
(2004) 01 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 7602 and 25979 of 2003

Osmania University

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 — Rule 5

Citation : (2004) 3 ALD 115 : (2004) 3 ALT 760

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Deepak Bhattacharjee, in WP Nos. 7602 and 25979, for the Appellant; Government Pleader, for Prohibition and Excise, in WP Nos. 7602 and 25979, R. Thimma Reddy, Respondent No. 4 in WP No. 7602, K. Raghuvier Reddy, Respondent No. 5 in WP No. 7602, for the Respondent

Judgement

L. Narasimha Reddy, J.—The subject-matter of these two writ petitions is common. Hence they are disposed of through a common judgment.

2. H.E.H. Nizam, a Dynastic Ruler thought it appropriate to bring about an excellent place of learning and education and had constructed beautiful edifices in a sprawling campus. He named it as Osmania University. It has grown up as an excellent place of learning shortly after it was established. After independence, it was flanked with important institution like the R.R. Labs (now IICT), N.G.R.I., Survey of India C.C.M.B. etc. The priorities of the successive Governments appear to have changed, particularly in the context of maintenance of serene and congenial atmosphere in the educational institutions. It is a different thing that several residential localities have come up all-round the campus. However, in pursuit of its object of earning as much revenue as possible through sale of intoxicants, it started granting licenses to establish Toddy shops and Bars right inside or just around the campus. The Alumni and the administration of the University had to record their protest and raise voices against such disturbing developments. Their voice is subdued or was rendered inaudible by the powerful

liquor lobbies or the Excise Department.

3. The 5th respondent in W.P. No. 7602 of 2003, who is the petitioner in W.P. No. 25979 of 2003 (herein after referred to as the licensee) was granted licence to establish and run a toddy shop in the land in Survey No. 10/2 of Habsiguda revenue village and part of Uppal Municipality, Osmania University, the Petitioner in W.P. No. 7602 of 2003 went on objecting to the very establishment of the shop. According to it, the shop was established on the land belonging to the University and at any rate within the prohibited distance from educational institution and a place of worship. Prolonged correspondence ensued between the University on the one hand and the Excise department on the other. After such long drawn battle, the Prohibition and Excise Superintendent, Hyderabad (hereinafter referred to as the third respondent) issued proceedings dated 2-2-1999 directing the licensee to choose another location for establishment of their shop. The licensee filed W.P. No. 3526 of 1999 in this Court and an interim order was obtained. The writ petition was ultimately allowed on 5-7-2001 on the sole ground that the third respondent did not have the jurisdiction to issue the order impugned therein. It was, however, left open to the Commissioner of Excise, (hereinafter referred to as the second respondent) to pass appropriate orders Nobody disputed the power of the Commissioner to require shifting of the shop.

4. The allegation of the University that the proceedings dated 2-2-1999 were issued only as an eye-wash gains strength with the conduct of the Excise Department subsequent to the orders in W.P. No. 3526 of 1999. The licence of the licensee was to expire on 1-10-2001. This Court, through its order dated 25-1-2001 directed that it shall be competent for the second respondent to pass appropriate orders for shifting. They have not chosen to do so. On the other hand the department had favoured the licensee by granting renewal up to 31-3-2007. The University became helpless. Therefore, it had filed W.P.No.7602 of 2003 challenging the orders granting renewal of the licence of the 5th respondent and sought for directions to set aside the same.

5. This Court granted an interim order on 28-4-2003 in W.P. No. 25979 of 2003. The same was, however, vacated by a learned Single Judge, through orders dated 13-5-2003 in W.V.M.P.1774 of 2003 and it was affirmed in a writ appeal. The students and administration of the University have also stepped up their protest. It was in this context, that the second respondent had issued proceedings dated 17-11-2003 directing the shifting of the shop. Consequently, the third respondent issued proceedings dated 19-11-2003 directing the licensee to select alternative suitable premises for location of the Toddy shop. W. P. No. 25979 of 2003 is filed by the licensee challenging the said proceedings.

6. Learned Standing Counsel for the University submits that the licensee had established the Toddy shop right in the University campus and is causing nuisance to the staff and students. Placing reliance on Rule 5 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969 (hereinafter referred

to as "the Rules") learned Counsel submits that it was impermissible for the Excise Authorities to grant licence to the 5th respondent to establish the shop in question. According to him, the entire campus of the University has to be treated as an educational institution and grant of licenses within 50 metres from the boundary of the campus, not to speak of any place within the campus was contrary to rules. He also submits that the grant of renewal in favour of the licensee was nothing but mala fide exercise of power, to confer benefit upon the licensee. Supporting the order, which is impugned in W.P. No. 25979 of 2003, he submits that this Court in its order in W.P. No. 3526 of 2002 had taken the view that it is competent for the second respondent to require shifting of the shop. He submits that on a direction issued by the second respondent, the order of the 3rd respondent dated 19-11-2003 was issued and that no exception can be taken to the same.

7. Learned Counsel for the licensee Sri Raghuveer Reddy on the other hand submits the shop in question was in existence since more than a decade and it was established in a private land purchased under sale deed dated 3-11-1966. According to him, there were no specific complaints of any disturbance or nuisance and it was only to satisfy the ego of some selected individuals, the impugned action was taken. It is also his case that the third respondent has no jurisdiction to require the petitioner to select alternative premises.

8. The learned Government Pleader for Prohibition and Excise submits that taking into account the objections raised by the University administration and the students, the second respondent has issued instructions in his proceedings dated 17-11-2003 and the order passed by the third respondent on 19-11-2003 is only a consequential step. Placing reliance upon Section 3 of the A.P. Excise Act (for short "the Act") he submits that the second respondent is vested with the power of regulation and superintendence and the impugned proceedings are initiated in exercise of such power.

9. As observed in the preceding paragraphs, the students and the administration of the University have been recording their protest since last several years against the existence of a toddy shop established by the licensee. Their objection was two fold viz., that the shop is established in the land belonging to the University and that it is within the prohibited distance from the University campus and a temple. The first aspect of the matter is outside the scope of these two writ petitions. It has to be seen as to whether the shop of the licensee is established in contravention of any provisions of the Act and Rules.

10. Rule 5 of the Rules prohibits the establishment of excise shops within 50 metres from the places of worship or educational institutions. The term "educational institution" is defined in explanation (ii) of Rule 5 which reads as under:

" "Educational Institution" means any Primary School, Middle School and High School recognized by the State Government or Central Government or any

college affiliated to any University establishing by law."

11. The University campus comprises of various colleges. In the Osmania University, several colleges such as Arts College, Science College, College of Engineering, College of Technology, Law College, College of Business Management etc., are within the campus. The entire campus has to be treated as educational institution for the purpose of Rule 5. Any other interpretation may even enable the grant of licenses in between colleges within the campus. Having regard to the clamor of the Government, particularly the Excise Department for earning as much revenue as possible by granting licenses, a situation may even arise when excise shops can be established within the campus duly maintaining 50 metres distance from the Colleges, if there is a pliable head of the administration of the University. That can never be said to have been the intention of the rule making authority. Therefore, there is no escape from the conclusion that in the context of Rule 5, the entire campus has to be treated as educational institution and the distance has to be measured from the outer boundary of the campus.

12. The parties to the proceedings have made contradictory claims as to the location of the shop. While the University contended that it is within its campus, the licensee contended that it is outside the same. To have a definite information about the matter, this Court directed the Assistant Director of Survey and Land Records, Ranga Reddy District to undertake a survey of the concerned place and to submit a report as well as sketch to indicate as to whether the shop in question is within the campus of the University. The Assistant Director, in turn, had conducted survey on 6-1-2004 and prepared a sketch. The sketch discloses that the shop is in Survey No. 10/2. The report as well as the sketch indicate that the University Campus is separated by a wall constructed between the Survey numbers 10/2 and 11/2 and that the shop is inside the wall. The Assistant Director has also referred to the revenue records whereunder Survey No. 10/2 admeasuring Ac.16.326 guntas is said to be registered in the name of the University. Though the title dispute is not the subject-matter of this writ petition, on a perusal of the sketch furnished by the Assistant Director of Survey and Land Records, this Court finds that the shop is right within the campus and within the prohibited distances from the temple in Survey No. 11/1 and staff quarters etc. Hence, the grant and renewal of licence by the Excise authorities in favour of the licensee was in contravention of the provisions of the rules and the 3rd respondent has committed illegality in granting and renewing the licence at the said place.

13. Through proceedings dated 2-2-1999, the third respondent required the licensee to select alternative premises. That was challenged in W.P.No.3526 of 1999. This Court had set aside the same on the sole ground that the third respondent did not have the jurisdiction to issue the said orders. It was specifically contended before this Court that it was competent for the second respondent to issue such directions. It was left open for the second respondent

to pass appropriate orders. Instead of taking proper steps to rectify the illegality committed by them and to ensure proper atmosphere in the University Campus, the third respondent had chosen to renew the licence through his proceedings dated 11-4-2002. To say the least, it was irresponsible on the part of the third respondent to have granted such a renewal. If at all anything, it only shows the type of education, he has received or the regard he has for educational institutions. He appears to have kept his thirst for funds, be it for himself or for the State, above the interests of the students in particular and the campus in general. Though the licensee was successful in getting the interim stay vacated, the second respondent has seen to reason atleast at a belated stage. He issued proceedings dated 17-11-2003 requiring shifting of the shop. The third respondent issued consequential proceedings dated 19-11-2003.

14. Several contentions have been raised in challenge to these proceedings. Firstly, it has to be noticed that no individual has any fundamental right to carry on trade in Excise. It has been so held by the Honourable Supreme Court time and again. Secondly, the power of the second respondent to issue necessary instructions is contained in Section 3 of the Act. Further, this Court made it clear that it shall be competent for him to pass appropriate orders in the context of the licensee itself. Therefore, no exception can be taken to the impugned proceedings. The exception if at all is only to the undue delay after which they have been issued. At least at a belated stage, the Respondents 2 and 3 have chosen to spare the one prominent educational institution from the purview of their wide net to earn as much revenue as possible through sale of intoxicants.

15. Learned Counsel for the licensee submits that his client has been singled out in the matter of shifting and states that several shops are existing within the prohibited distance. Since this Court recorded a finding that the entire University Campus has to be treated as an educational institution for the purpose of Rule 5 of the Rules, it is directed that the Respondents 2 and 3 shall ensure that no excise shop of any category whatever is permitted to function within the prohibited distance measured from the outer limit of the Campus of the University and take appropriate steps to shift them within two months from the date of receipt of a copy of this order. It is, however, made clear that any observation made herein shall not be treated as pronouncement of the title of the parties to the land in question.

16. Accordingly, W.P. No. 7602 of 2003 is allowed and W.P. No. 25979 of 2003 is dismissed in terms indicated above.