
(2013) 04 AP CK 0096
In the Andhra Pradesh High Court
Case No : Writ Petition No. 38320 of 2012

T. Hari Prasad

APPELLANT

Vs

The Commissioner of Prohibition and Excise and Others

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 3(1)

Citation : (2013) 6 ALD 413 : (2013) 5 ALT 496

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M.P. Chandramouli, for the Appellant; Government Pleader for Prohibition and Excise, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a mandamus to declare the action of the respondents in not granting permission to the petitioner to establish A-4 shop at door No.13-1-1091/A, P.K. street, ward No.14, Tirupati Municipal Corporation as illegal and arbitrary. The petitioner sought for a consequential direction to the respondents to permit him to shift the A-4 shop to the abovementioned premises from S.N. puram, Rajeev nagar, Panchayat, Tirupati Urban Mandal. I have heard Sri M.P.Chandramouli, learned counsel for the petitioner, and the learned Assistant Government Pleader for Prohibition and Excise.

2. In response to the notification issued by respondent No.4, the petitioner applied for running retail liquor shop (A-4 shop) at S.N. Puram, Rajeev Nagar, Panchayat, Tirupati Urban Mandal for the year 2012-13. The petitioner was granted licence on 02.07.2012. He has established a shop in S.N. puram area. However, on the same day, on which the shop was opened certain women organisations went on agitation for closing the shop. Thereupon, the petitioner has made a representation for permission to shift the shop to ward No.14. The petitioner's request was examined and reports were submitted by the Prohibition and Excise Inspector, Tirupati Urban on 24.08.2012, the Assistant Prohibition and

Excise Superintendent, Tirupati on 25.08.2012, the Prohibition and Excise Superintendent, Tirupati - respondent No.3 herein on 27.08.2012 and the Deputy Superintendent of Prohibition and Excise, Tirupati - respondent No.2 herein on 30.08.2012. Upon considering these reports, respondent No.1 has issued proceedings dated 31.08.2012, wherein he has directed respondent No.2 to submit a specific report considering the fact that due to recommendations of the Assurance Committee, no shops were notified for ward Nos.13, 14 and 15. Thereafter, the whole process was redone. The Prohibition and Excise Inspector submitted his report on 12.09.2012, the Assistant Prohibition and Excise Superintendent on 13.09.2012 and the Prohibition and Excise Superintendent - respondent No.3 on 12.09.2012. It is relevant to note that in all these two sets of reports submitted by the officials of the Excise Department, they have consistently recommended for grant of permission to the petitioner for shifting the liquor shop to ward No.14. After receiving the second set of reports, respondent No.1 has once again issued proceedings dated 03.10.2012, wherein he has observed that even though he has directed respondent No.2 to submit his specific report, he has not submitted any report and therefore, he has once again directed respondent No.2 to submit a specific report along with topoplan duly signed by respondent No.3. While submitting his third report dated 08.10.2012, respondent No.3 has completely changed his tenor, wherein he has stated that even though ward No.14 is not specifically included in the list of wards in which location of A-4 shops has been banned, inasmuch as no shop has been notified for ward No.14, it is implied that opening of shops in the said ward is also prohibited. Therefore, he has opined that ward No.14 also comes under the prohibited area and that the request of the petitioner to shift his A-4 shop to the said ward may not be accepted.

3. On 19.10.2012, respondent No.1 has issued another proceeding directing respondent No.2 to examine the objections stated to have been raised by the residents of ward Nos.14 and 15 for opening of A-4 shop in the said wards and ensure that the shop is established without further loss of time by personally examining the matter. Thereafter, respondent No.2 has submitted his report on 26.10.2012, which is on identical lines as that of respondent No.3. Despite the two adverse reports of respondent Nos.2 and 3, respondent No.1 has issued proceedings dated 14.11.2012, wherein it was inter alia mentioned that the petitioner, who was allotted shop at licence fee of Rs.46,00,000/- could not establish A-4 shop at the notified area due to the public agitation, that he has requested to accord permission to shift his A-4 shop to ward No.14 or to any one of the ward Nos.11, 17, 19, 23 and 26 of Tirupati Municipal Corporation. It was further observed by respondent No.1 that respondent Nos.2 and 3 have initially recommended for relocation of A-4 shop to ward No.14 and that as the said ward does not fall within prohibited wards as per the Assurance Committee guidelines and as the petitioner could not establish A-4 shop even after lapse of four months, he has directed respondent No.2 to permit the petitioner to establish A-4 shop at ward No.14 or in any one of ward Nos.11, 17, 19, 23 and 26, which

are not objectionable and not against the guidelines of the Assurance Committee.

4. Interestingly, instead of permitting the petitioner to open A-4 shop in terms of order dated 14.11.2012, respondent No.3 has passed an order on 01.12.2012, wherein he has rejected the petitioner's request for permission to establish his A-4 shop in ward No.14 as the same comes within the prohibited area declared by the Assurance Committee. The petitioner was instructed to procure suitable premises and submit proposals as per Rule 28 of the Andhra Pradesh Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012. Feeling aggrieved by the inaction of respondent Nos.2 and 3 in implementing the order of respondent No.1, the petitioner filed this writ petition.

5. During the hearing of the case, the learned Government Pleader for Prohibition and Excise has stated that the competent authority to permit shifting of A-4 shop is respondent No.1, that respondent Nos.2 and 3 can only abide by the directions issued by him. As this Court felt that in view of the specific direction issued by respondent No.1, vide his order dated 14.11.2012, to respondent No.2 to allow the petitioner to establish A-4 shop at ward No.14 or any one of the wards referred to above, the order dated 01.12.2012 passed by respondent No.3 is diametrically contrary to the said order, which prima facie constitutes grave insubordination, this Court has adjourned the case on 28.03.2012 directing respondent No.1 to file his personal affidavit indicating his response to the order passed by respondent No.3.

6. Accordingly, respondent No.1 filed his affidavit in the form of a counter-affidavit. It is indeed disappointing to note that respondent No.1, instead of taking exception to the conduct of respondent No.3, has supported his action in rejecting the request of the petitioner for relocation of the shop in ward No.14. It is also surprising that respondent No.1 has given undue weight to the opinion of the District Collector, Chittoor, who is only the auctioning authority besides being a member of the Implementation Committee of the decision of the Assurance Committee constituted by the Andhra Pradesh Legislative Council and who has no say in the matter of permission to locate shops upon shifting from one place to another.

7. From the facts referred to above, it is evident that the petitioner has come out with a genuine reason for shifting of the shop from S.N. puram area which falls in Tirupati Urban Mandal to any one of the wards and in particular ward No.14, where he has identified his premises. While in the two sets of reports submitted by respondent Nos.2 and 3, they have opined that ward No.14 is not included in the list prepared by the implementation committee banning location of the A-4 shops, suddenly they have changed their version in the third set of reports submitted by them. Even in these reports, it is not the specific case of respondent Nos.2 and 3 that ward No.14 was included in the prohibited list, but from the fact that the District Collector has not notified the said ward for location of the shops, they have inferred that the same is included in the list of prohibited wards. It is also interesting to note that in another case pertaining to M/s.

Yallamuri Wines, of which one Smt.Y.Sujatha, is the Proprietrix, respondent No.1 has issued two proceedings on 06.11.2012 and 06.12.2012. Copies of those proceedings are filed by the petitioner along with his reply affidavit. While considering the request of M/s. Yallamuri Wines for permission of locating the shop in ward No.14 instead of ward Nos.8 and 10, respondent No.1 has considered the opinion of the District Collector, Chittoor and he has differed with his opinion. It is relevant to reproduce the relevant portion of the order passed by him on 06.11.2012 as under:

The Collector and District Magistrate has issued the following instructions with regard to establishment of A-4 shops at 14th ward

Ward No.14 has no shops in the previous years. It is implied during notification that ward No.14 is also a prohibited ward in view of the commitment made to the assurance Committee. Therefore ward No.14 is also a prohibited ward shall at no circumstance be considered for establishing shops. Public have filed their grievance that ward No.14 shall remain free of shops in the interest of the welfare of the residents. Therefore in view of the public representation and also the fact that ward No.14 was free of shops previously, It is decided to prohibit shops in ward No.14 in the interest and welfare of the public. Moreover no license was granted in ward No.14 during the auction, hence the question of entertaining any request does not arise at this point in time, which will violate the spirit of auction and transparency and level playing field.

Further the Deputy Commr. of Proh & Excise, Chittoor has reported in the reference cited that the telephonic instructions with regard to given permission to shift the premises of A4 shop of M/s. Yallamuri wines to 14th ward of Tirupathi Municipal Corporation was appraised to the District Collector, Chittoor. The District Collector opined and endorsed that since it is already decided that ward No.14 has to be exempted.

The matter has been carefully examined. The wards where there would be no shops were identified in the beginning of licence period of 2012-13 itself and notified accordingly. To insist that there shall be no shops in some more wards may not be appropriate because it will have serious implications on the trade and revenue.

Therefore, the District Collector and Magistrate, Chittoor is requested to act accordingly in this matter.

(emphasis added)

8. As the said order was not implemented, the licensee has once again approached respondent No.1 after respondent No.3 has rejected her request, as in the present case, by an identical order passed on 01.12.2012. Respondent No.1 has issued another proceeding on 06.12.2012, wherein he has clearly opined as under:

The matter is once again examined, and it is observed that Ward No.14 is not

one among the 6 wards denotified earlier for establishing the A4 shops. As such CPE accorded permission to the applicant to shift her A4 shop to 14th ward. Therefore, the Deputy Commissioner of Proh & Excise, Chittoor is requested to convince the collector to implement the orders of the Commissioner of Proh & Excise, A.P. Hyderabad issued in the reference 2nd cited.

(emphasis added)

9. The above discussed two orders of respondent No.1 would clinchingly establish that he differed with the opinion of the District Collector, Chittoor, that ward No.14 is included among the prohibited wards for establishment of A4 shops. By expressing this opinion in express terms, respondent No.1 directed respondent No.2 to convince the District Collector, Chittoor to agree for opening of the A-4 shop at ward No.14 by implementing his earlier order dated 06.11.2012. Regrettably, in this case, respondent No.1 has taken a different stand in his counter-affidavit even though in his proceeding dated 14.11.2012, he has permitted the petitioner to shift the shop to ward No.14 or any other ward Nos.11, 17, 19, 23 and 26. Thus, I find grave inconsistency in the stand of respondent No.1 between the pre and post filing of the writ petition. Respondent No.1 being the Chief Controlling Authority in all matters connected with the administration u/s 3(1) of the Andhra Pradesh Excise Act, 1968 (for short "the Act") and competent to exercise all the powers of Collector under the Act, he has failed to assert himself and ensure that his order permitting the petitioner to shift the shop at ward No.14 is implemented by his subordinate officers. On the contrary, when respondent No.3 who is not vested with the power or authority whatsoever to consider, leave alone, reject the request for shifting of the shops has passed an order on 01.12.2012 diametrically contrary to the order passed by respondent No.1, instead of taking a serious view of the conduct of respondent No.3, respondent No.1 goes to the extent of supporting the indefensible act of respondent No.3. This Court is thoroughly dissatisfied with the manner in which respondent No.1 has dealt with the patently illegal order passed by respondent No.3 even though he was given an opportunity to take corrective steps.

10. Under Rule 28(3) of the Rules, the jurisdiction to permit shifting of the shops is exclusively vested in respondent No.1. In this case, this Court is not really concerned as to whether the decision of respondent No.1 to permit the petitioner to shift the shop to ward No.14 is strictly in conformity with the said Rule or not because the legality or otherwise of the order passed by him on 14.11.2012 permitting the petitioner to shift the shop is not in question in this writ petition. This Court is only concerned with the non-implementation of the order passed by respondent No.1. As noted hereinbefore, the main reason for respondent No.1 for not ensuring implementation of his own order is that ward No.14 is included in the list of wards, where location of A4 shops is prohibited. However, as noted hereinbefore, there are as many as two proceedings dated 06.11.2012 and 06.12.2012, whereby respondent No.1 has opined that ward No.14 is not a prohibited ward. Therefore, I do not find any justification whatsoever for the

respondents in not permitting the petitioner to shift the shop to ward No.14. Having issued the proceedings dated 14.11.2012, which are still holding the field, it is the bounden duty and obligation of respondent No.1 to ensure that his subordinates carry out his orders in letter and spirit. Respondent No.3 has indeed meddled with the issue over which he has neither authority nor jurisdiction whatsoever by purporting to reject the petitioner's application by passing an order on 01.12.2012. Such an action on the part of respondent No.3 ought not to have been endorsed by respondent No.1.

11. For the aforementioned reasons, respondent No.3 is directed to permit the petitioner to shift the A-4 shop to D.No.13-1-1091/A, P.K. street, ward No.14 of Tirupati Municipal Corporation in terms of the proceedings dated 14.11.2012 of respondent No.1 within two weeks from the date of receipt of a copy of this order.

12. Subject to the above direction, the Writ Petition is allowed. As a sequel to allowing the writ petition, W.P.M.P.No.48588 of 2012 filed by the petitioner for interim relief shall stand disposed of as infructuous.