THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION Nos.31553 and 34821 of 2015

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COMMON ORDER:

W.P.No.31553 of 2015 was filed challenging the action of the excise authorities in allotting the licence for the A4 shop at Serial No.88 situated at Chilkur Village, Moinabad Mandal, Ranga Reddy District, in favour of the 7th respondent for the excise years 2015 – 2017.

By order dated 28.09.2015, this Court took note of the fact that the provisional licence had already been granted in favour of the 7th respondent and directed *status quo* as on that day to be maintained by the parties.

It is an admitted fact that the subject shop licence was granted under the Telangana State Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules 2012 (for brevity 'the Rules of 2012') (Telangana Adaptation Order 2015) read with the orders of the Government in G.O.Ms.No.391, Revenue (Ex.II) Department, dated 18.06.2012 and G.O.Ms.Nos.163, 164 & 165 dated 11.09.2015. 111 A4 shops were notified by the Commissioner of Prohibition and Excise, State of Telangana, on 11.09.2015 for the excise years 2015 - 2017. The notification was issued in the District Gazette No.42 dated 14.09.2015. The applicants were required to attend the process of drawal of lots to be held on 23.09.2015.

The petitioner in W.P.No.31553 of 2015 filed an application for grant of licence for the A4 shop at Serial No.88 of the Gazette notification, which was located at Chilkur Village, Moinabad Mandal. The process of drawal of lots was stated to have begun at 11.00 A.M. on 23.09.2015 at the notified location. As per Rule 12(6)(a) of the Rules of 2012, the selection process was taken up shop wise as per the serial numbers. The time taken for drawal of lots depended on the number of applications received for the particular shop as per the counter filed by the Prohibition and Excise Superintendent, Rajendranagar, Ranga Reddy District.

Insofar as Chevella Division is concerned, 21 A4 licences were stated to have been notified in the Gazette from Serial Nos.74 to 94. The drawal of lots pertaining to Chevella Division was begun at 4.00 P.M. At the commencement of the selection process, the licensing authority/designated authority was stated to have first announced the names of the persons and the number of persons who had filed applications for the subject shop. In respect of the shop at Serial No.88 relating to the petitioner and the

7th respondent, the names of all seven applicants were called out, but it was found that the petitioner, having been issued entry pass No.88/2, was absent. The Prohibition and Excise Superintendent stated that his name was called out several times, but as he was absent the process continued. The contention of the petitioner that his wife was present was specifically denied by the excise authorities and it was categorically stated that she did not come forward during the drawal of lots pertaining to the shop at Serial No.88. The petitioner however emerged successful in the drawal of lots and was called upon to complete the formalities but as he was not present there, no steps were taken in this regard. Rule 12(6)(g) of the Rules of 2012 states as under:

> *"Where the successful applicant is not available at the place of selection, the earnest money deposit submitted along with the application in the form of Demand draft shall be forfeited and the selection process shall be continued by taking a fresh LOT, if necessary. The procedure shall be continued till the selection of applicant for the shop is finally made."*

In the light of the aforestated Rule, the excise authorities effected forfeiture of the EMD deposited by the petitioner and took up the drawal of lots for the subject shop again, whereby the 7th respondent emerged successful. Provisional licence was also issued to him in this regard. However, owing to the *status quo* order passed by this Court in W.P.No.31553 of 2015, it appears that the 7th respondent was not permitted to lift the stock for selling the same through the licenced A4 shop awarded to him at Chilkur Village, Moinabad Mandal, Ranga Reddy District.

Aggrieved thereby, he filed W.P.No.34821 of 2015.

Sri V.Ramchander Goud, learned counsel for the petitioner in W.P.No.31553 of 2015, contended that his client was present allthrough, but left the auction hall to answer a call of nature. His specific contention is that the drawal of lots for the shops notified from 50 to 87 collapsed owing to lack of applicants and therefore, the subject location at Serial No.88 was called abruptly and that is the reason why the petitioner was absent. His further contention is that the petitioner's wife was present in the auction hall but despite her entreaties, the excise authorities continued with the process. However, the Prohibition and Excise Superintendent, Rajendranagar, Ranga Reddy District, specifically denied that the petitioner's wife was present in the hall as stated supra. He further stated that against the applications received for the shops notified from Serial Nos.50 to 87, all the 282 applicants were present and these 38 A4 licences were allotted after following the due process. The allegation to the contra by the petitioner was therefore denied.

Though the counter was filed by the excise authorities as long back as on 14.10.2015, no reply was filed by the petitioner in W.P.No.31553 of 2015.

Sri V.Ramchander Goud, learned counsel, further contended that Rule 12(6)(g) of the Rules of 2012 vests the excise authorities with discretion to continue with the drawal process and that there was no necessity for taking recourse to the same in the present case. He would point out that the Rules specifically state that a fresh lot is to be taken only if necessary. However, it is an admitted fact that the petitioner in W.P.No.31553 of 2015 was absent when the drawal of lots took place for the shop at Serial No.88. In the light of his own lapse, it is not open to the petitioner to dictate to the authorities as to how and when the discretion vested in them under the Rule should be exercised. In their wisdom, the excise authorities decided to continue with the drawal of lots for the subject shop and thereby, the 7th respondent emerged successful. This Court therefore finds no irregularity or illegality in this exercise of the excise authorities.

Viewed thus, the various contentions urged by the petitioner in W.P.No.31553 of 2015 do not hold water and the said writ petition is devoid of merit. It is accordingly dismissed.

In the light of the dismissal of W.P.No.31553 of 2015, the grievance of the 7th respondent, the petitioner in W.P.No.34821 of 2015, also stands settled and no orders are required to be passed therien. The said writ petition is accordingly closed.

Interim order dated 28.09.2015 passed in W.P.No.31553 of 2015 shall stand vacated.

Pending miscellaneous petitions, if any, in both the writ petitions, shall stand closed. No order as to costs.

SANJAY KUMAR, J

Date:02.11.2015

GJ