

(1971) 07 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 226 and 227 of 1971

R. Kistayya and Another

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 29-07-1971

Acts Referred:

Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 — Rule 29, 41

Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 — Rule 3(2)
Constitution of India, 1950 — Article 19(1)

Citation : AIR 1972 AP 279

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Advocate : P.A. Chowdary, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. These two writ petitions may be conveniently disposed of by a common order as they raise common questions.

2. In Writ Petition No. 226 of 1971 the Abkari auctions in respect of Malakpet group of Sendhi shops were held in the month of August, 1970. The petitioners were the highest bidders at a monthly rental of Rs. 87,512/-. They have also deposited the three month rentals and two per cent earnest money on the annual rentals. In addition they also paid a sum of Rs. 64,670/- towards tree tax for the first cut. After they paid these amounts, they were granted the necessary licence on the basis of which they commenced selling sendhi from first October, 1970.

3. In Writ Petition No. 227 of 1971 the auction was conducted in the month of August, 1970 for the Komati Kunta group of Sendhi shops. The petitioners were of Sendhi shops. The petitioners were the highest bidders at a monthly rental of Rs. 67,512/-. They also deposited three months rentals and two per cent earnest money. They further paid the tree tax for the first cut. They were also granted a licence after these payments and commenced the business of selling Sendhi,

from 1-10-1970.

4. The petitioner in both the petitions opened their shops in several places for selling Sendhi. But the shops were not opened and run at the places which were specified under the licences granted to them. The licences specified the boundaries of the places where the licensees should hold their shops. But the petitioners opened their shops anywhere they liked. It is the contention of the petitioner that they have a right to open the shops anywhere within the area, even after the issue of a licence whereunder boundaries were specified. The respondents objected to the petitioner's running the shops at places other than those indicated in the licences. It is alleged that the respondents prevented the petitioners from selling Sendhi from the shops opened by them. Consequently the petitioners closed their shops.

5. Further it is alleged that the petitioners have applied for allotment of Sendhi trees from 36 totes mentioned in the auction notification in the several districts. Since the allotment of the trees was not fully done, the petitioners made application to the Government under Rule 29 of the Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 on 2-1-1971 requesting the Government to remit the rentals for the period commencing with 20-11-1970. But the Government has not taken any action so far either accepting or rejecting the application. Since the authorities were proceeding to re-auction the shops, the petitioners have brought the writ petitions for the issuance of a direction to the Government to permit the petitioners to sell Sendhi from the shops which were opened by them in the areas and not to collect monthly rentals from the petitioners till the disposal of the petitioners' applications by the Government. It is also prayed that the respondents be directed to stay the collection of the rentals from the petitioners pending the disposal of the applications before the Government under Rule 29 of the Andhra Pradesh Excise (Arrack and Today Licences General Conditions) Rules.

6. In the counter it is contended that the licenses are bound to open shops and sell Sendhi only at such places which are mentioned in the licenses and nowhere else. They have no right to open shops anywhere they like. Any violation of the conditions of the agreement, provisions of the Act and the relevant rules is an offence. In regard to the allotment of trees, it is stated in Writ Petition No. 226 of 1971 that for the excise year 1970-71, 23,500 trees were allotted and out of the same all the trees except a quota of 3,925 were allotted even in the beginning. By the time the petitioners made an application under Rule 29 on 2-1-1971, there remained only 3,925 trees out of 23,500 trees. Even these 3,925 trees were allotted in the months of January and February, 1971 itself. It is therefore, untenable to say that the petitioners could not draw and sell sufficient quantities of Sendhi on account of the non-allotment of full quota of trees. Even to start with nearly 20,000 trees were available and in a space of three months the petitioners could not have exhausted all these trees. The balance of 3,955 trees was also allotted even in the months of January and February. Therefore

the application under Rule 29 is wholly untenable. In any case the petitioners are not entitled to get the relief of suspension of payment of the monthly rentals until their application under Rule 29 is disposed of.

7. Likewise in the case of Writ Petition No. 227 of 1971, 25000 trees were allotted to the petitions. Excepting 4,091 trees, all the others were notified and were already allotted even before the commencement of the business. Even the balance of 4091 trees was allotted subsequently. Thus the petitioners have sufficient number of trees to draw Sendhi from and it could not be said that they had no supply of Sendhi for selling. The contentions raised in Writ Petition No. 226/71 are the same as in Writ Petition No. 227/71.

8. Sri P. A. Chowdary raised two principal contentions before me. The first of them is that the petitioners are free to open shops anywhere in the licenced area, in accordance with the requirements and the exigencies of business and nay restriction by the respondents on this right of petitioners is unreasonable restrictions on the fundamental right guaranteed to the petitioners under Article 19(1)(g) of the Constitution. Secondly large number of trees were not allotted to the petitioners and therefore they were obliged to file an application for revision under Rule 29. The Government should be directed to dispose of that application at an early date and until that application is disposed of, the respondents should be directed not to collect the monthly rentals from the petitioners.

9. In regard to the first point, the record discloses that even in the licences, the places from where the petitioners should vend sendhi were fixed. Even the boundaries of such places were indicated in the licences. Under Rule 3 (2) of the Andhra Pradesh Excise Lease of Right to Sell Liquor in Retail Rules, 1969 the Commissioner has the power even before the publication of the auction notice, to fix not only the number of shops to be established in an area, but also their location. It is in exercise of this power that the Commissioner fixed the number of shops and were indicated with their boundaries in the licences themselves. Thus, there is no doubt as to the places from where, the petitioners as licensees, should sell Sendhi. It cannot, therefore, be said that the petitioners could and did in fact open the shops anywhere they liked, because these places were not fixed in the licences.

10. Then the contention is that fixing the location of the shops by the officers concerned and denying the right to the licensees to open their business places anywhere they liked within the area is an unreasonable restriction on the fundamental right guaranteed to the petitioners under Article 19(1)(g) of the Constitution under is now well established, after the decision of the Supreme Court in Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, that the right to do the business in liquor is also a fundamental right. But at the same time it should not be forgotten that liquor is an injurious article and it should be regulated by the State in order to safeguard the well-being and the moral and physical health of the population. In order to do so, several restrictions are imposed on the liquor business, by passing the Excise Act

and ;making rules thereunder. Entry (8) of the IInd List in the Seventh Schedule to the Constitution empowers the State Legislature to make law in respect of intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. That means the State is given the power to make certain regulations not only in regard to the manufacture of intoxicating liquors, but also in regard to their purchase and sale. Sendhi is undoubtedly an intoxicating liquor and there is no dispute about it. Therefore where Sendhi should be sold or purchases an aspect which directly comes within the ambit of Entry (8) . Sale and purchase of intoxicating liquors like Sendhi is not desirable in the midst of a residential locality r by the side of a school. Several considerations like the social well being of the community. receptions of the people to the physical act of selling and purchasing of intoxicating liquors and their consumption at the places where they are sold and purchased, the feelings of repugnance that are created in the minds of several people and the uncontrollable behaviour of those who have consumed intoxicating liquors, should all be taken into account before the places for purchase and sale of such liquors are fixed. It is not merely the licenses" financial interests or physical conveniences that should guide in fixing the places for such purchase and sale, but also the conveniences and reactions of the community at large. It is, therefore wholly untenable in my view, to contend that the licensees should have unbridled choice and freedom to open their shops for sale of sendhi anywhere in the area. The concerned authorities who are put in charge of the implementation of the excise laws are expected to fix the place after taking into consideration all the aspects relating to the business of purchase and sale of intoxicating liquors. By any stretch of imagination, it cannot be said that it is an unreasonable restriction on the right of the licensees to sell intoxicating liquors. If they have any representations to make, the licensees could make them to the concerned authorities who would certainly consider them at the appropriate time.

Rule 41 of the Andhra Pradesh Excise (Arrack and Toddy Licenses General Conditions) Rule, 1969 provides for shifting of shops. That Rule says: "The licensee shall not shift the shop from one place to another during the currency f the licence. In special circumstances, the Commissioner or any officer authorised by him in this behalf may permit such shifting." If the place indicted in the licence is found to be not suitable for conducting business, the licensee can apply to the Commissioner by pointing out special circumstances for shifting the shop and f he is satisfied about the existence of special circumstances the Commissioner may permit such shifting. All these restrictions are undoubtedly conceived in the larger interest of the community at large and I have no hesitation to hold that fixing of the place by the concerned authorities for selling intoxicating liquors is a reasonable retractions on the right of the licensee to sell intoxicating liquors. For these reasons this objection put forward on behalf of the petitioners should be rejected.

11. It is then argued that the petitioners have filed an application to the

Government under Rule 2. Under that rule, the Government is empowered to postpone the payment of rental or defer its collection, or reduce or remit the rental for any period due to certain circumstances like natural calamities, widespread disturbed conditions and non-availability of arrack or toddy for reasons which are completely beyond the control of the licensee. Now, the ground on which the petitioners are said to have applied under Rule 29 is nonavailability of Sendhi, on account of nonallotment of trees to the petitioners by the concerned authorities. It is not necessary for me to go into the merits of this application. It is open to the licensees to make an application under Rule 29 and they have made one rightly or wrongly; justifiably or unjustifiably. It is not for this Court to adjudicate upon that petition. It is a petition made to the Government and it is the Government that could dispose of the petition on merits. Therefore, the Government is directed to dispose of the applications made by the petitioners in the two cases as early as they can.

12. That the next aspect of the matter is whether the respondents should be directed not to collect the rentals until the application made under Rule 29 is disposed of by the Government. I do not want to elaborately go into the reasons because if I do so, it may prejudice the case of the petitioner before the Government. I, therefore, do not go deeply into the merit on this aspect. The remission is sought on the ground of non-availability of arrack or toddy because the full quota of trees were not allotted. Is it a ground for suspending the payment of rentals during the pendency of the application? From the facts stated in the counter-affidavit which I have no reason to disbelieve it is shown that quite a substantial number of trees were allotted to the petitioners even before 1-10-1977. Prima facie they should be sufficient to enable the petitioners to draw sendhi to be sold in their shops and only a very small portion of the trees were not yet allotted by the time the petitioners made their applications to the Government. In the circumstances, I do not think that I would be justified in suspending the payment of rentals until the applications before the Government are disposed of. Prima facie the petitioners are not justified in seeking such a relief. As I said I do not want to go into the merits of the case out of fear that I might prejudge the applications under Rule 29. Suffice it to say that I am not satisfied that the petitioners are entitled to this exemption.

13. In the result, a direction will issue to the Government to dispose of the applications of the petitioners under Rule 29 very expeditiously. In other respects the writ petitions fail and are dismissed with costs. Advocate's fee Rs. 100/- in each.

14. The petitioners are granted fifteen days' time from today to pay the rentals which are in arrears. These do not, however, prevent them from approaching the Government or any other appropriate authority for extension of time for payment.

Petitions dismissed.
