
(2003) 07 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7226 of 2003

Srinivasa Wines

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 28
Andhra Pradesh Excise Act, 1968 — Section 3

Citation : (2003) 5 ALD 32 : (2003) 5 ALT 38 : (2003) 3 APLJ 82

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : P. Balamukunda Rao, for the Appellant; K. Swarna Seshu and Government Pleader for Prohibition and Excise for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—Invoking the jurisdiction of this Court under Article 226 of the Constitution of India the petitioner has filed this writ petition praying for a declaration that the action of the 2nd respondent-Commissioner of Prohibition and Excise (hereinafter referred to as "the Commissioner") in fixing a new IL-24 shop for Lingasamudram Mandal of Prakasham District, with a slab licence fee of Rs. 3,00,000/-, is illegal, arbitrary and contrary to the excise policy declared by the Government.

2. According to the petitioner, there are three shops in Lingasamudram Mandal, one in the name of the petitioner, M/s. Sreenivasa Wines, and the other two in the names of M/s. Vigneshwara Wines and M/s. Kokila Wines. It is the case of the petitioner that as per the policy decision taken by the Government in G.O. Ms. No. 389, dated 13-3-2003, only the licences of the existing licensees are to be renewed subject to their fulfilling the formalities and other conditions, and in case the existing licensees do not come forward to renew their licences, the Commissioner was at liberty to allot the unrenewed licence/s to those interested

by following the procedure prescribed therefor.

3. It is the case of the petitioner that though all the existing licensees got their licences renewed for the excise year 2003-04, the Commissioner fixed an additional shop for Lingasamudram Mandal. The fixation of additional shop by the Commissioner, according to the petitioner, is not in harmony with the excise policy issued by the Government in G.O. Ms. No. 109, Revenue (Ex.II) Department, dated 11-3-2002, and runs contrary thereto. According to the petitioner, if the newly created shop is allotted or granted in favour of any third parties, it will not only affect his business, but will also affect the business of other existing licensees, adversely. The petitioner, therefore, prays this Court to declare the fixation of additional shop by the Commissioner, as illegal and arbitrary, and consequently to set aside the same.

4. The 3rd respondent-Superintendent of Prohibition and Excise (hereinafter referred to as "the Superintendent") has filed counter-affidavit stoutly defending the action of the Commissioner in fixing an additional IL-24 licence for Lingasamudram Mandal. It is stated that in pursuance of the orders issued by the Government in G.O. Ms. No. 389, dated 13-3-2003, providing for renewal of the existing IL-24 licences, the petitioner and other existing licensees got their licences renewed for the excise year 2003-04.

5. It is further stated that in response to Notification No. 17, dated 18-4-2002, issued by the 3rd respondent, inviting applications for grant of IL-24 licence in Lingasamudram Mandal for the excise year 2002-03, one Sri. Yarava Veeranjanyulu Reddy, submitted his application, but by reason of an unanticipated human error, his application was clubbed with the group of applications received for grant of licences in Ponnalur Mandal, and as a consequence thereof, his application for grant of licence in Lingasamudram Mandal, missed from being considered.

6. Aggrieved thereby, Sri. Yarava Veeranjanyulu Reddy, filed W.P. No. 10085 of 2002, and this Court while disposing of the same, by order dated 7-6-2002 directed the Commissioner to consider and dispose of the representation dated 29-4-2002 made by Sri Yarava Veeranjanyulu Reddy, after calling for a report from the Deputy Commissioner of Prohibition and Excise (hereinafter referred to as "the Deputy Commissioner"), and pass appropriate orders thereon, in accordance with law and the conditions appended to the Notification dated 18-4-2002, within three weeks.

7. The Commissioner after summoning the report from the Deputy Commissioner, vide his proceedings dated 18-7-2002 requested the government to sanction one additional shop for Lingasamudram Mandal. After the close of the excise year 2002-03, the Government by their proceedings dated 3-4-2003, requested the Commissioner to renew his proposal for sanction of additional licence in Lingasamudram Mandal, for the excise year 2003-04. The Commissioner purporting to act on this communication of the Government,

requested the Superintendent to notify a shop in Lingasamudram Mandal for the excise year 2003-04 with a slab fee of Rs. 3.00 lakhs.

8. In pursuance of the abovesaid proceedings of the Commissioner, the Superintendent issued notification dated 17-4-2003, inviting applications for grant of IL-24 licence. Assailing the said notification, Sri Yarava Veeranjanyulu Reddy filed W.P. No. 7419 of 2003 siting that the notified additional shop should not be auctioned, but should be allotted to him. This Court by order dated 24-4-2003, while refusing to accept such a contention, disposed of the said writ petition at the stage of admission directing the petitioner (Sri Yarava Veeranjanyulu Reddy) to participate in the selection along with other eligible applicants. In the selection, which was held in accordance with the Rules by drawal of lots on 25-4-2003, one Sri Maddela Venkat Rao (Applicant No. 124), who filed implead and vacate stay petitions, was selected.

9. As the Commissioner fixed the additional shop having regard to the factors, namely non-consideration of the application of Sri Yarava Veeranjanyulu Reddy for the excise year 2002-03 because of the mistake on the part of the excise officials, the orders passed by this Court in the writ petition filed by him, the large number of applications received for one shop in Lingasamudram, and the proceedings of the Government calling upon the Commissioner to renew his request for sanction of additional shop for the excise year 2003-04, the deponent submits that fixation of additional shop by the Commissioner, cannot be said to be illegal or arbitrary, and more particularly, when the Government by their proceedings dated 18-6-2003 have ratified the action of the Commissioner in fixing the additional shop.

10. Sri Maddela Venkat Rao, who was selected for the newly created additional shop filed W.P. M.P. No. 12968 of 2003 and W.V. M.P. No. 1785 of 2003 seeking to implead him as party-respondent to the writ petition and to vacate the interim orders, passed by this Court in W.P. M.P. No. 9440 of 2003 on dated 23-4-2003. In the affidavits filed in support of the applications, the implead petitioner avers that pursuant to his selection for the additional shop in Lingasamudram Mandal for the excise year 2003-04, he furnished bank guarantee for two-third of the value of the annual licence fee and also complied with the formalities required therefor, including execution of counterpart agreement. The implead petitioner complains that in spite of his being selected in accordance with the procedure prescribed in Rule 31(4) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 (hereinafter referred to as "the Rules") and in spite of his having complied with all the formalities, the respondents have not granted him the licence because of the interim orders passed by this Court on 23-4-2003. The implead petitioner submits that if the interim order passed by this Court in the writ petition is not vacated, he would suffer irreparable loss and injury.

11. Heard the learned Counsel for the petitioner, the learned Government Pleader for Prohibition and Excise and the learned Counsel for the implead petitioner.

12. The learned Counsel for the petitioner would contend that as per the policy decision taken by the Government in G.O. Ms. No. 389, dated 13-3-2003, the Commissioner is vested with the power of only renewing the licences of the existing licensees, and it does not confer upon him any power to fix or create an additional shop. Inasmuch as all the existing licensees in Lingasamudram Mandal got their licences renewed, the learned Counsel submits that the Commissioner could not have fixed an additional shop and requested the Superintendent to notify the same. The learned Counsel for the petitioner submits that as the fixation of additional shop by the Commissioner is ultra vires the powers vested in him, the Government could not have ratified such action of the Commissioner, and more particularly when the Government themselves are not empowered to vary with their policy. According to the petitioner, the fixation of additional shop by the Commissioner and the ratification thereof by the Government being not in consonance with the excise policy issued by the Government in G.O. Ms. No. 389, dated 13-3-2003, he would submit that the fixation of additional shop is bad and illegal, and to sustain this argument, he placed reliance on the judgement of this Court in *Toddy Tappers Co-op. Society, Ramachandrapuram v. Government of A.P.* 1979 (1) ALT 4 (NRC).

13. The learned Government Pleader for Prohibition and Excise appearing on behalf of the official respondents justified the fixation of additional shop by the Commissioner in Lingasamudram Mandal having regard to the peculiar facts and circumstances appearing in the case. According to him, the creation of a new shop in Lingasamudram Mandal was necessitated because of the clubbing of the application submitted by Sri Yarava Veeranjanyulu Reddy for grant of licence in Lingasamudram Mandal with the application received for grant of licence in Ponnalur Mandal for the excise year 2002-03, the orders dated 7-6-2002, passed by this Court in W.P. No. 10085 of 2002, filed by Sri. Yarava Veeranjanyulu Reddy and the large number of applications received for grant of licence for one shop. He submits that under Rule 28 of the A.P. Indian Liquor and Foreign Rules, 1970 (for short "the Rules"), the Commissioner is empowered to fix the number of licences to be granted in an area, and inasmuch as the Government has ratified the action of the Commissioner in fixing additional shop by their proceedings dated 18-6-2003, the same would become legal even if it was assumed that the Commissioner had no power to fix such additional shop. Inasmuch as fixation of additional shop by the Commissioner was ratified by the Government, the learned Government Pleader submits that the proceedings which have taken place subsequent to the creation of additional shop, namely issuing of notification and selection of the implead petitioner which was done in accordance with the Rules, will have legal force and cannot be interfered with. The learned Government Pleader to sustain his argument that once the Government ratifies an action of an authority, which action was taken by the authority without any power or authority of law, the ratification would relate back to the date when such action was taken by the authority, placed strong reliance on the judgment of the Apex Court in *Punjab University Vs. V.N. Tripathi* and

Another, .

14. The learned Counsel appearing on behalf of the implead petitioner submitted that inasmuch as the implead petitioner was selected for the newly created shop in Lingasamudram Mandal in accordance with the Rules and the procedure prescribed therefor, and has also complied with the required formalities, including furnishing of bank guarantee in a sum equivalent to two-third of the value of the annual licence fee and also executed counterpart agreement, the interim order should be vacated and the respondents should be directed to issue licence immediately.

The prime question that arises for consideration in this writ petition is whether, in the given facts and circumstances of the case, the Commissioner was justified in fixing an additional licence in Lingasamudram Mandal, and if so, whether the Government was well within its powers in subsequently ratifying such action of the Commissioner?

15. There cannot be any dispute about the fact that the Commissioner appointed by the Government u/s 3 of the A.P. Excise Act, 1968 is the chief controlling authority in all matters connected with the administration of the Act and is competent to exercise all the powers of the Collector under the Act and shall have total control over the administration of the Prohibition and Excise Department. The Government in exercise of the powers conferred upon them by Section 72 read with Sections 9, 11, 12, 13, 14, 15 and 28 of the A.P. Excise Act, 1968 and in supersession of all Rules on the subject, framed Rules known as A.P. Indian Liquor and Foreign Liquor Rules, 1970. Rule 28 of the Rules, which deals with the number of licence to be granted in an area reads:

28. Number of licences :--Subject to such directions which the Government may issue in this regard, from time to time, the Commissioner shall be competent to fix number of licences to be granted in an area having due regard to requirement, public order, health, safety and such other factors as he thinks fit. Subject to such directions or instructions as the Commissioner may give in this behalf, the licensing authority may grant licences in each category and to each person in any area.

16. From a bare perusal of the provisions of Rule 28 of the Rules it becomes manifestly clear that the power of the Commissioner to fix the number of licences to be granted in an area is not absolute, but is subject to the directions which the Government may issue from time to time, and in the course of fixing the number of such licences, the Commissioner shall have due regard to the requirement, public order, health, safety and such other factors as he thinks fit, and basing on such directions or instructions which the Commissioner may give in this behalf, the licensing authority shall grant licences. It is in the light of the requirements ordained in Rule 28 of the Rules, we have to examine whether, in the given facts and circumstances of the case, the Commissioner was justified in fixing additional shop in Lingasamudram Mandal.

17. The factual matrix of the matter, as narrated supra, would disclose that as the application submitted by Sri. Yarava Veeranjanyulu Reddy for grant of licence in Lingasamudram Mandal for the excise year 2002-03 was excluded from being considered because of the faux pas played by the excise officials in clubbing the said application with the bunch of applications received for grant of licences in Ponnalur Mandal, he filed writ petition in W.P. No. 10085 of 2002, before this Court, and this Court while disposing of the same, by order dated 7-6-2002 directed thus:

Having regard to the above, and having heard the learned Counsel for the petitioner as well as the learned Assistant Government Pleader for Prohibition and Excise, without adjudicating the matter on merits, I dispose of this writ petition directing the 1st respondent-Commissioner of Prohibition and Excise, Hyderabad, to consider the report of the Deputy Commissioner of Prohibition and Excise, and pass appropriate orders on the representation dated 29-4-2002 filed by the petitioner in accordance with law and the conditions appended to the notification dated 18-4-2002, within a period of three weeks from the date of receipt of a copy of this order.

18. In pursuance of the above order, the Deputy Commissioner of Prohibition and Excise having enquired into the matter, submitted his report on 14-5-2002 indicting the excise officials guilty of serious lapses. While recommending action against those responsible for the serious lapses, the Deputy Commissioner requested the Commissioner to inform Sri. Yarava Veeranjanyulu Reddy that his request for cancellation of lots cannot be considered because he brought the discrepancy to their notice belatedly.

19. It may be noticed that this Court in W.P. No. 10085 of 2002, by its order dated 7-6-2002, has not given any positive directions to the Commissioner to grant licence to Sri Yarava Veeranjanyulu Reddy, What all this Court directed the Commissioner was to consider the report of the Deputy Commissioner and pass appropriate orders on the representation dated 29-4-2002 made by Sri Yarava Veeranjanyulu Reddy, in accordance with law and the conditions appended to the Notification dated 18-4-2002. Had the Commissioner considered and disposed of the representation made by Sri Yarava Veeranjanyulu Reddy, the matter would have ended there. But the Commissioner despite there being no positive report from the Deputy Commissioner, for reasons extraneous and not connected with the requirements ordained in Rule 28 of the Rules, has addressed letter dated 18-7-2002 to Government to accord sanction for an additional shop in Lingasamudram Mandal. The factors, as can be seen from the letter dated 18-7-2002 addressed by the Commissioner to the Government, which made him request for sanction of an additional shop in Lingasamudram Mandal are the large number of (106) applications received for one shop and the orders dated 7-6-2002 passed by this Court in W.P. No. 10085 of 2002, filed by Sri Yarava Veeranjanyulu Reddy.

20. The reasons stated by the Commissioner in support of his request for

sanction of additional shop in Lingasamudram Mandal do not commend to this Court and are liable to be rejected. Licences and shops in an area are fixed having regard to the size of its population. Merely because the Department has received large number of applications for grant of licence for one shop in an area, that by itself does not clothe the Commissioner to seek sanction of the Government for creation of additional shop, and more particularly, when there was no positive direction given by this Court to the Commissioner to grant licence to the Sri Yarava Veeranjanyulu Reddy. Had the Commissioner considered the representation made by Sri. Yarava Veeranjanyulu Reddy, as directed by this Court, the representation could have resulted in rejection having regard to the fact that the Deputy Commissioner in his report has categorically requested the Commissioner to inform Sri Yarava Veeranjanyulu Reddy that his request for cancellation of lots cannot be accepted as he pointed out the discrepancy belatedly, and that apart, it was pointed out in the report that one of the conditions appended to the Notification dated 84-2002 absolved the Department of any responsibility for any discrepancies and unintended omissions in the list of shops.

21. It is to be further noticed that before the Government could act on the letter dated 18-7-2002 of the Commissioner, the Government in G.O. Ms. No. 389, dated 13-3-2003, having reviewed the functioning of the existing IML retail outlets in the State, decided to renew the licences to the extent of existing IML retail shops only for the year 2003-04 subject to their fulfilling the formalities, and in case the existing licensees do not come forward to renew their licences, the Commissioner was permitted to re-allot the same to others. It may be noted that in pursuance of this G.O., all the existing licensees got their licences renewed before the expiry of their lease for the excise year 2002-03. A reading of the G.O. would indicate that no additional shop was created by the Government except providing for renewal of the existing licences, and if the existing licences do not come forward for renewal, it was open to the Commissioner to re-allot them to others.

22. As all the existing licensees, including the petitioner got their licences renewed for the excise year 2003-04, it was not open for the Commissioner to create an additional shop for Lingasamudram, and more so on the grounds mentioned in letter dated 18-7-2002 addressed by him to the Government seeking sanction of additional shop in Lingasamudram. It is to be further seen that after the close of the excise year 2002-03, the Government vide their proceedings dated 3-4-2003, purporting to reply to the letter dated 18-7-2002 of the Commissioner, informed him that he may renew his proposal for sanction of one additional shop for Lingasamudram Mandal for the excise year 2003-04, if necessary as the excise year 2002-03 was already over. Even these proceedings of the Government did not permit the Commissioner to create an additional shop in Lingasamudram Mandal, but only requested him to renew his request, if necessary. As all the existing licensees, including the petitioner got their licences renewed by the date the Government issued the proceedings dated 3-4-2003,

there was absolutely no necessity for the Commissioner to ask the Superintendent vide his proceedings dated 15-4-2003 to notify a shop in Lingasamudram even without requesting the Government for creation of additional shop.

23. Had there been positive direction from this Court to grant licence to Sri Yarava Veeranjaneeyulu Reddy whose application for grant of licence for the excise year 2002-03 went out of consideration, the Commissioner would have been justified in creating an additional shop in Lingasamudram Mandal, but that is not the case on hand. Even the report of the Deputy Commissioner and the conditions appended to the Notification dated 8-4-2002, and the Rules in vogue, basing on which the representation of Sri Yarava Veeranjaneeyulu Reddy was directed to be considered by this Court, did not favour creation of additional shop. Apart from the above, even G.O. Ms. No. 389, dated 13-3-2003 which provided for renewal of existing licences, did not provide for creation of additional shop. Even the letter dated 3-4-2003 of the Government, did not permit the Commissioner to create additional shop, but only gave him the liberty of renewing his request, if necessary. Inasmuch as the creation of additional shop in Lingasamudram Mandal by the Commissioner is for reasons extraneous and not in harmony with the requirements mentioned in Rule 28 of the Rules and the excise policy issued by the Government for the excise year 2003-04 in G.O. Ms. No. 389, dated 13-3-2003, the same has to be held illegal and without jurisdiction.

24. There cannot be any dispute on the proposition that an action taken without any authority of law, would become valid upon its ratification by the power conferring authority, and would relate back to the date when such action was taken by the authority without any authority of law, and reliance placed by the learned Government Pleader in support thereof on the judgment of the Supreme Court in Punjab University v. V.N. Tripathi. In the case before the Supreme Court, employees filed suits against the University against dispensation of their services, which were decreed. The Registrar filed appeals against the judgments and decrees of the Trial Court. It was contended that the Registrar had no power to file appeals unless the Senate takes a decision. The Senate ratified the action of the Registrar subsequently. Both the first and second appellate Courts upheld the said contention. In further appeal to the Supreme Court, the question whether the Registrar was competent to file the appeals without any decision of the Senate of the University to that effect or not, fell for consideration. This contention of the employees was negatived by the Supreme Court, and it held that the ratification has the effect of relating back to the time when the action was taken without authority. In the case before the Supreme Court, the Registrar was defending the interest of the University. But that is not the case on hand. Here none of the facts and circumstances, neither the report of the Deputy Commissioner, nor the conditions appended to the Notification dated 8-4-2002, nor the orders of this Court in W.P. No. 10085, dated 7-6-2002 nor the proceedings of the Government dated 3-4-2003 which requested the

Commissioner to renew his request for creation of additional shop, if necessary, do support the action of the Commissioner, in creating an additional shop in Lingasamudram. Therefore, the contention of the learned Government Pleader inasmuch as the Government has subsequently by their proceedings dated 18-6-2003 have ratified the action of the Commissioner in creating additional shop, the same would relate back to the date on which the Commissioner created the additional shop without authority of law, cannot be accepted. Had there been justifying reasons for the Commissioner to create additional shop, the Government would have been justified in ratifying the action, but such is not the case on hand.

25. In the above view of the matter, the auction conducted by the Superintendent in respect of the newly created shop, in which the implead petitioner was successful, is liable to be set aside, and it is accordingly set aside. Inasmuch as the creation of additional shop by the Commissioner is set aside, the proceedings which have taken place pursuant to the notification, including selection of the implead petitioner in the auction, though made in accordance with the Rules, have to be set aside, and they are accordingly set aside.

26. In the result the writ petition is allowed, and the respondents are directed to return the money paid by the implead petitioner pursuant to his being selected to the newly created shop. There shall be no order as to costs.