
(1978) 03 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 29 of 1978

V. Narayana

APPELLANT

Vs

S. Babu Rao and Others

RESPONDENT

Date of Decision : 08-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1978 AP 437

Hon'ble Judges : Narasinga Rao, J; Madhava Reddy, J

Bench : Division Bench

Advocate : S. Ranga Reddy, for the Appellant; M. Bhujanga Rao and Govt. Pleader, for the Respondent

Judgement

Madhava Reddy, J.—This writ appeal is directed against the order in writ petition No. 5176/77 by which the order of the District Collector (Excise), Hyderabad directing the shifting of the arrack shop of the 5th respondent from Hammal Basthi to Warasinguda locality, was a quashed and the 5th respondent was directed to shift the same to any place in Hammal Basthi locality within 15 days of the date of receipt of the order. The 5th respondent in the writ petition is the appellant before us.

2. The appellant was granted a licence under the Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules 1969 for the excise year 1977-78 in respect of Hammal Basthi and Warasinguda group of arrack-shops. He opened the shop at a place very near the Secunderabad Railway over- bridge in Hammal Basthi on 1-10-1977. The railway workers and the authorities living in the vicinity objected to the location of the shop at that place. The Excise Authorities, therefore, seized the licence. The appellant thereupon filed an application to permit him to shift his shop to Warsiguda. That petition was allowed by the District Collector (Excise), Hyderabad by his order dated 18-10-1977 and in pursuance of that order the appellant opened the shop in Warsiguda on 21-10-1977. The respondents 1 to 3 herein who were licensees for the Adikmet

and Parasigutta group of arrack shop filed the present writ petition inter alia contending that (1) the Collector, Excise, the 6th respondent had no jurisdiction to order the shifting of arrack shop; (2) that Warsiguda was not included in Hammal Basti locality and the arrack shop could not have been within the area of operation of the licensee (3) that the circumstances did not justify the shifting of the shop to Warasiguda.

3. It may be stated that earlier almost on identical grounds the contractor of Seethafalmadi group of arrack shops filed a writ petition (W. P. 4779/77) challenging this very order of shifting made by the District Collector (Excise), Hyderabad. That petition was dismissed on 21-11-1977 by our learned brother Gangadhara Rao, J. holding that in view of rule 5 read with Andhra Pradesh Excise Delegation of Power Rules, 1972 the District Collector was competent to exercise powers of the Commissioner and direct the shifting of the shop. Warasiguda was also held to be within Hammal Basti locality.

4. In answer to the rule nisi the 5th respondent specifically pleaded that Warsiguda was part of Hammal Basti and Walker Town group of arrack shops and that it was not within the area of operation of the petitioners who are the licencees for Adikmet and Parsigutta area. While admitting that, after the opening of the shop near the railway over-bridge in Hammal Basti, on the objection raised by the railway authorities and the workers, he applied for the shifting of the shop to Warasiguda, he pleaded that the District Collector (Excise), Hyderabad was competent to exercise powers of the Commissioner and direct shifting of the shop to Warsiguda having regard to the circular 4382/Ex/70 GI Board of Revenue, Excise, A. P. dated 30-1-1971.

5. One of the main contentions raised before the learned single Judge was: irrespective of whether the order of the 6th respondent is valid or not, the petitioners had no legal right to question the order of shifting and consequently had no locus standi to maintain the writ petition. He also urged that if at all the petitioners felt themselves aggrieved, they had a specific alternative remedy provided under the provisions of the Andhra Pradesh Excise Act and, therefore, this Court is precluded under Art. 226(3) of the Constitution of India from issuing any writ or direction as prayed for by the petitioners.

6. In allowing the writ petition, our learned brother Chennakesav Reddy, J. proceeded upon the footing that the appellant herein had not stated that Warasiguda is part of Hammal Basti area and that it was admitted that Warasiguda was included in Walker Town toddy group and a toddy shop is located in Warasiguda. Proceeding on that basis, he held that the shifting of the shop to Warasiguda affected the rights of the petitioners. The learned Judge further held that there was no valid delegation of the powers of the Commissioner to the District Collector in his behalf under the Circular relied upon by the appellant herein and the order permitting the shifting of the shop from Hammal Basti to Warsiguda was not shifting from one place to another as contemplated under R. 41 but was shifting of the shop from one locality to

another. In that view of the matter, he held that the order was a nullity. On that basis he rejected the appellant's contention that the alternative remedy of revision provided under S. 64 of the Act was not a bar to the exercise of the extraordinary jurisdiction of this Court under Art. 226(3) of the Constitution. Accordingly he quashed the order and directed the re-shifting of the shop from Warasiguda to any place within Hammal Basti locality.

7. In this appeal, having regard to the contentions raised by the learned counsel, the point that emerge for consideration in this appeal are:

1. Whether the writ petitioners have locus standi to challenge the order of the District Collector directing the shifting of the shop;
2. Whether Warasiguda is part of Hammal Basti and Walker Town group of shops and whether the question is disputed question of fact and can be gone into in these proceedings under Art. 226(3) of the Constitution of India;
3. Whether the alternative remedy of revision provided under S. 64 of the Act bars the jurisdiction of this court to issue any writ under Art. 226(3) of the Constitution and
4. Whether there was a valid delegation of power of the Commissioner to the Collector Excise under Circular No. 4382/ EX/70GI dated 30-1-1971 empowering him to direct shifting of shop from one place to another within the locality and whether that power could be exercised even after the enforcement of the A. P. Excise Delegation of Powers Rules, 1972.

8. Points 1 and 2:- As per the averments in the petitioners affidavit petitioners 1 to 3 who are respondents 1 to 3 herein were the licencees of arrack shop of Adikmet and Parsigutta group of shops for the excise year 1977-78. It is the admitted case of the petitioners that Warasiguda is not part of Adimket and Parsigutta group of arrack shops. The appellant is the licensee of Hammal Basti and Walker Town group of arrack shops. Hammal Basti shop was originally located near the Secunderabad railway bridge and another shop was located in Walket Town locality. The shop near the Secunderabad railway bridge was sought to be shifted to Warsiguda locality. While the appellant contends that Warsiguda is part of the area of operation of the licensee's arrack shops of Hammal Basti and Walker Town, the petitioners-respondents contend that it outside the area of operation of the appellant. But as already noticed it is not the further case of the respondents that Warsiguda while not include in the appellant's area of operation, is included in their own area of operation. In other words their case is that Warsiguda is outside the area of operation of both the appellant and the respondent-licensees. If that be the position, can it be said that the writ petitioners have any legal right to invoke the jurisdiction of this court and seek a writ of mandamus for quashing the order of the 6th respondent on the ground that it is illegal or even without jurisdiction? It is well settled that in order to entertain a petition under Art. 226(3) of the constitution, the petitioner invoking the jurisdiction of this Court must have a legal right vested in him. In The Nagar

Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, their Lordships of the Supreme Court had to consider the question whether the previous permission of the Central Government required for the change of the location of the rice mill not having been obtained, the rival rice mill owner is entitled to challenge the order permitting the shifting of the rice mill on the ground that it was illegal and without jurisdiction and held (at P. 250):

"Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the respondents may raise against the grant of permission by the authority permitting the installation of machinery on new site. The right to carry on business being a fundamental right under Art. 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interest of the general public under Art. 19(1)(g)

Sec. 8 (3) (c) is merely regulatory, if it is not complied with, the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business because of the default"

Their Lordship further observed:-

"Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Art.19(1)(g), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed."

9. In recent decision, the Supreme Court in J. M. Desai v. Roshan Kumar AIR 1975 SC 578, following the above decision (1) proceeded to hold in the case of grant of "no objection" certificate for the location of cinema theatre that the rival in trade had no locus standi to invoke the jurisdiction of the High Court under Art. 226(3) of the Constitution. The Supreme Court held (at P. 588):

"The proprietor of a cinema theatre holding a licence for exhibiting cinematograph films is not entitled to invoke the certiorari jurisdiction ex debito justitiae to get a "No objection Certificate" granted under R. 6 of the Bombay Cinema Rules, 1954 by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffers from a defect of jurisdiction (at p. 581)

In order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person". The expression "aggrieved person" denotes an elastic, and to an extent an elusive concept".

Considering the provisions of the Bombay Cinema Regulation and the Rules made thereunder , the Supreme Court observed (at pp. 586-87):

" The Act and the Rules do not confer any substantive justiciable right on a rival in Cinema trade apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under R. 4 . Thus the proprietor of cinema theatre holding a licence for exhibiting cinematograph films have no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of the grant of No objection Certificate to the rival trader".

The Court held that the rival trader had no legal right to question the grant of the certificate and maintain the writ petition against such grant.

10. In an earlier decision, the Supreme Court in *State of Orissa and Others Vs. Rajasaheb Chandanmull Indrakumar (P) Ltd. and Others*, :

"Unless the legal right is established the High Court exercising writ jurisdiction cannot grant him any relief."

In *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*, , the Supreme Court proceeded to consider who can be deemed to be a person aggrieved and held (at p. 2723):

"The right which is the foundation for exercising the jurisdiction under Art. 32 or Art. 226(3) is ordinarily the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified (at p. 2724).

Where the petitioner challenged under Art. 226(3) the grant of mining lease on the ground of a direct infringement of his right to be granted a mining lease over an area for which the respondent was given a lease along with other area and it was found that no such right of the petitioner was affected, he has no locus standi to file the writ petition. He is neither a party nor a person aggrieved or affected and consequently his writ petition in the High Court is not maintainable.

11. Having regard to these well settled principles as regard the conditions precedent for the maintainability of a writ petition by a person, it has to be seen whether the petitioner can be deemed to be a person aggrieved and whether any of his legal rights have been infringed so as to entitle him to file a petition under Art. 226(3) of the Constitution. Warsiguda is an area which is not included within the petitioner's area of operation under the licence issued to him for Adikmet and Parasigutta group of arrack shops. Assuming that Warsiguda is not within Hammal Basti and Walker Town group of shops for which the appellant is granted the licence, shifting of the shop to Warsiguda would at the most be illegal or even without at the most be illegal or even without jurisdiction. But nonetheless, by such shifting, no legal right of the petitioners is affected. The mere fact that on account of proximity of the shop to their area of operation, their business would be affected, is no ground to hold that any of their legal right is infringed.

No undertaking is given either under the Act or the Rules or the licence given to him that a shop in the nearby area would not be permitted to be opened by any other licensee. Even if the order permitting the shifting of shop is illegal as held in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , the petitioners would have no locus standi to challenge the grant of permission because no right vested in them was infringed. It was however argued by Mr. Bhujangarao the learned counsel for the petitioner that the order itself being a nullity and being illegal, cannot be allowed to stand. That question, however, would come up for consideration before the court if the petitioners have locus standi to maintain the petition. In the aforesaid two decisions viz., *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, and *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, the Supreme Court proceeded to hold that the petitioner have no locus standi even on the footing that the impugned orders were illegal and without jurisdiction and refused the relief granted by the High Court by allowing the appeals. Hence even if the impugned order is illegal or without jurisdiction, that is no ground for holding that the petitioners have locus standi to maintain the petition.

12. The learned single Judge in considering whether the petitioners had locus standi to maintain a writ petition proceeded on a wrong hypothesis that even the appellant had admitted that Warasiguda was not part of Hammal Basthi. The 5th respondent-(appellant herein) did not admit this fact anywhere in the counter affidavit. On the other hand in para 1 of his counter affidavit he specifically pleaded:

"I filed a petition to the Collector, Excise, Hyderabad to permit me to shift my shop to Warasiguda as Hammal Basti includes Warasiguda."

He further pleaded in para 3:

"The petitioners group of arrack shops are different and Warsiguda was not included in their group of arrack shops."

This assertion is supported by the affidavit of the Excise Superintendent, Hyderabad. In para 3 of the counter affidavit filed by the Excise Superintendent, he stated that the 5th respondent has "chosen a place in Warasiguda which is a part of Hammal Basti." In para 5 he stated:

"There is no change in the locality as the 5th respondent's shop is within the area which is sought to be covered by his licence and Hammal Bastic area."

The confusion seems to have arisen from the fact that Waler Town Group of Toddy shops includes Warsiguda. Presumably what must have been admitted during the hearing of the Writ Petition was that Waler Town group of toddy shops includes Warsiguda and not that Warsiguda is not part of Hammal Basti, Be that as it may, inasmuch as the petitioners-respondents themselves did not claim to be entitled to locate the shop in Warsiguda, their legal right cannot be said to

have been infringed if rival trader is permitted to open the shop. Even if such an order is illegal or without jurisdiction the petitioners have no locus standi to maintain the Writ Petition.

13. Further if at all the question whether Warsiguda is part of Hammal Basti for which the petitioners were granted licence to vend arrack is a disputed question of fact. It is how well settled that while this Court has jurisdiction to decide even disputed question of fact, it would be reluctant in writ proceedings to do so. In the circumstances of the case it is wholly inappropriate to go into this question as the lease itself is for a period of one year.

14. Point No. 3:-- In the view we have taken on the first two points, we deem it wholly unnecessary to express any opinion on the other two questions. No doubt the Gujarat High Court has held that if the impugned order is a nullity, in spite of an alternative remedy having been specifically provided under a statute, a writ petition lies. However, a Full Bench of our High Court in *The Government of India and Others Vs. The National Tobacco Co. of India Ltd., Calcutta*, has broadly stated that where there is "an alternative remedy provided for redressal of the grievance, no writ lies." Whether that statement also covers cases where the order itself is a nullity, it is in the circumstances of the case unnecessary for us to consider and we express no opinion.

15. Even on the question whether the delegation of power made by the Commissioner under the Circular No., 4382/Ex/70/G.1 dated 30-1-1971 authorising the District Collectors to permit shifting of shops we think it unnecessary to express any opinion. After the Circular was issued which is not challenged as *Ultra Vires*, the A. P. Excise Delegation of Power Rules 1972 have come into force with effect from 12-9-1972. Under the said rules powers may be delegated by the Commissioner to any Officer Subordinate to him not lower in rank than that of a Deputy Excise Superintendent. But under R. 4 (iii) such delegation cannot be made except with prior approval of the Government. The question canvassed before us is that even if the delegation was properly made before the promulgation of these Rules, having regard to R. 4 (iii) which required the previous approval of the Government for a valid delegation, that power can no longer be exercised by the delegates.

16. In view of the foregoing discussion, this writ appeal is allowed and the order in the writ appeal is allowed and the order in the writ petition is set aside and the writ petition is dismissed; but in the circumstances without costs. Advocate's fee Rs. 200/-.

17. Appeal allowed.