
(2001) 03 AP CK 0127

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5991 of 2000

P. Vasantha

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 29(3)

Citation : (2001) 3 ALD 168 : (2001) 3 ALT 280

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. Kowturu Vinayakumar, for the Appellant; Government Pleader, for Prohibition and Excise and Mr. E. Manohar, for the Respondent

Judgement

Elipe Dharma Rao, J.—This writ petition has been filed seeking a writ of mandamus to declare the order dated 1-4-2000 issued by the 3rd respondent in proceedings Rc. No.65/2000/B2 as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondent Nos. 1 to 3 not to renew the licence in favour of the 4th respondent viz., M/s. Sai Beer and Wines, represented by its Proprietor, Shaik Jageer S/o Shaik Hussain in the premises bearing No. 15-1-106, Island Centre, Ponnur, Guntur District and pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

2. It is submitted that the petitioner is the owner of the Shop No. 15-1-106 situated at Island Centre, Ponnur, Guntur District. Earlier her husband was carrying on the business in Bar and Restaurant in the said premises and he died in the year 1988. Subsequently the petitioner along with some others continued the said business and they stopped the business in the year 1994 in view of the prohibition imposed in the State of Andhra Pradesh. Thereafter the petitioner let out the shop to 5th respondent to run a cycle shop. But consequent upon lifting of the prohibition, the 5th respondent has started liquor business along with 4th respondent in the said premises without her consent or permission. Questioning

the illegal action of the respondents 4 and 5 and also the action of the licensing authority in granting licence to them to run liquor business in the premises, the petitioner had filed WP No. 5475 of 1999 which was withdrawn as the licence was already granted. When the licensing authority was trying to renew the licence again, the petitioner made a representation on 3-1-2000 and also a reminder dated 13-1-2000 to the licensing authority objecting to the renewal of the licence in favour of 4th respondent. As the petitioner received no response, she filed another WP No.809 of 2000 and the said writ petition was disposed of on 24-3-2000 with the following direction.

"In such view of the matter, it would be appropriate to direct respondent No.3 herein to consider the objections filed by the petitioner on 3-1-2000 and 14-1-2000 and examine as to whether respondents 5 and 6 have made available any lease deed as such executed by the owner of the premises. The representation stated to have been made shall be considered and disposed of within a period of two weeks before granting the renewal."

3. In pursuance of the above directions the 3rd respondent considered and rejected the representations of the petitioner by proceedings dated 1-4-2000 stating that such representations are cleared off, as they are not maintainable in terms of the rules and regulations. The said order was impugned in this writ petition on the ground that it is violative of principles of natural justice and the representations of the petitioner were not considered properly on par with Rule 29(3) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short "the Rules") as directed by this Court in WP No.809 of 2000. The impugned order was also attacked on the ground that there was no lease agreement between the petitioner and the 4th respondent. Was there any lease deed produced by the 4th respondent, it was a forged document, and as per Rule 29 (3) of the Rules unless the applicant produces the lease deed on a stamp paper for the proposed licensed premises from the owner of the premises, licence in Forms IL 17, IL 19 and IL 24 cannot be granted or otherwise renewed. As there was no lease deed executed by the petitioner in favour of 4th respondent, the renewal of licence in favour of 4th respondent for the year 2000-2001 is contrary to the above said provisions and therefore the impugned order is liable to be set aside.

4. In response to the above averments made by the petitioner, the respondent Nos. 1 to 3 filed their counter-affidavit in which it is stated that the 5th respondent has produced two rent agreements, one is purported to have been executed in between him and the petitioner and another agreement is in between the respondents 4 and 5 and as per the condition No.3 in the lease deed, dated 20-1-1990 the petitioner had permitted the 5th respondent to let out the premises on sub-lease for which there will be no objection from the petitioner and there was no term with regard to the lease period in the agreement, as such there was no limitation. Basing on the terms and conditions of the lease deed dated 20-1-1990 the 5th respondent has let out the premises on sub-lease to the 4th respondent who is the present licensee and the licensing

authority has granted licence for the year 1998-99. Moreover the petitioner has not raised any objection at the time of grant of licence and for conducting the said business by the 4th respondent for the year 1998-99. Accordingly the licence was also renewed for the year 1999-2000 and also for the year 2000-2001. With regard to the compliance of the order of this Court passed in WP No.809 of 2000 it is stated that the representations dated 3-1-2000 and 13-1-2000 of the petitioner were considered and as the eviction of the licensee from the licensed premises and examination of the lease deed as to whether it is forged or not, are not within the purview of the licensing authority and accordingly rejected as maintainable in terms of the rules and regulations.

5. The respondents 4 and 5 filed their counter in which they admitted the ownership of the petitioner in respect of the licensed premises, but they denied that her husband alone carried on the business in Bar and Restaurant in the said premises during his life time till 1988. It is stated that the said Bar and Restaurant was carried on under the partnership firm in which the 5th respondent was also one of the partners. After the death of the petitioner's husband the said business was carried on by the partnership firm upto 14-7-1989. In the said partnership the petitioner was having 10 paise share only, whereas the 5th respondent was having 52 paise share being the major partner and one Durga Prasad Rao had 17 paise share and Arjun Rao had 10 paise share. As the petitioner has not realized the rents properly from the shop in question and due to the differences between the partners, she decided to retire from the partnership firm and sold her 10 paise share to the other partners by receiving Rs.20,300/- towards her share in the partnership, accordingly relinquished her right in favour of other partners through a deed of agreement dated 14-7-1989. It was agreed to pay a sum of Rs.3,000/- towards monthly rents of the said premises. It was also further agreed to continue the lease on enhancement of rent by 10% on completion of every three years. Thus the partnership under the name and style of Bhavani Beer and Wines was being carried on in the said premises with the consent of the petitioner. It is further stated that the petitioner had executed a lease deed dated 20-1-1990 wherein the condition No.3 clearly stipulates that the petitioner consented to sub-lease the said premises to third parties and on the basis of that condition the 5th respondent let out the premises to the 4th respondent and executed a sub-lease in his favour and on production of the said sub-lease deed the licensing authority has granted licence to the 4th respondent to run the liquor business for the year 1998-1999 and also renewed the licence for the years 1999-2000 and 2000-2001.

6. On the basis of the above stated facts and circumstances of the case, Mr. E. Manohar, learned senior Counsel appearing for the respondents 4 and 5 submits that sub-Rule (3) of Rule 29 of the Rules was amended by G.O. Ms. No.207, Revenue (Ex.III) Department, dated 28-3-1998 and the following was substituted.

(3) No licence shall be granted,

(a) in Forms IL 17 and IL 19 unless the applicant produces the permission or the no objection certificates from the local authority concerned as to the sale of liquor at the premises by the applicant.

(b) In Forms IL 17, IL 19 and IL 24 unless the applicant produces the lease deed on a stamp paper for the proposed licensed premises from the owner of the premises.

7. He submits that there was a lease deed existing between the petitioner and the 5th respondent in respect of the premises in question and according to the condition No.3 of the said lease deed the petitioner had permitted the 5th respondent to sub-let the premises to third parties and on the basis of that condition, he executed a lease deed in favour of the 4th respondent letting out the premises and as per clause (b) of sub-rule (3) of Rule 29 of the Rules the 4th respondent has produced the lease deed on a stamp paper for the proposed premises from the owner of the premises and therefore the licensing authority had granted licence to the 4th respondent for the year 1998-99 and subsequently renewed it for the years 1999-2000 and 2000-2001 and the petitioner has not taken any objection to it. Accordingly to the learned senior Counsel the "owner" includes the lessee as per the dictionary meaning and as per the rulings of the Supreme Court, therefore it cannot be said that licence and renewal of licence cannot be granted to the 4th respondent by the licensing authority on the basis of the lease deed executed by the 5th respondent in favour of 4th respondent.

8. It is an admitted case of the petitioner that there was an agreement between her and the 5th respondent to lease out the premises to run a shop, and as per the condition No.3 stipulated in the lease deed permitting the 5th respondent to sublease the premises to third parties, he has let out the premises to the 4th respondent. The 5th respondent who is a lessee has become owner and occupant of the premises by virtue of the lease deed executed by the petitioner. As the lease deed in between the petitioner and the 5th respondent is in existence, and in terms of the Excise policy the licence can be renewed from year to year, the licensing authority has renewed the licence for the years 1999-2000 and 2000-2001. As per clause (b) of sub-rule (3) of Rule 29 of the Rules mere production of the lease deed on a stamp paper for the proposed licensed premises from the owner of the premises is sufficient to grant licence and it is not obligatory on the part of the licensing authority to verify the genuineness or otherwise of the lease deed executed by the owner of the premises. If the Legislature wanted to entrust verification of genuineness or otherwise of the lease deed executed between the owner of the premises and the proposed licensee, it should have made it clear in the above said Rule, that the licensing authority, after verification as to the existence of lease deed between the proposed licensee and the owner of the premises is genuine or not before granting the licence in L Form No.17, 19 and 24. The Legislature thought that it is sufficient to produce the lease deed by the proposed licensee executed

between the owner of the premises and the proposed licensee to obtain the licence in L Form No.17, 19 and 24. Therefore as per Rule 29 mere production of the lease deed is sufficient to grant licence to the proposed licensee by the licensing authority. It can also be understood that the Rule made it clear that mere production of lease deed between the owner of the premises and the proposed licensee is sufficient to grant licence and also restricts the owner of the premises to revoke the lease during the subsistence of the lease in order to make it convenient to do his business. The Rules have not given any scope to the owner of the premises, after executing the lease deed, to express his willingness to withdraw the lease deed and prevail over the licensing authority to cancel the licence and to obstruct the business of its tenant, if any dispute arose during the lease period. By way of safeguard to do the business of the licensee, the Legislature thought it fit to produce the lease deed on stamped paper for the proposed premises from its owner. Therefore, the respondent have rightly rejected the claim of the petitioner to go into the genuineness of the lease deed. On the other hand, the burden lies on the petitioner to approach the civil Court and get the lease deed set aside for the reasons stated by her. So long as the lease deed is in existence between the petitioner and the 5th respondent, the licensing authority has no option to except renew the licence of the 4th respondent shop as per the excise policy enunciated by the Government from year to year. Therefore it cannot be said that the representations of the petitioner were not considered in consonance with the directions given by this Court in WP No.809 of 2000. They have been considered in accordance with the directions of the Court and rejected as not maintainable by a reasoned impugned order.

9. For the reasons stated above the order passed by the 3rd respondent renewing the licence for the years 1999-2000 and 2000-2001 is correct and the rejection of the representations of the petitioner by the impugned order is legal as per clause (b) of sub-rule (3) Rule 29 of the Rules.

10. Though the petitioner issued a notice u/s 80 of CPC as early as in the year 1999 taking objection to the running of the liquor shop in her premises, so far she has not filed any suit in competent Court of law for cancellation of the lease deed. As the lease deed is valid and is in existence between the petitioner and the 5th respondent, she has no right to object for the renewal of the licence granted in favour of the 4th respondent for the years 1999-2000 and 2001 unless it is cancelled. I see no merit in this writ petition. It is accordingly dismissed. No costs.