
(2005) 03 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25029 of 2004

Nakka Ramagoud

APPELLANT

Vs

Prohibition and Excise Superintendent and Another

RESPONDENT

Date of Decision : 25-03-2005

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 23
Andhra Pradesh Excise Act, 1968 — Section 28

Citation : (2005) 3 ALD 405

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Chilumala Pratap Reddy, for the Appellant; Government Pleader for Respondent No. 1 and G.V.S. Ramaiah Naidu, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is the President of Toddy Tappers" Co-operative Society, Tunki Khalsa Village, Vargal Mandal, Medak District. The Society was granted licence to run the toddy shops within its area of operation. The grievance of the petitioner is that the second respondent was granted a licence to run the shop within the prohibited distance and that the same is affecting the sales in the shops being run by the petitioner Society.

2. The first respondent filed a counter-affidavit. It is stated that the second respondent is the President of the Toddy Tappers" Co-operative Society, Meenajipet of the same Mandal and as contemplated under the Excise policy for the year 2004-05, a "B" licence was issued in favour of the second respondent. It is stated that the distance between the shops established by the petitioner on the one hand and the one established by the second respondent, through the impugned licence, on the other, is more than 2 K.Ms. and, as such, it cannot be said that the petitioner has any genuine grievance. The issuance of the "B" licence is sought to be sustained on the basis of the existing policy.

3. The second respondent is served with the notice and one Sri G.V.S. Ramaiah

Naidu filed vakalat for him. The matter was adjourned thrice to ensure his presence. Still there is no response.

4. It is not in dispute that the petitioner is the Chairman of the Toddy Tapers" Cooperative Society, Tunki Khalsa and the second respondent is the President of the Toddy Tappers" Co-operative Society of the neighbouring Village viz., Meenajipet. Both the societies are granted licences in accordance with the provisions of the A.P. Excise Act (for short "the Act") and the Rules made there under. In addition to the regular licence issued in favour of the Societies, the first respondent issued "B" licence in favour of the second respondent. On the strength of that licence, the second respondent established a shop in a hamlet known as Tunki Maktha which is in between the Villages of Tunki Khalsa and Meenajipet. It has come on record that the new shop established by the second respondent is at a distance of 1/2 K.M. from Meenajipet Village and more than 2 K.Ms. from Tunki Khalsa Village.

5. Section 28 of the Act provides for issuance of permits and licences, in the form and manner, as may be prescribed. Grant of licences for establishing and running the toddy shops is provided for under the A.P. Excise (Tapping of Trees and Toddy Shops-Special Conditions of Licence) Rules, 1969 (for short "the Toddy Rules"). The Rules provide for only one category of licences for retail sale of toody, namely, Form T.S-1, referable to Rule 3(2). There is nothing like "B" licences, under these Rules. Wherever the Legislature or the Government under its delegated powers, intended to provide for additional category of licence, they did so, by duly amending the relevant provisions.

6. For example, under the A.P. Indian and Foreign Liquor Rules, 1970, in addition to the regular and usual IL-24 licences, a new category of IL-24-B licences, to enable the IL-24 licensees to serve liquor in the permit rules, was provided through amendment to Rule 23, vide G.O. Ms. No. 151, dated 30-3-2002. A new category of licence was included in Rule 23, and the corresponding form as also incorporated through the same amendment. There is no such amendment to provisions in the Toddy Rules. This new category of licence is the creation of the policy. A policy can be framed only to supplement the implementation of the Rules. It cannot create a parallel regime, de hors the Rules. Though the policy, as such, is not challenged, this Court finds it difficult to sustain any action on the strength of the policy alone as long as it does not have corresponding root or basis, in the Act or the Rules.

7. Be that as it may, the policy itself directs that a minimum distance of 2 K.Ms. shall be maintained between a "B" licence shop and an existing shop. It does not indicate that the restriction as to distance applies selectively only in relation to certain aspects. The prohibition for establishment of a "B" licence shop, within 2 K.M. applies even in relation to the same licensee or Society. Viewed from any angle also, this Court does not find any basis for the first respondent in granting "B" licence in favour of the second respondent.

8. Hence, the writ petition is allowed and the licence issued in favour of the second respondent is set aside. There shall be no order as to costs.