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

TUESDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.37135 of 2014

BETWEEN

Manthena Vijaya Rama Raju.

... PETITIONER

AND

State of Andhra Pradesh, Excise Department, Secretariat, Hyderabad, Rep. by its Principal Secretary and others.

...RESPONDENTS

Counsel for the Petitioner: MR. O. MANOHAR REDDY

Counsel for the Respondents: GP FOR PROHIBITON & EXCISE

The Court made the following:

ORDER:

Petitioner herein assails the validity of the order passed by respondent

No.3 dated 29.11.2014 confirming the order of respondent No.4 dated 25.10.2014, as contrary to Rule 25(3) of the A.P. Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012 (for short 'the Rules').

2. Petitioner states that he was the successful bidder with respect to shop in Ward No.46 of Kakinada Municipal Corporation and accordingly, the license was granted to him for the period 19.07.2013 to 30.06.2015. Petitioner selected premises at D.No.1-41-1, Sriram Nagar, Kakinada in Ward No.46. petitioner sought approval of the said premises from respondent No.4 and it is alleged that the Station House officer, Kakinada recommended for grant of license.

However, on further verification by respondent No.5, it was found a temple is diagonally opposite to the proposed premises and basing on the said report, respondent No.4 passed an order rejecting the application of the petitioner for approval of the proposed premises. Questioning that order, petitioner filed WP.No.32271 of 2014 before this Court and the same was disposed of on 05.11.2014 wherein it was held that physical verification of the site by a higher officer and reconsideration of the matter is appropriate and since an appeal under Section 63 of the A.P. Excise Act is provided before the Deputy Commissioner of Prohibition and Excise, petitioner was permitted to approach respondent No.3 by way of such an appeal and further directions were given to respondent No.3. Petitioner, accordingly, filed an appeal, which came to be dismissed under the impugned order dated 29.11.2014 passed by respondent No.3. Hence, aggrieved by the orders of respondents 4 and 3 respectively, the petitioner has filed the present writ petition.

3. Mr. O. Manohar Reddy, learned counsel for the petitioner,

has submitted that Rule 25 of the Rules specifically provide the manner in which the distances are to be measured and keeping in view the said requirement under the Rules, admittedly, the petitioner's proposed premises is 102 meters from the place of worship.

Learned counsel, further, points out that the impugned order itself is irrational inasmuch the Deputy Commissioner also accepts that the distance measured though is 102 meters, ignoring the divider on the road and crossing over the divider, the distance would be only 52 meters from the place of worship is erroneous. Learned counsel has specifically drawn the attention of this Court to the two paras in the impugned order, extracted hereunder:

> "In the instant case, distance from the proposed premises to the entrance of the temple was calculated straight without taking the divider into consideration depending upon the provision that a pedestrian can cross the divider.
>
> Though it is not easy for a pedestrian to cross the road divider, it is not difficult either. There is no specific provision in any traffic rule which penalizes for crossing a road divider either. In the common scenario of breaking law in every walk of our life, no individual, pedestrian to be specific, hesitates to cross the road-divider and it is very common."

Learned counsel submits that such consideration is wholly arbitrary and illogical, as the divider itself is 0.6 meters and it is not easy for any pedestrian to cross the divider and as such,

the Deputy Commissioner cannot presume that breaking of law is not unknown and on that premise cannot reject the proposed premises of the petitioner as unsuitable.

4. During the hearing of this writ petition, learned counsel for the petitioner sought to raise an additional ground based upon the representation of the petitioner made to the Commissioner of Prohibition and Excise that during the previous lease for the year 2000-2001 where A4 shop was permitted to be established was in the same premises where the petitioner proposes to establish the present A4 shop. The application for amendment made vide WPMP.No.48792 of 2014 was, accordingly, filed by specifically contending that the respondents had earlier granted license to run A4 shop in the same premises bearing D.No.1-14-1, Sriramnagar Colony, Kakinada for the excise years 1998-1999 and in the adjacent premises bearing D.no.1-14-2 for the

excise year 2004-2005 and hence, rejecting the petitioner's request for locating his shop in the same premises was arbitrary. It was, further, contended that there was no objection for running of shop for a period of one year in the same premises and for a period of four years in the adjacent premises. The said application was accordingly ordered on 26.12.2014 and the respondents have also filed additional counter affidavit.

5. In the counter affidavit filed by the respondents, it is stated that one ancient temple known as Bhanugudi, which is registered with the Endowment Department is situated diagonally opposite to the proposed premises beyond the road. It is also stated that the divider on the road measures 0.61 meters with a width of 1.05 meters and though the distance in terms of Rule 25(3) of the Rules is 102 meters, if measured in a straight line over the road divider, the distance between the said temple and the proposed shop is only 52 meters. It is also stated that '… *as the ordinary pedestrian, more particularly a person under the influence of alcohol is not expected to follow traffic rules'*. Counter affidavit, further, states that the proposed premises was, therefore, not found suitable and reliance is placed upon a decision of this Court in WA.No.898 of 2006 dated 30.08.2006 based on which the Commissioner had issued certain guidelines,
which include assessment of suitability of the premises by permitting the Prohibition and Excise Superintended to go beyond the requirement as specified in the Rules. Para 9 of the counter affidavit specifically states that '*Though it is not easy for a pedestrian to cross the road divider, it is not difficult either. There is no specific provision in any traffic rule which penalizes for crossing a road divider either.*
In the common scenario of breaking law in every walk of our life,
no individual, pedestrian to be specific, hesitates to cross the
Road-divider and it is very common as it is nearest to his destination'. Based on the aforesaid appreciation, the order passed by respondents 4 and 3 rejecting the proposed premises of the petitioner was sought to be justified. A

map as well as photographs of the area is also enclosed to the counter affidavit.

6. In the additional counter affidavit filed, it is not disputed that an A4 shop existed at premises bearing D.No.1-14-2 for the years 1999-2004 (said premises is adjacent to the proposed premises of the petitioner). It is also specifically admitted that another A4 shop functioned in the very same premises, as proposed by the petitioner, during the year 1998-1999. It is also stated that for the year
2013-2014 several complaints were filed against the establishment of
A4 shop at D.No.2-127-14/1 in Ward No.5 and accordingly, the said shop was shifted from the said premises during the year 2013-2014.
In the additional counter affidavit also the aspect of suitability is highlighted and it is contended that the discretion of the authorities on the ground of suitability cannot be interfered with.

7. It is evident from the rival contentions that the existence of similar A4 shop in the very same premises, where the petitioner proposes to establish his shop is not in dispute. So also the fact that in the very same premises a shop existed for one year and in the adjacent premises A4 shop existed for years also is not in dispute. Both the counter affidavits do not refer to any objections raised relating to the functioning of the shops in the proposed premises and the adjacent premises. Reference is made in the additional counter affidavit to the objections raised by the member of public relating to some other premises, which is not selected by the petitioner.
That apart, Rule 25 of the Rules, relevant portion, whereof is extracted hereunder, clearly stipulate the manner in which the distance is required to be measured.

> "**25. Selection of Premises: -** (1) Subject to the approval of the Prohibition & Excise Superintendent the selected applicant shall select suitable premises for the sale of IMFL and FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be as notified in the District Gazette. It shall be at least 100 meters away from the places of Public worship,

> Educational Institutions, Hospitals and 50 Meters away from Highways.
>
> (2)…
>
> (3) The distances referred above shall be measured from the mid-point of the entrance of the Licensed premises along the nearest path by which a pedestrian would ordinarily reach the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the Institution/place of public worship."

8. It would be evident from the above that 100 meters distance, required to be maintained from the place of worship, educational institutions and hospitals, is required to be measured, as provided for under Rule 25(3) of the Rules. Since the mode of measurement is also prescribed, as above, in my view, if the distance rule is specified by following the aforesaid Rules, it would not be permissible further to hold on and exercise discretion in refusing to approve the premises, even if it complies with the requirement of Rule 25(3), as above.

The contention of the respondents that suitability can as well be examined *de horse* the Rules, in my view, would give rise to arbitrariness, particularly, when the statutory Rules prescribe the manner in which the distance is to be measured for the purpose of selection of premises. The word suitability used in Rule 25(3) of the Rules is, therefore, in conformity with the specific Rules provided and not *de horse* the said Rules. It is not in dispute that going by the method of calculating the distance, as prescribed above, the proposed premises of the petitioner is at a distance of 102 meters.

Hence, on the face of it, I do not see any reason as to why the petitioner is denied approval of the said premises. It is also evident from the paras above that height of the divider is 0.61 meters and the width is 1.05 meters. It is also stated in the counter affidavit, as extracted above, that it is not easy for a pedestrian to cross the road divider. Thus, it cannot be presumed that a pedestrian will break the law and scale the divider and thus, the distance between the place of worship and A4 shop would be 52 meters. Such consideration, in my view, is clearly arbitrary and contrary to the Rules and cannot be permitted. The petitioner has already lost more than six months of the license period on account of litigation. Hence, in my view, the orders impugned, being contrary to Rule 25(3) of the Rules, are liable to be set aside and are accordingly set aside and the writ petition deserves to be allowed as prayed for.

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

VILAS V. AFZULPURKAR, J

February 10, 2015
DSK