
(2001) 06 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 515 of 2001

New Amruth Restaurant

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 15-06-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 294

Citation : (2002) CriLJ 3102

Hon'ble Judges : Satyabrata Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : A. Ramanarayan, for the Appellant; G.P. for Home, for the Respondent

Judgement

Satyabrata Sinha, C.J.—This writ appeal is directed against a judgment passed by a learned Single Judge of this Court in W.P. No, 2203 of 2001 whereby and whereunder the writ petition filed by the appellant herein was dismissed.

2. The writ petitioner-appellant is a restaurant by name New Amruth Restaurant commonly known as Hotel Sridevi represented by its proprietor Y. Koteswari.

3. The petitioner filed an application for renewal of amusement licence for the year 1995, which was rejected. A writ petition was filed against the said order of rejection which was allowed and the said order of the learned Single Judge was challenged in an appeal and a Division Bench of this Court allowed the said appeal confirming the order passed by the authority.

4. Another application was filed by the petitioner on 15-12-1995, during the pendency whereof, several writ applications were filed before this Court, whereupon a Division Bench of this Court directed the respondents to consider the case of the petitioner. By order dated 22nd March, 1997, the second respondent, however, rejected the said application once again. The said order was questioned in an another writ petition which was allowed where against a writ appeal W.A. No. 695 of 1997 was filed and the same had been allowed.

5. Yet another application afresh was filed by the petitioner for grant of amusement licence on 20th December, 2000 and by reason of the impugned Memo dated 30-1-2001 it was rejected stating :

It has been reported that the management of the restaurant indulged in illegal acts by violating the licence condition by allowing indecent dances under the guise of Indian dances. During the year 1997 three cases were registered vide Cr. No. 18/97 u/s 294(a)(b), IPC Cr. No. 199/97 u/s 294(a), IPC and Cr. No. 210/97 u/s 294(a) IPC by Abid Road Police Station, against the management of the restaurant. All the three cases are still pending trial in the Court.

During the year 1999-2000 you have filed writ petition in A.P. High Court viz., W.P. No. 6288/99. W.P. No. 4640/99 and W.P. No. 3976/2000 the same have been dismissed by the Hon''ble High Court.

In view of the past bad record of the applicant and in the light of the above facts and as there is no guarantee that the Management will follow the guidelines laid down in the licence condition and it is quite evident that there is a great threat to the society and dignity of women who come to the restaurant. Hence it is not desirable to issue the Amusement licence to hold Indian Dance, singing and Music for the year 2001.

Therefore, the request of the applicant for grant of amusement licence to hold Indian Dances, singing and music for the year 2001 is rejected.

6. A writ petition has been filed questioning the said order and having due regard to the earlier orders passed by the Court, the writ petition of the petitioner-appellant had been dismissed by a learned single judge by the impugned judgment. Challenging the same the present writ appeal is filed.

7. During the course of arguments, Sri Ram Narayan learned Counsel for the appellant-writ petitioner has drawn our attention to the aforesaid Division Bench judgment of this Court dated 10th July 1997 passed in W.A. No. 695 of 1997 wherein a similar question as raised before the learned single Judge had been considered.

8. Having regard to the facts and circumstances of the case, we are of the opinion that although no citizen of India has the fundamental right to carry on whatever business he chooses and wherever he chooses, yet, as is well known, before refusing to grant a licence, the objective criteria as laid down in the relevant Rule should be complied with. The said Rule reads thus :

**POWER OF THE COMMISSIONER OF POLICE WITH REGARD TO NON-ISSUE
SUSPENSION AND CANCELLATON OF THE LICENCE :**

136. The Commissioner of Police shall have the power to refuse licence for establishing any proposed area, provided there is likelihood of causing damage, danger or loss to the inhabitants of the locality or the thoroughfares of the surroundings.

2. The Commissioner of Police shall have the discretionary power to suspend or cancel any licence given under these Rules or under the licence to close such area permanently or temporarily or take such action as to check the hindrance, trouble, danger or loss of the inhabitants of the locality or the thoroughfares of the surroundings of such areas.

9. A bare perusal of the Rule clearly goes to show that although the power of the Commissioner is discretionary in nature, but the order refusing to grant licence must be based upon objective criteria. Grant of a licence may be refused provided there is a likelihood of causing damage, danger or loss to the inhabitants of the locality or the thoroughfares of the surroundings. Assuming that such a power of the Commissioner is discretionary in nature, still we are of the opinion that the authority empowered to grant licence, in case of refusal to grant such a licence, must satisfy himself as regards existence of the preconditions laid down therein. The discretion, as is well known, must be based on sound principles of law and not on whims and caprice.

10. In that view of the matter, we are of the opinion that before passing of the order refusing to grant the licence, the Commissioner of Police should have given the petitioner an opportunity of being heard and could have considered its case subject to condition that if a licence is granted in its favour it would not do anything such would run counter to the decisions of this Court as also the public interest wherefore the said power is conferred on the Commissioner. We are making these observations only because it has been stated at the Bar by Mr. Ram Narayana, learned Counsel for the appellant that the petitioner shall strictly comply with such condition/conditions as may be imposed by the Commissioner. The learned Commissioner also, before passing any order, may inspect or cause an inspection to be made of the premises concerned. He may also cause an enquiry to be made about the general reputation of the petitioner-establishment.

11. Subject to the observations made by us above, the writ appeal is disposed of. There shall be no order as to costs.