
(2013) 03 AP CK 0077

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1397 and 6168 of 2013

Nemmali Saradhi

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 5 ALD 232 : (2013) 4 ALT 775

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.R.N. Prashanth for M/s. Indus Law Firm, in W.P. 1397 of 2013, Mr. D. Prakash Reddy, for Mr. P. Hemachandra and Mr. J.N. Bhushan in W.P. 6168 of 2013, for the Appellant; V.R.N. Prashanth for M/s. Indus Law Firm, Counsel for R-4 in W.P. 6168 of 2013, G.P. for Prohibition and Excise for Respondent Nos. 1 to 3, Mr. D. Prakash Reddy, for Mr. P. Hemachandra and Mr. J.N. Bhushan, Counsel for Respondent No. 4 in W.P. 1397 of 2013, for the Respondent

Judgement

L. Narasimha Reddy, J.—These two writ petitions are connected with each other. Hence, they are disposed of through a common order. For the sake of convenience, the parties are referred to as arrayed in W.P. No. 1397 of 2013.

2. The petitioner is a resident of Ward No. 13, which abuts Ward No. 15. The 4th respondent, Sri B. Vijaya Bhaskar, was granted licence to run a Bar & Restaurant in a premises situated in Ward No. 10 of Tirupathi Town. He submitted an application to the Commissioner of Prohibition & Excise, the 2nd respondent herein, with a request to permit him to shift the Bar & Restaurant to premises in Door No. 13-6-759/3E, Sandhya Complex, Jayashyam Road, Tirupathi in Ward No. 15. The 2nd respondent called for remarks from the Deputy Commissioner of Prohibition & Excise, Tirupathi and after taking the same into account, passed an order, dated 07.11.2012, rejecting the application. Aggrieved by that, the 4th respondent filed a revision before the Government, the 1st respondent herein. Through order, dated 15.01.2013, the 1st respondent accorded permission to the 4th respondent to shift the Bar & Restaurant to the premises in Ward No. 15. The

said proceedings are challenged in W.P. No. 1397 of 2013.

3. While admitting W.P. No. 1397 of 2013, this Court passed an interim order on 22.01.2013 suspending the proceedings, dated 15.01.2013. Taking the same into account, the Prohibition and Excise Superintendent, Tirupathi, the 3rd respondent herein, passed an order, dated 25.02.2013, revoking the permission accorded to the 4th respondent for shifting the Bar & Restaurant. W.P. No. 6168 of 2013 was filed by the 4th respondent challenging the order passed by the 3rd respondent.

4. The petitioner contends that taking into account the fact that Tirupathi is a pilgrim town, the authorities of the Government have taken a decision not to permit any shops in certain Wards through which the connecting roads leading to Tirumala pass. He submits that Ward No. 15 was included in the list and as a result, the existing A-4 shops were shifted to other places and the efforts to shift the Bars & Restaurants in that Ward are in progress. He contends that the 2nd respondent has taken the views expressed by the 3rd respondent as well as the District Collector and rejected the application filed by the 4th respondent by assigning cogent reasons and that there is no justification on the part of the 1st respondent in according permission.

5. In the counter-affidavit filed on behalf of respondents 1 to 3, the fact that certain Wards were identified for exclusion in the context of establishment of excess (sic. Excise) shops is admitted. It is stated that though the 3rd respondent rejected the application of the 4th respondent, taking into account the fact that the existing A-4 shops were shifted, the 1st respondent took the view that there is no prohibition against shifting of the Bars to Ward No. 15.

6. In his counter-affidavit, the 4th respondent stated that the shifting of the shop established by him in Ward No. 10 became necessary on account of the fact that the owner of the premises has been insisting on vacating it and that the 3rd respondent rejected the application in a mechanical way. He contends that neither in the A.P. Excise Act nor in the Rules made there under, there existed any prohibition from shifting one shop to another place as long as the other parameters are followed. He submits that the writ petition is filed at the behest of the business rivals and that there are no bona fides on the part of the petitioner.

7. Sri V.R.N. Prashanth, learned counsel for the petitioner, submits that serene atmosphere in the pilgrimage town of Tirupathi has been spoiled on account of indiscriminate establishment of shops for sale and supply of intoxicants and that the issue became so serious that it was raised in the State Legislature. He submits that the Assurance Committee examined the matter and decided to prohibit establishment of excise shops in certain Wards and follow up action was also taken in the form of shifting A-4 shops from the identified Wards. He contends that when such is the effort made by the authorities of the Excise Department on the directions issued by the Assurance Committee, there was

absolutely no justification on the part of the 1st respondent in according permission to the 4th respondent to shift his shop to Ward No. 15. He further submits that in clear defiance of the interim orders passed by this Court, the 4th respondent started not only operating the Bar & Restaurant, but also selling the liquor in retail. He further submits that the proposed place is nearby Tirupathi Bus Stand, where large number of pilgrims gather and the existence of shop is not in the public interest at all. It is also his case that the house of the petitioner is hardly 100 metres away from the proposed location.

8. The learned Government Pleader for Prohibition & Excise submits that the directions issued by the Assurance Committee of the Legislative Council was mostly in respect of the retail shops and that no prohibition as such exists against establishment or shifting of Bars & Restaurants in the identified Wards also.

9. Sri D. Prakash Reddy, learned Senior Counsel for the 4th respondent, submits that the necessity to seek shifting of the shop has arisen on account of the problems which the 4th respondent is facing from his landlord and that the 1st respondent has accorded permission by duly taking into account the fact that the establishment of Bars & Restaurants at any place in Tirupathi is not prohibited. He contends that the very fact that the two Bars & Restaurants are functioning in Ward No. 15 even while the retail shops have shifted bona fides the view taken by the 1st respondent. The learned counsel further submits that the petitioner did not raise any objection for the continued existence of the Two Bars & Restaurants in Ward No. 15, whereas he is creating obstruction for the shifting of the Bar to that Ward.

10. No civilised society has recognised the intoxicants as essential for human life. Efforts were made almost by every Government to eradicate and prohibit the use of intoxicants. However, when the efforts for total prohibition did not fructify, measures were taken at least to regulate it in such a way that people are discouraged from consuming liquor. In the State of Andhra Pradesh also, the flip-flop in this regard has taken place on several occasions. About a decade ago, prohibition was enforced with certain amount of conviction on the part of the Government as well as the public in general. However, the violations here and there were taken as an excuse and the prohibition was lifted. What started as a minute activity has expanded beyond anybody's imagination. A stage has reached where the State has treated the sale of intoxicants as main source of its income and the emphasis by the Department is to promote the sales even while it retains the name Prohibition & Excise. The norms were diluted, regulations were softened and all marketing techniques are at the fingertips of the Excise Department. They blink at violations and the State has virtually become insensitive to the instances of intoxicated persons killing their parents, spouses and even children not being able to understand what they are doing. The State deserves to be complemented for supplying unadulterated intoxicants at the doorsteps and obtaining maximum income by promoting the sales. An average

person gains an impression that the State felt, at least for now, that the deterioration of social life and the instances, which shock the conscience of any civilised person solely attributable to indiscriminate consumption of liquor that too by poor sections of the society, is not a matter of its concern.

11. Tirupathi, a world-famous pilgrimage centre of late, has acquired all tenets of a modern city and slowly it is turning out in no way different from other developed towns. Whatever may be the impact of the modern development upon the spirituality, which is required to be maintained in Tirumala, consumption of liquor and its effect can, by no means, be ignored or neglected. On account of easy availability of liquor and intoxicants in Tirupathi, the serene atmosphere is required to be maintained. This naturally resulted in furore among the public and in the Legislative Council. Attention of the Government was drawn to this issue and the Assurance Committee examined the matter in detail. As a first step, it was decided to identify the Wards through which the roads leading to Tirumala pass and ensure that they are made free from intoxicants. Though this step cannot be treated as panacea, it would certainly help to control the situation, which is otherwise going out of hand. Ward Nos. 3, 6, 13, 15, 16 and 22 were identified in the process. As an immediate step, A-4 (retail) shops were shifted from those Wards.

12. The 4th respondent is a licensee for a Bar & Restaurant in Ward No. 10. He wanted to shift his Bar & Restaurant to Ward No. 15, that too in a premises where an A-4 shop was existing and was shifted to other place. On receipt of the application, the 2nd respondent called for remarks from the 3rd respondent and other concerned authorities, such as Collector and passed an order, dated 07.11.2012. Four reasons that weighed with the 2nd respondent in refusing to accede to the request of the 4th respondent are evident from the following portion of the order, dated 07.11.2012.

Further, the Deputy Commissioner of Prohibition & Excise, Chittoor reported that the objection petition of MLA Tirupathi has been enquired and found that the proposed bar premises D. No. 13-6-759/C3 is situated in Ward No. 15 of Tirupathi Municipal Corporation in which an A4 shop was functioned during the lease period 2010-2012. The Deputy Commissioner further reported that (18) A4 shops which are existing on approach roads to the entry points of Tirumala Hills in Ward Nos. 3, 6, 13, 15, 16 and 22 have been removed and relocated in other wards of Tirupathi Municipal Corporation in consonance with the recommendation of the Assurance Committee.

The Deputy Commissioner of Prohibition & Excise has also reported that the Prohibition & Excise Superintendent, Tirupathi reported that the effect of pilgrims on the decision of the government in removal of A4 shops on the avenue from Railway Station to Alipiri via Nandi Circle and adjacent wards is highly appreciated by the public and pilgrims are feeling comfortable. Further, due to existence of two other Restaurant & Bars in Ward No. 15 the liquor demand is being served in that ward.

This matter involves public interest and sensitive in view of the Assurance Committee recommendations, the District Collector, Chittoor has issued instructions that "ward No. 15 is a prohibited zone hence there is no question of allowing new bars/shops and initiate action to shift the existing bars also out of prohibited wards".

Finally, the Prohibition & Excise Superintendent, Tirupathi and the Deputy Commissioner of Prohibition & Excise, Chittoor have recommended that the shifting of M/s. Partha Restaurant & Bar to Door No. 13-6759/C3 at ward No. 15 cannot be considered at this juncture.

13. Feeling aggrieved by the order, the 4th respondent filed a revision before the 1st respondent. The 1st respondent has taken note of various facts mentioned in the order passed by the 2nd respondent. The same is evident from the following observation in the impugned order, dated 04.01.2013.

It was noticed that the Government directed the Commissioner of Prohibition & Excise to take necessary action not to permit the establishment of retail liquor shops on the approach roads to the entry points to Tirumala Hills while granting licences to the retail shops in future, as was recommended by the Assurance Committee. Accordingly, the District Collector, while notifying the shops in Tirupathi Municipal Corporation for drawal of lots for the year 2012-2013, has relocated the A4 retail shops which existed in Ward Nos. 3, 6, 13, 15 and 16 to other wards.

14. Any logical step in view of this observation, would have been to deny permission to the 4th respondent to shift the shop to Ward No. 15 and to uphold the order of the 2nd respondent. However, that did not happen. The only reason on account of which the 1st respondent has set aside the order passed by the 2nd respondent and accorded permission is that there are no rules prohibiting shifting of Bars from one place to another within the Municipal Corporation.

15. Strength was sought to be added to this observation by stating that two Bars are already functioning in Ward No. 15. This Court is of the view that the reason assigned by the 1st respondent in reversing the order passed by the 2nd respondent cannot be sustained in law. The State cannot abdicate its responsibility to maintain a healthy atmosphere. Even where two views are possible, the one, which promotes the public wealth and welfare, must be adopted.

16. Acting on the directions issued by no less an authority than the Assurance Committee of the State Legislature, remedial steps were taken by identifying certain Wards in which establishment of shops cannot be permitted. Follow up action was also taken. It appears that on account of the fact that the establishment of a Bar & Restaurant is fairly large, immediate shifting thereof in the identified Wards was not taken up and obviously they wanted to wait till the expiry of the licence period. This, however, has become an excuse for the 1st respondent to accord permission, which is otherwise impermissible. Instead of

appreciating objective and responsible step taken by the Commissioner, the 1st respondent has accorded permission to the 4th respondent with one stroke of pen.

17. Further, the reasons pleaded by the 4th respondent for shifting do not warrant such an action. The licence itself is for a period of one year and it is only on the production of valid lease deed for that, licence is granted. In case the landlord has required the 4th respondent to vacate the premises, the latter need not oblige. His rights are protected for the period covered by the lease. The plea raised by the 4th respondent that no objection is taken for the functioning of the two Bars in Ward No. 15 and resistance is being offered only for shifting of his shop to that Ward is equally meek. From the order, dated 07.11.2012, passed by the 2nd respondent, it is evident that the District Collector has already initiated steps for shifting of the existing Bars also and to make it as a prohibited zone. Viewed from any angle, the order impugned in W.P. No. 1397 of 2013 cannot be sustained in law. The order, which is challenged in W.P. No. 6168 of 2013, is only consequential in nature.

18. Hence, W.P. No. 1397 of 2013 is allowed and W.P. No. 6168 of 2013 is dismissed. The miscellaneous petitions filed in these writ petitions shall also stand disposed of.