

(1993) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7057 of 1993

M. Narasimhulu

APPELLANT

Vs

The Excise Superintendent and Another

RESPONDENT

Date of Decision : 10-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 3 ALT 179

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : V. Jagapathi, for the Appellant; Govt. Pleader for Respondent No. 1, M.V. Ramana Reddy and M. Ravindra Nath Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—The writ petition is filed seeking a writ of Mandamus declaring the order Rc.No. 647/91/A2 dated 13-5-1993 of the first respondent as arbitrary and violative of principles of natural justice and consequently a direction is sought by the petitioner to direct the first respondent to permit the petitioner to continue him to run Nellore group (8) toddy shops for the Excise year 1992-93 pursuant to the agency granted to him by the first respondent in proceedings Rc.No. 647/91-A2 dated 11-4-1993.

2. The short question that falls for consideration in this writ petition is whether the petitioner is entitled for a notice as contended by him.

3. Admittedly, the group of toddy shops in Nellore were put to auction some time before the commencement of the Excise year 1992-93. It is not in dispute that during that period in Nellore district, there was agitation by women against the sale of toddy in the entire State of Andhra Pradesh, in particular in the district of Nellore. However, for the year 1992-93, 8 toddy shops pertaining to Nellore town were given to the Nellore Town Toddy Co-operative Society. Pursuant to such an order, the Nellore Town Toddy Co-operative Society was granted licence to sell

toddy for the entire year, i.e., till September, 1993. The rentals directed to be paid were fixed monthly.

4. When the first respondent realised that the Nellore Taluk Toddy Co-op Soccity failed to pay the rentals for those eight toddy shops in the month of February, 1993, the licence was cancelled. Since the year ends by September, 1993 the respondent No. 1 thought it fit to give it to individuals, who come forward by offering rentals to run the toddy shops. Therefore, the petitioner herein offered Rs. 2, 500/- per day to run to toddy shops and pursuant to his offer, the respondent issued proceedings dated 1-4-1993, wherein it is directed that the petitioner shall pay Rs. 2,500/- rental per day and the licence was granted for ten days. It is also stated therein that he has to obtain extension of his agency for the remaining year 1993. Therefore, it is clear that in terms of proceedings dated 1-4-1993, rentals were fixed daily and in case the petitioner intends to continue to run the shops, he has to obtain further extension from the concerned Excise Superintendent.

5. By proceedings Rc.No. 647/91-A2 dated 13-5-1993, the licence of the petitioner was cancelled by giving it to one T. Ramanaiah. The terms and conditions agreed to in this proceedings contemplate that T. Ramanaiah shall pay Rs. 3,000/- per day. He was also directed to pay two months rentals in advance or to give bank guarantee for an amount of Rs. 1,80,000/- as a deposit equal to two months rental.

6. It is evident from the material palced by the learned Government Pleader that his aspect is not in question. There was no regular auction pursuant to the cancellation of licence originally granted to the Nellore Town Toddy Co operative Society in the month of February, 1993. Therefore, the respondent in order to augment the financial losses resorted to giving the toddy shops to willing persons by fixing certain rents. As evident from the record, they were given to various persons and ultimately it has been entrusted to the impleaded second respondent herein.

7. Sri Jagapathi, learned counsel for the petitioner, states that the first respondent has violated the principles of natural justice inasmuch as no notice was issued to him before cancelling the licence issued to him pursuant to the proceedings dated 11-4-1993. The second submission by the learned counsel for the petitioner is that the Excise year ends by September, 1993 and in terms of the proceedings dated 11-4-1993, he should have been continued upto the end of the Excise year 1992-93, which ends by the end of September, 1993. The third submission made by Sri Jagapathi is that earlier the petitioner filed W.P.No. 6630 of 1993, which was disposed of by this Court on 19-5-1993 holding that there is no violation of the conditions imposed in proceedings dated 11-4-1993 and therefore, the petitioner shall be continued to run the toddy shops.

8. The learned Government Pleader for Excise, on the contrary, states, that in Nellore district, the agitation by women was on rampant and therefore, the

Government could not auction the various shops in Nellore district. In so far as this particular group of shops are concerned, Nellore Taluk Toddy Co-operative Society was given licence to run the toddy shops. But, failure on their part to pay the rentals had made the first respondent to cancel their licence and in order to augment the financial deficiencies, the first respondent thought it fit to give it to such persons who are willing to pay daily rentals. Since the petitioner was one such person who had offered Rs. 2,500/- towards rental per day, initially licence was granted to him for 10 days. It is further contended that since the arrangement is a temporary phase, no notice is necessary. However, the learned Government Pleader states that auction notice was also given on 17-6-1993 indicating that the auction for the eight toddy shops would be held on 21-6-1993. Pursuant to the auction notice, three parties participated in the auction, including the second respondent herein, and since the second respondent offered to pay more rental the licence was granted to him. In the said circumstances, it is contended by the learned Government Pleader that there is no violation of Principles of natural justice, because once the auction notice is issued, it would be open to the petitioner also to participate.

9. Sri M.V. Ramana Reddy, learned senior counsel representing Sri Ravindranath Reddy for the second respondent, states that pursuant to issuance of auction notice, the second respondent participated and offered Rs. 5,365/-towards rental per day and also agreed to deposit advance rental and therefore there is no illegality in such auction by the first respondent. Even assuming for a moment that the petitioner filed earlier Writ Petition No. 6630 of 1993, the decision rendered by this Court in that Writ Petition is not binding on the respondents as the petitioner has not disclosed the fact that his licence was cancelled on 13-5-1993 in the writ petition though was filed on 15-5-1993. Therefore, failure on the part of the petitioner to disclose the facts before this Court would amount to a person approaching this court with unclean hands and therefore no sympathy could be shown in this matter.

10. Sri Ramana Reddy has further contended that the provisions now sought to be relied upon by the petitioner's counsel under Sections 206 and 182 of Indian Contract Act are not applicable to the facts and circumstances of this case as there is no lease as such granted in favour of the second respondent. It is only a licence granted to the second respondent and such licences are only temporary in nature and therefore the provisions now sought to be relied upon by Sri Jagapathi are not applicable.

11. Having heard the learned counsel for the petitioner, the learned Government Pleader for Excise as well as Sri M.V. Ramana Reddy, learned senior counsel on behalf of Ravindranath Reddy for the second respondent, and on perusal of the record, I am of the view that no notice is necessary before cancellation of licence having regard to the facts and circumstances of the case. Though the learned counsel for the petitioner has tried to draw my attention to the provisions contemplated u/s 206 of the Indian Contract Act, I am afraid this provision has

no reference to in the instant case, as pointed out by Sri M.V. Ramana Reddy. I am in entire agreement with him and, therefore, I do not feel that notice is necessary in a case of this nature. It is not in dispute that in Nellore district there was problem for the respondent/Government to run liquor/toddy shops as the women agitations were fortified there. In order to augment the revenue to the Government, the procedure followed was by fixing rentals per day and offered to such willing persons, who offered highest rentals. It is noticed that earlier, the Nellore Taluk Toddy Co-operative Society was given permanent licence for the entire excise year ending by 30-9-1993 and the rentals fixed were monthly. In the instant case, the rentals are day-to-day. Therefore, I am inclined to accept the submissions made by the learned Government Pleader for Excise when he says that the Government in order to augment its revenue had made this arrangement temporarily.

12. Under these circumstances, I do not find any merits in the submissions made on behalf of the writ petitioner and, therefore, the writ petition is accordingly dismissed. No order as to costs.