

(1994) 09 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16414 of 1994

Vislavath Thavirya

APPELLANT

Vs

The Excise Superintendent and Others

RESPONDENT

Date of Decision : 20-09-1994

Acts Referred:

Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 — Rule 5
Constitution of India, 1950 — Article 226

Citation : (1994) 3 ALT 120 : (1994) 2 APLJ 221

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : T.A. Goud, for the Appellant; Govt. Pleader for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Parvatha Rao, J.—The petitioner has come to this Court invoking Article 226 of the Constitution of India without any real cause. He states that he is the owner of the premises, having purchased the same under registered sale deed, dated 15-4-1985, in which the third respondent is running a FL - 24 liquor shop. He does not seem to have objected to the running of the liquor shop by the third respondent till recently. He states that he made a representation, dt.26-8-1994; to the Excise Superintendent, Ranga Reddy District - first respondent herein requesting him not to grant or renew FL - 24 licence in the name of the third respondent in his premises for the excise year 1994-95. He states that he has been consistently going round the excise office since then to get his request considered and then he adds that he learnt that his request would be considered only if there was a direction from this Court to consider the said request.

2. I am afraid that cannot be the basis for approaching this Court. There is no material whatsoever to show that the first and second respondents refused to consider his request or rejected his request.

3. The learned Counsel for the petitioner himself has drawn my attention to a decision of this Court rendered by Smt. Justice K. Amareswari in *A. Prabhakar Goud v. Excise Superintendent*, Hyderabad, 1985 (2) APLJ 48 (SN) - W.P. No. 14352 of 1984, dt.11-6-1985. " interpreting Rule 5 of the Andhra Pradesh Excise (Arrack & Toddy Licences General Conditions) Rules, 1969. As per the short noted report, the said decision is to the following effect.

"Rule 5 enjoins that a private premises cannot be approved without the consent of the owner for location of an excise shop. The licensee must be one who is entitled to possession. Either there must be a valid lease by the owner of the premises or his consent or permission for opening a shop in the said premises. It is only then the premises can be approved for location of a shop. The respondents cannot approve a premises in respect of which there is no lease or permission in favour of the licensee. In the present case long before the excise year 1984-85 had commenced, the petitioner had informed the respondents that he was not willing to have the toddy or arrack business carried on in his premises and requested the authorities not to grant approval for the said premises. There is no lease of the land by the owner. In the circumstances, the approval given by the Excise Superintendent notwithstanding the intimation given by the owner withdrawing his consent for location of a shop is illegal. No permission can be granted to a person to sell liquor in somebody else premises without his consent."

4. In view of this legal position clarified by this Court, it would have been more appropriate for the petitioner to bring it to the notice of the first respondent through his Counsel, if really the first respondent was disinclined to consider his representation. It is not the case of the petitioner that the said decision was brought to the notice of the first respondent. It is also to be noticed that in the case referred to above, the petitioner approached this Court when, in spite of the objection raised, the authorities concerned granted the licence contrary to the objection raised.

5. In the present case, admittedly, no licence was renewed in favour of the third respondent for running FL - 24 liquor shop in the premises of the petitioner. More over, copy of the representation, dated 26-8-1994, made to the authorities concerned, was not marked to the third respondent. The petitioner has also not stated whether he has informed the third respondent about his refusal to permit him to continue to run the FL - 24 liquor shop in his premises. Properly speaking, he ought to have informed the third respondent also and really it is a matter in between the petitioner and the third respondent. In the circumstances, the petitioner ought not to have approached this Court on 14-9-1994, when admittedly he made a representation to the authorities concerned only on 26-8-1994.

6. The Writ Petition is, therefore, dismissed. No costs.