2 Kms away from Teegalaguttapally Village and he was directed to select another suitable premises in the main village of Teegalaguttapally. Thereafter, he selected the present premises bearing D. No. 4-69/27/B, Teegalaguttapally Village for grant of A4 licence. The Prohibition and Excise Inspector, Prohibition and Excise Station (Rural) inspected the premises on 02-01-2007 and submitted

a report in Rc. No. 54/06/P&E.I/KNR(R) dated 03-01 -2007 stating that the said premises is in conformity with Rule 27(1) of the Shop Rules and that Vamshidhar Rao is fully qualified to be considered for issuance of licence in Form A4. Pursuant to the said recommendation the Assistant Prohibition & Excise Superintendent also inspected the said premises on 03-01-2007 and made the following endorsement:

I have inspected the proposed premises along with SHO, Karimnagar Rural on 03-01 -2007 and examined the proposal submitted by the SHO Karimnagar Rural for establishing A4 shop at H. No. 4-69/ 27/B at Teegalaguttapally and submit that the premises is suitable for establishing IML A4 shop and is at a distance of about 1 KM from the border of Karimnagar Municipal Corporation and about 1 1/2 Km from Teegalaguttapally main village. The nearest municipal corporation Karimnagar Town shop (Madras Wines) is situated at about 2 KMs away from the proposed premises.

Sd/- 4/1/07 Asst. Proh. & Ex. Supt.

7. Meanwhile, the Commissioner of Prohibition & Excise, Hyderabad vide proceedings Cr. No. 10639/2006/CPE/G4 dated 17-01-2007 communicated the guidelines prepared by him as per the orders of the aforesaid Division Bench of this Court for selection of premises of A4 shop under Rule 27 of the Shop Rules, to the Prohibition and Excise Superintendents and Deputy Commissioners of Prohibition and Excise for taking necessary action. The draft guidelines are as follows:

1. The successful Auction purchaser shall select the suitable premises for sale of IL & FL within the Municipal Corporation, Municipality, village/town/ city or area/ locality, as the case may be notified in District Gazette. It should not attract any disqualification under Rule(27)namely:

100 Meters away from the places of public worship, Educational Institutions, Hospital and (50) Meters away from Highways.

The term place of public worship, Educational Institutions, Hospitals and Highway should satisfy the definition of the term given in the explanation to Rule 27.

2. Depending on the suitability of the premises, if necessary the Proh. and Excise Superintendent can go beyond the requirements specified U/R (27).

3. Regarding the applicability of term "suitability'' of the selected premises, the Proh. and Excise Superintendent should exercise his discretion judiciously and most carefully and it should not be based on extraneous reasons and irrelevant considerations and the location of the A4 shop should not lead to any litigation, law and order problem and unhealthy competition among the licensees.

The decision on suitability of premises or otherwise should be supported by a thorough enquiry.

4. As far as possible the proposed premises should be located well within the

notified/located area and location of the A4 shop in the periphery area should be avoided as far as possible. The discretion exercised by Proh. & Excise Superintendent in this regard should not unduly interfere with the freedom of the licencee to select the premises for the shop.

5. The boundaries of the premises shall be well defined.

6. 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.

8. Accordingly, the Commissioner of Prohibition and Excise vide proceedings dated 19-01 -2007 directed the Prohibition and Excise Superintendent, Karimnagar to follow the said guidelines while issuing A4 shop licence. Pursuant to the request of the Prohibition and Excise Superintendent to reexamine the grant of licence in favour of Vamshidhar Rao keeping in view the said guidelines, the Prohibition and Excise Inspector, Prohibition and Excise Station, Karimnagar Rural submitted a report dated 26-01-2007 stating that he has examined the premises keeping in view the aforesaid guidelines and found that the premises is in accordance with the guidelines satisfying the distance under Rule 27 of the Shop Rules and the proposed premises is located within the village of notified area of Teegalaguttapally village and is more than 1 KM away from the border of Karimnagar Municipal Corporation. It appears that meanwhile 21 IML licencees situated within the Karimnagar Municipal Corporation submitted objections opposing the grant of licence in favour of Vamshidhar Rao in the aforesaid premises of Teegalaguttapally village for the lease period 2006-2008 stating that their IML shops business will be affected and the said objections were forwarded to the Prohibition and Excise Inspector vide proceedings dated 29-01-2007 on which the later submitted another report dated 05-02-2007 stating that Vamshidhar has taken the said shop for Rs. 54 Lakhs and his request to grant licence was rejected twice and now he has selected another premises bearing No. 4-69/27/B for establishing the A4 shop, which has been inspected by him and recommended for issuance of licence. The said premises was once again inspected and verified by the Prohibition and Excise Inspector and found to be in accordance with the guidelines issued by the Commissioner of Prohibition and Excise and the same was submitted with relevant remarks through the Assistant Prohibition and Excise Superintendent, Karimnagar. Since the newly proposed premises is in accordance with the rules and guidelines issued by the Commissioner of Prohibition and Excise for establishment of A4 shop and being 1 KM away from the border of Karimnagar Municipal Corporation and 2 KMs away from the nearest Municipal Corporation IML shop i.e. Madras Wines and very far away from the rest of Municipal Corporation IML shops, there is no justification in the contention of the licensees of the Karimnagar Municipal Corporation and accordingly recommended the for grant of A4 shop licence to the aforesaid premises which falls within the Teegalaguttapally village only.

9. The report of the Prohibition and Excise Inspector was sent through the Assistant Prohibition and Excise Superintendent, who also made an endorsement,

dated 05-02-2007 stating that he has verified the report of the SHO Karimnagar Rural and that he agrees with the remarks offered by the Inspector. But the said reports did not find favour of the Prohibition and Excise Superintendent as he rejected the request of Vamshidhar Rao for grant of licence in the said premises of Teegalaguttapally village on the ground that this Court by order dated 23-01-2007 and 06-02-2007 in WPMP. No. 1646 of 2007 directed not to grant any licence in favour of the leaseholder outside Teegalaguttapally main village limits contrary to Rule 27 of the Shop Rules. In view of the aforesaid judgment of this Court in W.P. No. 15704 of 2006 and the interim order and the guidelines issued by the Commissioner of Prohibition and Excise he observed that granting licence in the new premises at D. No. 4-69/27/B may lead to litigation and law and order problem and unhealthy competition among the licencees of the Corporation and surrounding villages of Karimnagar Municipal Corporation and found to be against his earlier instructions dated 21 -01 -2006 aria 06-11 -2006, therefore, the request of Vamshidhar to grant licence in the said premises was not approved and he was further advised to select any suitable premises as per the interim orders of this Court dated 06-02-2007 in WPMP. No. 1646 of 2007 and such premises be selected in the main village of Teegalaguttapally but not in the periphery area of Karimnagar Municipal Corporation.

10. I have perused the judgment of the learned Single Judge in W.P. No. 15704 of 2006 as well the order in W.A. No. 898 of 2006. When the request of Vamshidhar Rao was rejected vide proceedings dated 21 -07-2006, he filed W.P. No. 15704 of 2006. My learned Sister Justice G. Rohini while dismissing the writ petition by order dated 14-08-2006 observed that the premises is situated 150 meters away from Karimnagar Municipal Corporation limits which is very nearer to the Municipal Corporation Limits and 2 KMs away from the main village of Teegalaguttapally and on the report submitted by the Station House Officer, Karimnagar (Rural) it was opined that if the petitioner is permitted to locate his shop in the proposed premises, it may lead to unhealthy competition among the licencees. The very purpose of the department in notifying the shop at Teegalaguttapally is to meet the liquor needs of that particular village and the population of the said village as per 2001 census was 4612 and after extracting Rule 27 of the Shop Rules which deals with the selection of premises and after relying on a judgment of this Court in Ch. Subrahmanyeswara Rao Vs. Commissioner, Prohibition and Excise and Others, held that as per the aforesaid report of the concerned SHO if the petitioner is permitted to establish a shop in the premises in question it would lead to unhealthy competition among the licencees of Karimnagar Municipal Corporation and that the shop will not be catering to the needs of the habitants of Teegalaguttapally village, hence, it cannot be said that the order passed by the Prohibition and Excise Superintendent is without application of mind but it was based on the factual report submitted by the SHO. The said matter was carried in appeal in W.A. No. 898 of 2006 and the Division Bench of this Court after considering the said judgment as well as the earlier reported judgments in the case and after

extracting Rule 27, while dismissing the writ appeal expressed a view to avoid future litigation on the subject that the Commissioner of Prohibition and Excise should examine the feasibility of issuing guidelines, which may be followed by the competent authority while deciding the applications for location of premises/ site for establishing liquor shops.

11. It is just and necessary to look into the relevant provisions with regard to the grant of lease of liquor shops under the Andhra Pradesh Excise Act, 1968 (for short ''the Act''). u/s 13 of the Act no person shall manufacture or collect an intoxicant, cultivate, possess and sell intoxicating liquor without a licence granted for that particular purpose. u/s 15 of the Act a licence for sale or buying shall be granted by the Prohibition and Excise Superintendent if the sale or buying is within a district; by the Deputy Commissioner if the sale or buying is in more than one district within his jurisdiction and by the Commissioner if the sale or buying is in an area within the jurisdiction or more than one Deputy Commissioner. A perusal of the Act and the Rules made there under go to show that the Government alone has got exclusive privilege of manufacture and sale of intoxicating liquors. u/s 17 of the Act it is for the Government to grant lease by different kinds of privileges i.e. of manufacturing or of supplying or selling by wholesale or by retail or selling of liquor by retail or by bar etc. u/s 23 of the Act the Commissioner or any Competent Officer is entitled to accept the payment of the sum in consideration of the grant of lease or licence or both for the exclusive privilege in respect of liquor or any other intoxicant u/s 17 of the Act. Keeping in view the provisions of the Act separate rules have been framed for manufacture, distribution, sale of intoxicant liquors and the Government formulated the rules in G.O.Rt. No. 998 Revenue (EX.II) Department dated 24-05-2005 called the Andhra Pradesh (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005.

12. Under the Shop Rules "Auction Purchaser" means the person whose tender is accepted by the Auctioning Authority. "Highest Tenderer" means a person who offers the highest lease amount by tender. "Lease amount" means the amount payable in respect of a shop as part of sum in consideration of the grant of lease payable u/s 23 read with Section 17 of the Act. "Licence" means a licence issued to a leaseholder under the Rules. "Licenced Premises" means where IL & FL is permitted to be sold by the leaseholder. "Shop" means a privilege granted under these rules for sale of Indian Liquor or Foreign Liquor in sealed or capsuled bottles or packages or tins to an individual in quantities not exceeding the limits as prescribed without permitting consumption on the licenced premises. Under Rule 3 of the Shop Rules lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders form the public after due notification. Under Rule 4 of the Shop Rules the Commissioner of Prohibition and Excise having due regard to requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in an area/locality before the publication of the auction notice under Rule 5. Under Rule 5 the auction notice shall contain the Serial Number and the name of the

area/locality where the shop will be established, lease period etc.

13. Pursuant to the Shop Rules the auctioning authority i.e. the District Collector, Karimnagar issued notification dated 01-07-2006 for auction of shops in Karimnagar District for lease of right to sell Indian made Foreign Liquor, Foreign Liquor by shop as specified in the list appended to the notification from 01 -07-2006 to 30-06-2008. The shop at SI. No. 25 is notified in respect of Karimnagar Rural Mandal and its location is shown at Teegalaguttapally village of Karimnagar Mandal. As already stated the shops have been notified Municipal Corporation wise and Municipalities wise and villages wise in respect of mandals etc. The auction purchaser in respect of one particular village or Mandal or municipality is not entitled to have a shop in the area other than the notified area for establishing the shop. Rule 27 of the Shop Rules deals with the selection of location of the premises. The successful tenderer shall select suitable premises within the municipal corporation, municipality, village, town, city or area/locality as notified in the District Gazette but it shall be 100 meters away from the places of public worship, educational institutions, hospitals and 50 meters away from the highways. Under Rule 27(2) the leaseholder of licence in Form A4 may be permitted to have a permit room in Form A4 (B) located in a place whose population is 5,000 and above. Under proviso to Sub-rule 2 of Rule 27 no such permit room will be granted in the 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. The premises selected for permit room must be adjacent to the existing A4 Licenced premises and it must have a minimum plinth area of 10 sq. meters with facilities of sanitary such as wash basin, water closet and drinking water and that the selected premises is at least 100 meters away from the places of public worship, educational institutions, highways and hospitals. Rule 27(3) also provides the manner and method of measuring distances between the entrance of the licenced premises and the nearest entrance of the institutions/places of public worship. What is prohibited under Rule 27(2) is only opening of permit room annexed to A4 licence but there is no prohibition for grant of A4 licence within the periphery of the Municipal Corporations, Municipalities etc. A belt area of 5 KMs is earmarked for grant of permit room from the periphery of Municipal Corporations but not for grant of A4 licence. Similarly, a belt area of 2 KMs is earmarked for grant of permit room from the periphery of Municipalities for neighbouring licencees who are holding A4 licence but no belt area or periphery is fixed for prohibiting the grant of licence situated outside the Municipal Corporations or the Municipalities. Therefore, any discretion on the part of the licensing authority is to see whether the premises selected by the highest bidder is in conformity with Rule 27 or not. However, there can be discretion on the part of the licensing authority while considering grant of licence at objectionable places even if the said premises is situated just above 100 meters, such discretion can be exercised as Rule 27(1) goes to show that the premises selected by the highest bidder shall be at least

100 meters away from places of public worship, educational institutions, hospitals and 50 meters away from the highway. As the word at least is used under Rule 27, it indicates that there is some amount of discretionary power vested in the licensing authority but once the premises is selected in conformity with Rule 27 of the Shop Rules, I am of the opinion that there is no other discretion vested in the licensing authority to refuse the approval of the premises for establishment of A4 shop.

14. In the instant case, in fact, the licencees situated in the Karimnagar Municipal Corporations have no locus standi to question the grant of licence situated outside the Karimnagar Municipal Corporation limits. It appears that the licencees of the Karimnagar Municipal Corporation formed into a ring and made a representation before the Prohibition and Excise Superintendent not to grant licence in favour of Vamshidhar Rao. Therefore, the Prohibition and Excise Superintendent time and again referred the matter to the Prohibition and Excise Inspector, who inspected the premises and submitted reports time and again; for the third time he clearly recommended for grant of licence in favour of Vamshidhar Rao, as the said premises was fully in conformity with Rule 27 of the Shop Rules. Even the Assistant Prohibition and Excise Superintendent also inspected and verified the premises and stated that the proposed premises is 1 KM away from the border of the Karimnagar Municipal Corporation; 2 KMs away from the existing Madras Wines in Karimnagar Municipal Corporation and 1 1/2 KM away from the Teegalaguttapally main village. In fact, the licence fee payable by Vamshidhar Rao is much higher than the licence fee paid by the licencees in respect of Karimnagar Municipal Corporation and the shops of the petitioners in other two writ petitions are situated in different mandals, different areas and different localities. Therefore, as per the auction notification issued by the District Collector for location of the shop at Teegalaguttapally village the premises selected by Vamshidhar Rao falls within the Teegalaguttapally village limits. Admittedly the premises selected by Vamshidhar Rao is within the Teegalaguttapally village limits. As and when the highest bidder complies with all requirements it is the duty of the licensing authority to grant lease in his favour and if the highest bidder fails to comply with the required rules the said shop shall be re-auctioned.

15. In fact, under Rule 21 of the Shop Rules, wherever the shops are not auctioned the auctioning authority with the approval of the Commissioner of Prohibition and Excise may permit the APBCL to open outlets for the sale of IMFL & FL in such areas/localities where the privilege of sale by shop could not be disposed of in the auction. Under Rule 29 the leaseholder shall sell liquor only in the premises specified in the licence no change or alteration of the licenced shop shall be made nor licenced premises be shifted elsewhere. However, the said shifting can also be permitted under Rule 29(3) subject to payment of 1% of the lease amount or Rs. 25,000/- whichever is higher by the Commissioner notwithstanding the notified area of the licenced premises, within the same Mandal or Municipality or Municipal Corporation without affecting the total

number of notified shops in the said Mandal or Municipality or Municipal Corporation. Thus, there is a provision to shift the premises within the same locality but not in another locality of the same Mandal. In the instant case, the Mandals are different and the selected premises of Vamshidhar Rao is situated in Karimnagar Rural Mandal whereas the shop of other licencees are situated within the Karimnagar Urban Mandal. Once the area of operation is prescribed, I am of the opinion that there cannot be any restriction for grant of license within the area of the notified area/ locality. As already stated, it cannot be said that the premises selected by Vamshidhar Rao is not within the area of Teegalaguttapally village and it cannot be assumed and presumed that Teegalaguttapally village means Teegalaguttapally main village but not the revenue village of Teegalaguttapally village. However, in the instant case, there is clear recommendation of the Prohibition and Excise Inspector, Karimnagar Rural Mandal as well as the Assistant Prohibition and Excise Superintendent, Karimnagar for grant of licence in favour of Vamshidhar Rao. Therefore, I am of the opinion that refusal to approve the said premises pursuant to the interim orders of this Court is illegal and unsustainable. Even the guidelines framed by the Commissioner of Prohibition and Excise, go to show that while approving the suitability of the selected premises the Prohibition and Excise Superintendent shall exercise his discretion judiciously and most carefully and it should not be based on extraneous reasons and irrelevant considerations and the location of A4 shop should not lead to any litigation, law and order problem and unhealthy competition among the licencees. The question of unhealthy competition and litigation arises only when the licence is granted within the municipal corporation limits but not outside the municipal corporation limits.

16. When the villages are having separate boundaries so does the municipalities and municipal corporations, therefore, the action of the Prohibition and Excise Superintendent in taking into account the objections of the licencees of the municipal corporation with regard to grant of licence outside the municipal corporation, falls within the ambit of extraneous reasons and it would be an irrelevant consideration. Even as per guideline 4 as far as possible the proposed premises shall be located within the notified/located area and the location of A-4 shop in the periphery area should be avoid as far as possible. The periphery is not at all earmarked for grant of A-4 licence but the periphery area is earmarked for grant of permit room alone. Guideline 4 further stipulates that discretion of the Prohibition and Excise Superintendent in this regard should not unduly interfere the freedom of the licencee to select the premises for the shop. I am of the opinion that in the instant case the Prohibition and Excise Superintendent interfered with the freedom of the licencee in selecting the present premises, which was recommended by the Prohibition and Excise Inspector, Karimnagar Rural Mandal as well as the Assistant Prohibition and Excise Superintendent. The said refusal was made keeping in view the objections raised by the licencees of the Karimnagar Municipal Corporation as well as the interim directions of this Court.

17. The action of the Prohibition and Excise Superintendent in disapproving the premises selected by the Vamshidhar Rao on the ground that though the said premises is 1 1/2 KM away from the village where there is no sufficient habitation has misinterpreted the scope of Rule 27 and by reason of this self misdirection he came to a wrong conclusion that in order to grant permission at any particular place in the village there should be sufficient habitation. What is relevant is whether the shop proposed to be set up is located within the village or locality as notified in the Gazette. When that condition is satisfied and if the premises chosen is not within the prohibited distance from the places and institutions specified in Rule 27, the Excise Superintendent has no power to refuse permission.

18. In fact, the other two writ petitions questioning the recommendations of the Prohibition and Excise Inspector, Prohibition and Excise Station, Karimnagar dated 03-01-2007 are not maintainable and it cannot be said that the petitioners in the other two writ petitions would be affected parties if the licence is granted in favour of Vamshidar Rao outside the municipal corporation limits.

W.P.Nos.810 and 1295 of 2007 are accordingly dismissed with costs of Rs. 5,000/-(Rupees Five Thousand Only) payable by the petitioners to P. Vamshidhar Rao.

W.P. No. 4895 of 2007 is accordingly allowed as prayed for. There shall be no order as to costs.

