

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF APRIL

TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.220 of 2015

BETWEEN

K. Prasad Rao.

... PETITIONER

AND

State of Andhra Pradesh, Revenue (Excise-II) Department, Secretariat, Hyderabad, Rep.
by its Secretary and others.

...RESPONDENTS

Counsel for the Petitioner: MR. O. MANOHER REDDY

Counsel for the Respondents: GP FOR PROH. & EXCISE

MR. M.V.S. SURESH KUMAR

The Court made the following:

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ORDER:

Petitioner, who is a licensee of A4 shop in the name of M/s. Srinivasa Wines in the premises bearing D.No.25-8-138 and 25-8-138/1, Old Post Office, Visakhapatnam, questions the order of the Commissioner of Prohibition and Excise, second respondent, dated 31.12.2014 permitting the fifth respondent to shift his A4 shop from the existing premises at Relliveedhi, Visakhapatnam to the premises bearing D.No.25-8-140, Ward No.24, I Town Area, Main Road, Visakhapatnam.

2. Petitioner states that he is a licensee of shop notified at Gazette Sl.No.4, Ward No.24 and the fifth respondent is stated to have been a licensee of a shop notified at Gazette Sl.No.1, Ward No.22. Petitioner states that he has been running his shop at premises bearing D.No.25-8-138 and 25-8-138/1, Old Post Office, Visakhapatnam whereas the fifth respondent is running his shop at premises bearing D.No.20-1-29, Relliveedhi, Visakhapatnam.

3. The primary contention of the petitioner is that the premise to shift the shop of the fifth respondent to Ward No.24, under the impugned order, is based on an erroneous report given to the second respondent that the distance between the shop of the petitioner and the proposed shop of the fifth respondent is 100 meters and that shifting may not affect the business of other A4 shops.

However, petitioner states that his shop is at a distance of 20 meters from the premises in which the fifth respondent was permitted to shift his shop and as such, the order permitting the shifting is contrary to the A.P. Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012 (for short 'the Rules'). Petitioner also questions the impugned order on the ground that under Rule 28(3) of the Rules,

though the Commissioner has to give valid reasons for permitting shifting, he has not applied his mind independently and in fact,

the shifting was permitted on an erroneous understanding that the distance between the proposed shop and the shop of the petitioner is 100 meters whereas, in fact, it is 20 meters.

Petitioner questions the said order of shifting on the ground that it would seriously affect the business of the petitioner in the existing shop for which petitioner has paid huge license fee.

4. When the writ petition came up for admission on 13.01.2015, learned Government Pleader for respondents 1 to 4 and learned counsel for the fifth respondent took notice and this Court while admitting the writ petition, passed the following interim order:

‘The petitioner questions the impugned order dated 31-12-2014 permitting shifting of the shop of the 5th respondent on the ground that the petitioner, who is also a licensee is having his shop 20 meters away; the petitioner is not put to notice; and without examining the ground position, the impugned order has been passed without application of mind. He also contends that the reasons given for permitting shifting are not in accordance with Rule 28 (3) of A.P. Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012.

I see force in the submissions of learned counsel for the petitioner. Since the petitioner is not put on notice, before passing the impugned order and the impugned order affects the rights of the petitioner to do business in the premises, which is stated to be very close to the premises where the 5th respondent is now permitted to shift and do business, there shall be interim suspension as prayed for.”

5. Learned Government Pleader for Prohibition and Excise as well as learned counsel for the fifth respondent have filed counter affidavits together with application seeking vacation of the said order.

6. The counter affidavit filed by the fourth respondent states that while the petitioner is a licensee of shop in Ward No.24, the fifth respondent is a licensee of shop in Ward No.22. It is stated that there were various complaint received, which were forwarded by the Deputy Commissioner of Prohibition and Excise, Visakhapatnam vide proceedings dated 08.07.2014 and 03.11.2014, which comprise of Prajavani petitions filed by various people from Relliveedhi opposing the location of A4 shop of the fifth respondent and requested shifting of the said shop. These petitions are stated to have been got enquired into by the Station House Officer, Visakhapatnam-I. It is also stated that residents of Relliveedhi also

conducted a Dharna before the Prohibition and Excise Superintendent opposing the fifth respondent's shop and demanded closure thereof. The licensee, thereafter, filed a complaint, which is registered as Cr.No.276 of 2014 before I Town Police Station, Visakhapatnam. The fifth respondent also approached this Court in WP.No.30971 of 2014 complaining of not providing police protection to conduct business where the aforesaid crime was directed to be investigated and the police were directed to give appropriate assistance to the fifth respondent to enable him to carry on the business.

7. It is stated that another petition was filed by the residents before the Deputy Commissioner of Prohibition and Excise along with the letter of an MLA South Constituency, which was also enquired into by the Station House Officer and the Deputy Commissioner also instructed the SHO to take necessary action on the grievance of the residents. Thereupon, a notice dated 29.11.2014 issued to the fifth respondent instructing him to shift his shop to some other location was challenged by the fifth respondent in WP.No.3667 of 2014, which was later withdrawn by the fifth respondent. It is stated that a detailed report with respect to the issue was already submitted to the Commissioner of Prohibition and Excise. Thereafter, the fifth respondent submitted proposal to shift his existing shop from Ward No.22 to the proposed premises at Ward No.24. On the said proposal, the petitioner is stated to have filed his objections dated 23.12.2014 whereupon measurements were taken and it was found that there is distance of 122 meters between the school and the proposed shop.

8. Counter affidavit also states that as per the report of the SHO with regard to the proposal of the fifth respondent, it was found to be in terms of Rule 25 of the Rules and after due enquiry, the request of the fifth respondent having been found to be genuine, the second respondent has passed a detailed order, which is impugned herein.

It is also stated that as per Rule 28(3) of the Rules, the Commissioner is empowered to consider and pass orders for shifting for valid reasons. It is stated that the shifting orders are in the public interest and passed after verifying all aspects. It is also pointed out that for an A4 shop there is no distance Rule between two shops and as such, there is no ground to interfere with the order passed by the Commissioner. Some of the documents referred to in the counter affidavit are also enclosed to the counter affidavit.

9. The fifth respondent also filed a counter affidavit asserting that the distance is 100 meters

as shown in the impugned proceedings and the fifth respondent states that request of shifting the shop was necessitated on account of the grievance of the residents and the endorsement of the District Collector. It is further stated that the proposed premises being in terms of Rule 25 of the Rules,

the Commissioner passed the impugned order by giving valid reasons. The fifth respondent also stated towards end of Para 2 that *"It is submitted that pursuant to the order I shifted my business to the new premises in the first week of January itself."* It is also stated that the petitioner is not entitled to any notice in terms of Rule 28(3) when orders of shifting are passed by the Commissioner and it is denied that there is any justification for the petitioner to contend that the distance is only 20 meters, even otherwise it is stated that there is no minimum distance to be maintained for A4 shops.

10. I have heard Mr. O. Manohar Reddy, learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise for respondents 1 to 4 and Mr. M.V.S. Suresh Kumar, learned counsel for the fifth respondent.

11. Rule 28 of the Rules requires the Commissioner to exercise the power to shift an existing shop from one location to another on valid reasons and a look at the impugned order would show that the Commissioner has taken into consideration the report of the Deputy Commissioner of Prohibition and Excise, as is extracted hereunder:

"The Proh & Excise Superintendent and the Deputy Commissioner of Proh & Excise, Visakhapatnam have reported and recommended the shifting of the licenced premises, for the reason stated hereunder:

- The distance between the existing and proposed premises is only (100) mts.
- The proposed shifting may not affect the business of other A4 shops.
- Grievance of the public of Relli Veedhi and the endorsement of the District Collector.
- The proposed premises is in accordance with Rule 25 of the AP Excise (Grant of licence of selling by shops and conditions of licence) Rules 2012."

As per the impugned order, the assertion in the counter affidavit filed on behalf of respondents 1 to 4 and that of the fifth respondent that the distance between the petitioner's shop and the proposed shop of the fifth respondent is 100 meters appears to correct. The

order also considers that the proposed shifting may not affect the business of the A4 shops (petitioner and others) and that the proposed premises is in accordance with Rule 25 of the Rules. Thus, it cannot be said that there are no valid reasons given by the Commissioner while passing the said order.

12. I had an occasion to consider similar issue in WP.No.28330 of 2014 dated 19.12.2014 wherein I have considered and held in para 14 as follows:

“14. So far as the distance alleged between the shop of the petitioner at Ramakuppam village and that of respondent No.6 at Bandarlappalli village is concerned, it cannot be said that under the Rules there is any distance restriction and since the shifting of the shop is within the same Mandal, it cannot be said the order impugned is otherwise unsustainable for any reason.”

It was further held that ‘... *the power exercised by the Commissioner having been found to be for good reasons, interference by this Court with the impugned order is not called for.*’

13. The facts of the present case also show that there is strong protest against the location of shop of the fifth respondent by the residents of Relliveedhi and apart from that, there is an endorsement District Collector also directing shifting of the shop. More importantly, the petitioner is a licensee of shop in ward No.24 whereas the fifth respondent seeks to shift his existing shop located in ward No.22 to the proposed premises in ward No.24 and since there is no Rule requiring minimum distance coupled with the fact that, as per the reports, the distance between the existing shop and the proposed premises of the fifth respondent is 100 meters, it cannot be said that the petitioner’s business will be affected by permitting shifting of the fifth respondent’s shop. It is also required to be appreciated that the fifth respondent proposed to shift his shop to the proposed location, apparently on the premise that neither his business would be affected nor the business of any other shop would be affected, otherwise the fifth respondent would never have proposed to shift his shop to the proposed location. Hence, the contention of the petitioner that his business will be affected by permitting the shifting of the fifth respondent’s shop does not appear to be sustainable.

Lastly, the fifth respondent has already shifted to the proposed location as early as in the first week of January 2015; consequently, therefore, the shop of the fifth respondent does not exist anymore at the original location and by virtue of the interim order of this Court, the fifth respondent has been disabled from carrying on business in the new premises where he has shifted. Since no prejudice, in fact, is caused to the petitioner on account of the proposed shifting and since the impugned order is clearly sustainable under the Rules, as passed on valid reasons, I do not see any justification to grant the relief as prayed for by the petitioner.

The writ petition is, therefore, dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

April 29, 2015

DSK