(2005) 02 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 404 of 2005

Kamala Wines APPELLANT

Vs

Commissioner, Prohibition and Excise and Others RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 35, 35(2)
Andhra Pradesh Excise Act, 1968 — Section 68, 72

Citation : (2005) 2 ALD 464 : (2005) 2 ALT 93 : (2005) 1 APLJ 279

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.B. Rama Mohan Reddy for B. Nagi Reddy, for the Appellant; E.V. Bhagirath Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Petitioner is a licensee in form IL-24 and it established a wine shop at Nekarikallu village and mandal, Guntur District. It feels aggrieved by the orders of the Government in G.O.Rt. No. 2106, dated 30-12-2004, and the consequential order dated 3-1-2005 passed by the second respondent, permitting the third respondent to shift its wine shop from Gullapalli village to Nekarikallu village. The petitioner contends that shifting of IL-24 shop is permissible under Rule 35 of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short "the Rules") only within the revenue village/Municipality/Municipal Corporation concerned and not from one village to another.

2. Sri C.B. Mohan Reddy, learned counsel for the petitioner, submits that the matter of shifting of IL-24 shops is governed by Sub-rule (2) of Rule 35 of the Rules and under the Rule, as it stands now, shifting is permissible only within the same village and not from one village to another. He contends that while issuing G.O.Rt. No. 2106, dated 30-12-2004, the Government referred to the Rule, before it was amended, and even according to the un-amended Rule, shifting of shops from one village to another is permissible if only there is no existing shop

in the revenue village to which the shop is proposed to be shifted. Learned counsel states that the Government has no power to grant exemption and the G.O. as well as the consequential order cannot be sustained in law.

3. Sri E.V. Bhagiratha Rao, learned counsel for the third respondent, submits that IL-24 shop established by his client at Gullapalli village was blasted by the naxalites on 1-11-2003 and it remained closed since 1-10-2004 due to threats. He submits that the third respondent approached the Government as well as respondents 1 and 2 seeking permission to shift the shop and the permission was accorded strictly in accordance with the relevant provisions of law.

4. Learned Government Pleader for Prohibition and Excise submits that being the Rule making authority, the Government has ample power to relax the conditions under any provisions, if the situation warrants, and it was in this context that G.O.Rt. No. 2106, dated 30-12-2004, was issued. She also pleads that no prejudice can be said to have been caused to the petitioner.

5. The petitioner and the third respondent are licensees of IL-24 shops. While the petitioner established its shop at Nekarikallu village, the third respondent established the shop at Gullapalli village. Both the shops are in the same mandal. Sub-rule (2) of Rule 35 of the Rules deals with the shifting of shops. It has been subjected to frequent amendments, depending on the exigencies. In July 2003 itself, it has undergone two amendments, one through G.O.Ms. No. 815, dated 22-7-2003, and the other through G.O.Ms. No. 844, dated 30-7-2003. The Rule, as it stands now, reads as under:

"Rule 35. Sale permitted at the licence premises only: (1) The licensee shall sell the liquor only at the premises specified in the licence.

(2) No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere without the prior approval of the Commissioner of Prohibition and Excise.

Provided that in the case of licensed premises in respect of any IL-24 and IL-17 licence shifting from one location to another can be permitted within the same revenue village/Municipalities/Municipal Corporations including their belt area of 2 kms and 5 kms. respectively within the same licence fee by levying a shifting fee of Rs. 10,000/-."

It is represented by the parties that there are no subsequent amendments.

6. A reading of the said Rule reveals that shifting of IL-24 shops is permissible within the revenue village/Municipality/Municipal Corporation, including their belt areas, subject to payment of a shifting fee of Rs. 10,000/-. As observed earlier, the shops of the petitioner and the third respondent are in separate villages. Therefore, the third respondent could not have been permitted to shift the shop to a village where the shop of the petitioner is situated.

7. In the ordinary course, the permission to shift the shop is accorded by the

Commissioner of Prohibition and Excise. The matter was taken with the Government, obviously, with a view to overcome the rigor of the Rule. A reading of G.O.Rt. No. 2106, dated 30-12-2004, also discloses that the first respondent sought for relaxation of Rule 35 in the case of the third respondent and the Government acceded to the request. Therefore, it needs to be seen as to whether it was permissible for the Government to relax the Rule 35.

8. The Rules are framed by the Government, in exercise of its power u/s 72 of the A.P. Excise Act, 1968 (for short ''the Act''). The Act does not empower the Government to exempt the operation of the Rules in any specified cases. The only power conceded to the Government to grant exemptions is the one u/s 68. Section 68 of the Act reads as under:

"Power of Government to exempt etc.: The Government, may, by notification, and subject to such restrictions and conditions as may be specified in such notification,-

(a) exempt or reduce the excise duty levied u/s 22 on any liquor sold,-

(i) for use or consumption by the members of the Armed Forces of the Union; or

(ii) for use for bona fide medicinal, scientific, industrial or such like purpose;

(b) exempt any intoxicant from any of the provisions of this Act, other than those of Chapter V, in any specified area or for any specified period or occasion.

The power of exemption under this provision is limited to the matters specified therein. This provision does not arm the Government to grant exemption in relation to other matters. Wherever the Legislature intends that power be reserved to the Government to grant exemption from the operation of any of the provisions, such power is specifically conferred. For example, Section 26 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 empowers the Government to exempt any buildings or class of buildings from all or any of the provisions of the Act. Section 26 reads as under:

"Exemptions:- Notwithstanding anything in this Act the Government may, by notification in the Andhra Pradesh Gazette, exempt subject to such conditions and terms, if any, as they may specify in the notification, any building or class of building from all or any of the provisions of this Act."

Such a general provision does not exist in the A.P. Excise Act.

9. While framing the Rules in relation to any matter covered by Section 72 of the Act, it is permissible for the Government to reserve to itself, the power to exempt the operation of the same, subject to the conditions indicated therein. For example, in A.P. (Regulation of Wholesale Trade and Distribution of Indian Liquor, Foreign Liquor, Wine and Beer) Rules, 1993, the Government reserved to itself the power to exempt the A.P. Beverages Corporation Limited, Hyderabad from the operation of the Rules. Rule 23 thereof reads as under:

"Exemption from the provisions of Rules: The Government or the Commissioner with the previous permission of the Government may exempt the Corporation from the operation of any of these rules for specific reasons to be recorded in writing."

Such a provision is not present in the A.P. Indian Liquor and Foreign Liquor Rules, 1970.

10. The Legislature brings about the enactments and the subordinate legislating agency makes the Rules or Regulations with an avowed object of enforcing them, uniformly. Selective implementation of the provisions attracts the vice of arbitrariness or discrimination and thereby violates the right of equality guaranteed under Article 14 of the Constitution of India. It is true that it would be difficult for any legislating agency, to generalize all situations and to provide uniform solutions. Depending on the complexity of the subject matter, the concerned legislation may itself provide for exemption and thereby arm the implementing agency to enforce the legislation in a different mode, if the situation warrants. For this purpose, however, the power has to exist. The power to relax or grant exemption from the operation of a provision has to be derived from an express provision of the Legislation concerned. It cannot be inferred nor be deduced by analogy or logic. Even where a most deserving situation emerges for according a differential treatment, the implementing agency cannot, but adhere to the mandate of the Legislature. The gravity of such situations or their recurrence, may, at the most, constitute a basis for the respective Legislatures to amend the law. Till that is done, the implementing agency cannot venture to deviate from it.

11. It is true that the third respondent was permitted to shift the shop from the place where it was established, on account of the certain factors beyond its control. At the same time, the right of the petitioner to conduct its business in the village and to prevent shifting of any shop to the same place cannot be violated. Rule 35 was framed, only to be followed, but not to be flouted. If the Government or respondents 1 and 2 find that the third respondent was subjected to any hardship, it is always open to them to mitigate or compensate such loss, either by granting remission or by refunding the proportionate licence fee. In the name of rescuing the third respondent from a delicate situation, respondents 1 and 2 cannot invade the rights of the petitioner or flout the Rule, which governs the situation.

12. For the foregoing reasons, the writ petition is allowed. G.O.Rt. No. 2106, dated 30-12-2004 and the consequential order dated 3-1-2005 passed by the second respondent, permitting the third respondent to shift its shop from Gullapalli village to Nekarikallu village, is set aside. There, shall be no order as to costs.