

***THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

+W.P.No.21398 OF 2015

% 15-09-2015

#T.Sridhar Reddy, s/o T.Ramachandra Reddy,
Aged about 38 years, Occ: Business,
R/o.H.No.51-967-37, Seetharam Nagar,
Kurnool, A.P.

....petitioner

Vs.

\$ The State of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue (Excise) Department,
Secretariat Buildings, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri C.Prakash Reddy

Counsel for the Respondents: G.P. for Prohibition and Excise for
respondents 1 to 4.

<Gist :

>Head Note:

? Cases referred:

[1] AIR 1986 SC 1499

² (2009) 14 SCC 85

³ (2009) 10 SCC 722

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.21398 of 2015

JUDGMENT:

The issue in the present writ petition, filed under Article 226 of the Constitution of India, arises under the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012, notified vide G.O.Ms.No.391, Revenue (Ex.II) Department, dated 18.06.2012 and the challenge is to the confirmation of A4 licence by the Prohibition and Excise Superintendent, Kurnool, Kurnool District/fourth respondent herein, in favour of fifth respondent herein.

2. The facts and circumstances, leading to the filing of the instant writ petition are, as infra:-

2.1. The Prohibition and Excise Superintendent, Kurnool/fourth respondent herein in exercise of powers conferred under Rule 5 of the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (hereinafter called 'the Rules') issued a gazette notification dated 30.06.2015, inviting applications for consideration for grant of licence for A4 shops for the period, commencing from 01.07.2015 to 30.06.2017 by way of drawl of Lots on or before 5-00 PM on 04.07.2015. The authorities fixed the date of drawl of Lots as 05.07.2015 at 10-30 A.M.

2.2. In response to the said notification, the petitioner herein applied for Shop Nos.8, 24, 63, 66 and 14 and the subject matter of the present writ petition is Shop No.14 of Ward No.25 of Kurnool Municipal Corporation. The drawl of Lots took place as scheduled

on 05.07.2015 to the shops including the Shop No.14. Pursuant to the said Lots, the fourth respondent issued notice Rc.No.B/162/2015, dated 06.07.2015, confirming Shop No.14 in favour of the fifth respondent and vide Rc.No.B/162/2015, dated 06.07.2015, the fourth respondent directed forfeiture of 10% earnest money deposit made by the petitioner in respect of Shop No.14.

3. Calling in question, the validity and legal sustainability of the said order of confirmation dated 06.07.2015 passed by the fourth respondent herein in favour of the fifth respondent, the present writ petition has been filed.

4. Heard Sri C.Prakash Reddy, learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise for respondents 1 to 4 and Sri O.Manohar Reddy, learned counsel for the fifth respondent apart from perusing the material available before the Court.

5. Submissions/contentions of the learned counsel for the petitioner.

5.1. The order under challenge is illegal, arbitrary, unreasonable, violative of Articles 14 and 19 (1) (g) of the Constitution of India and opposed to the very spirit and object of the provisions of the Excise Act and the Rules.

5.2. The order of the fourth respondent, confirming the licence in favour of the fifth respondent, is totally one without jurisdiction, since the selection authority is the District Collector as per Rule 11 of the Rules.

5.3. Having issued the entry passes for other shops, the authorities did not issue entry pass to the petitioner to enter into the place of drawl of Lots for shop No.14 as per Rule 7 of the Rules.

5.4. Though the petitioner contacted the respondent authorities immediately and paid 1/3rd of the licence fee as per Rule 16, the fourth respondent erroneously confirmed the licence in favour of the fifth respondent.

5.5. The refusal to confirm the licence in favour of the petitioner on the ground of absence of the petitioner at the place of drawl of Lots is in contravention of Rule 12 (6) (d) of the Rules and the provisions of the Rules are required to be interpreted in a harmonious manner and object behind the amended provisions cannot be frustrated.

5.6. Rule 61 of the Rules is neither relevant nor applicable to the present issue.

To bolster his submissions and contentions, learned counsel for the petitioner places reliance on the judgments of the Hon'ble Apex Court in **GIRDHARI LAL AND SONS v. BALBIR NATH MATHUR AND ORS**^[1],

V.K. ASHOKAN V. ASSTT. EXCISE COMMNR. AND ORS^[2] and **SURJIT SINGH V. MTNL**^[3].

6. Submissions/contentions of the learned Government Pleader.

6.1. Petitioner having failed to collect the entry pass and having remained absent at the time of drawl of Lots, is precluded from blaming the respondents in granting licence in favour of the fifth respondent.

6.2. Even according to the petitioner, he was absent on 05.07.2015, at the time of drawl of Lot for Shop No.14 despite having entry pass for four other shops for which he made applications.

6.3. Only on 07.07.2015, petitioner approached the fourth

respondent by way of a representation and by which time the fourth respondent already confirmed the licence in favour of the fifth respondent.

6.4. In the absence of attribution of any *mala fides* against the authorities, the petitioner herein is not entitled for any relief under Article 226 of the Constitution of India.

6.5. The action impugned in the present writ petition is justified under Rule 12 (6) (g) of the Rules.

6.6. Under Rule 61 of the Rules, the petitioner has the alternative remedy and is required to approach the Commissioner of Prohibition and Excise for redressal of his grievance.

7. Submissions/Contentions of learned counsel for the fifth respondent.

7.1. Since the petitioner did not specifically challenge the order dated 06.07.2015, no relief can be granted in favour of the petitioner herein.

7.2. The averments and the allegations made in paragraph 5 of the affidavit filed in support of the writ petition that the petitioner tried to contact the Excise Sub-Inspector immediately on coming to know of his emerging as successful applicant in the drawl of Lots, but the authorities did not lift the phone, do not find place in the representation dated 07.07.2015 submitted by the petitioner, as such, no credence can be given to the case of the petitioner herein.

7.3. The contentions of the learned counsel for the petitioner that the order is one without jurisdiction is not tenable in view of Rules 2 (l) and 5 of the Rules.

7.4. When the petitioner herein failed to adhere to Rule 12 (6) (g) of the Rules, the writ petition deserves to be dismissed.

7.5. Since the fifth respondent herein is a reserve candidate, there is no requirement to hold lots afresh as per Rules 12 (6) (g) of the Rules.

7.6. In view of existence of disputed questions of facts in the case of the petitioner herein, the jurisdiction of this Court under Article 226 of the Constitution of India is not available to the petitioner.

7.7. The judgments cited by the learned counsel for the petitioner herein have absolutely no relevance to the facts and circumstances of the present writ petition.

8. In the light of the pleadings and the contentions and submissions available before this Court, now the issues which this Court is called upon to answer in the present writ petition are:

- (A) Whether the action of the fourth respondent/Excise Superintendent in confirming A4 shop licence in favour of the fifth respondent is in accordance with law?
- (B) Whether the fourth respondent is justified in confirming A4 shop licence in favour of the fifth respondent on the ground of absence of the petitioner at the place of drawl of Lots on 05.07.2015?
- (C) Whether the petitioner is required to approach the Commissioner of Prohibition and Excise for redressal of his grievance under Rule 61 of the Rules?
- (D) Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

9. In order to consider and appreciate and answer the above mentioned issues A and B, it would be apt and appropriate to refer to the provisions of law governing the situation.

10. The State Government, in exercise of the powers conferred under Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, framed the Rules notified vide G.O.Ms.No.391, Revenue (Ex.II)

Department, dated 18.06.2012. According to Rule 2 (I), the licensing authority means the Prohibition and Excise Superintendent of the concerned place in which the licensed shop is situated. Rule 5 of the Rules deals with notification in the district gazette and the said provisions of law empowers and authorise the licensing authority to call for applications for grant of licences in the area/locality by way of issuing a notification in the district gazette.

11. Rule 7 of the Rules deals with entry pass, and according to which, no person other than the officers on duty and the persons duly authorised by the District Collector shall enter the place of selection without presenting an entry pass, which will be issued to the applicants who have already filed applications, duly fixing his/her/their passport size photos.

12. Rule 12 of the Rules deals with the submission of applications for selection of applicants for grant of licence. Rule 12 (6) (d) of the Rules initially stipulated that in the event of there being more than one application for a notified shop, the selection among the eligible applicants for grant of license should be by drawl of LOT by the Collector in the absence of the applicants available at the time of selection. According to Rule 12 (6) (e), if the selected applicant is not willing to take the licence, the earnest money deposit submitted along with the application under Rule 12 (1) (iii) shall stand forfeited to the Government.

13. Rules 12 (6) (f) (g) read as under:

(f) The successful applicant shall sign his name or affix his thumb impression against the relevant entry in the register maintained for the purpose.

(g) 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.

14. According to Rule 24 of the Rules, the Prohibition and Excise Superintendent concerned is competent to issue licence once the applicant is selected by the District Collector.

15. The State Government brought in certain amendments to the Rules and notified the same vide G.O.Ms.No.218, Revenue (Excise-II) Department, dated 22.06.2015. By virtue of the same, the State Government substituted Rule 12 (6) (d) and the said substituted Rule 12 (6) (d) reads as under:

“Where there are more than one application for a Notified Shop, the selection among the eligible applicants for grant of licence shall be by drawal of Lot by the Collector, irrespective of the presence of the applicants”.

16. The State Government by way of the above said notification also added Clause (dd) to Sub-Rule (6) of Rule 12 and the same reads as infra:

“The Collector, after selecting the applicant in respect of an A4 shop, may continue drawl of lots and select not more than two applicants from among the remaining applicants as reserve applicant(s), who may, subject to the provisions of these rules, be allotted the A4 shop, in case the applicant selected first fails to comply with the conditions laid down in these rules on the day of drawl of lots or subsequently.”

17. The substituted Rule 16 (3) by virtue of the above said notification reads as follows:

“Where the selected applicant opts to pay the annual licence fee in instalments, he/she shall pay a sum equal to 1/3rd of the annual licence fee for the shop less the amount remitted under sub-rule (1) (iii) of Rule-12 on the day of selection or the succeeding working day by way of Challan. He/she shall also submit five Fixed Deposit Receipts or Bank Guarantees in Form A-5, each equal to 1/3rd of the annual licence fee, valid for 5 months, 9 months, 13 Scheduled Bank situated in Andhra Pradesh, within seven days of his/her selection and obtain the licence.

Provided that the District Collector may, at his discretion for valid and genuine reasons that may be recorded in writing, grant extension of time not exceeding seven working days to the selected

applicant for submission of Fixed Deposit Receipts or Bank Guarantees in Form A-5 and obtain the Licence.”

18. The issues (A and B) as framed above, needs to be considered in the light of the above factual situation and in terms of the above provisions of law.

19. The Parliament and the State legislations make the laws obviously for the betterment of the society and for inculcating discipline in the society. Therefore, the authorities, discharging their functions under the said legislations are required to function in the direction of creating and strengthening the credence and faith of the citizens in the system guided by Rule of Law.

20. In the case on hand, there is no controversy about the reality that in response to the gazette notification dated 30.06.2015 issued by the fourth respondent/Excise Superintendent under Rule 5, the petitioner herein applied for licence for A4 shop in Ward No.25 of the Municipal Corporation, Kurnool. As per the said gazette notification dated 30.06.2015, the Excise Superintendent fixed the date of drawl of Lots as 05.07.2015 at 10-30 A.M at Zilla Parishad Meeting Hall, Kurnool. According to the case of the petitioner, the respondent authorities did not issue entry pass for Shop No.14 as per Rule 7 of the Rules, thereby, he was prevented from attending the place of drawl of Lots for the said shop. It is also the case of the petitioner that immediately after coming to know of his selection as successful candidate on 05.07.2015, he tried to contact the Excise Sub-Inspector, but he did not lift his phone, and on the next day, when the petitioner called the Excise

Sub-Inspector, he asked the petitioner to approach the higher authorities, and on 06.07.2015, when the petitioner went to the office of the fourth respondent, he was not available and as the time fixed for payment of the first instalment was fast approaching, the petitioner made payment of Rs.11,67,000/- vide Challan No. 0000021316, dated 06.07.2015. It is further pleaded by the writ petitioner that after such payment, when he approached the fourth respondent on 06.07.2015, the fourth respondent

informed him that his application would be considered by evening of 06.07.2015. On the contrary, in the counter affidavit filed by the fourth respondent, while denying the allegation that the petitioner was not allowed into the hall at the time of drawl of Lots, it is stated that in view of the absence of the petitioner at the time of drawl of Lots, the fourth respondent confirmed the licence in favour of the fifth respondent. The said counter also avers that the petitioner never met the fourth respondent on the date of drawl of Lots, but only met him on 07.07.2015 along with an application.

21. Even according to the fourth respondent, the petitioner herein met him on 07.07.2015 and there is also no dispute with regard to the submission of application to the fourth respondent on the even date. At this juncture, it is appropriate to refer Rule 16 (3) of the Rules, which reads as under:

“Where the selected applicant opts to pay the annual licence fee in instalments, he/she shall pay a sum equal to 1/3rd of the annual licence fee for the shop less the amount remitted under sub-rule (1) (iii) of Rule-12 on the day of selection or the succeeding working day by way of Challan. He/she shall also submit five Fixed Deposit Receipts or Bank Guarantees in Form A-5, each equal to 1/3rd of the annual licence fee, valid for 5 months, 9 months, 13 Scheduled Bank situated in Andhra Pradesh, within seven days of his/her selection and obtain the licence.

Provided that the District Collector may, at his discretion for valid and genuine reasons that may be recorded in writing, grant extension of time not exceeding seven working days to the selected applicant for submission of Fixed Deposit Receipts or Bank Guarantees in Form A-5 and obtain the Licence.”

22. According to the above Rule 16 (3), the selected candidates can pay 1/3rd of the annual licence fee less the amount remitted under Sub-Rule 1 (iii) of Rule 12 on the date of selection or the succeeding working day by way of challan. It is also important to note that as per the amended Rule 12 (6) (d), the presence of the applicant at the time of drawl of Lots is not mandatory now. As per Rule 12 (6) (dd), the question of consideration of reserve candidates arises only in the event of failure

on the part of the selected candidate in complying with the conditions laid down in the Rules. Conditions 8 and 9 are the reiteration of Rules 12 (6) (d) & (dd) of the Rules. Since the above mentioned Rules afford time for deposit of 1/3rd of the amount on the succeeding day also i.e., 06.07.2015, this Court finds absolutely no justification on the part of the fourth respondent in ordering forfeiture of the earnest money deposit on 06.07.2015 and confirming the licence in favour of the fifth respondent on the same day and no plausible explanation is forthcoming as to why such action was resorted to by the authorities. It is also evident from Rule 24 of the Rules that the question of issuing licence by licensing authority i.e., fourth respondent herein, arises only after selection of the candidate by the Collector under Rule 11 of the Rules, and in the instant case, no evidence of any such order of selection by the Collector is forthcoming. According to the learned Government Pleader and the learned counsel for the fifth respondent, since Rule 12 (6) (g) continues to exist in the Rules, the fourth respondent is perfectly justified in forfeiting the earnest money deposit and granting licence in favour of the fifth respondent. In order to appreciate the said contention, it is appropriate and apposite to refer to the judgments cited by the learned counsel for the petitioner.

23. In **GIRDHARI LAL AND SONS** (*supra* 1), the Hon'ble Apex Court at paragraphs 6 to 9, held as follows:

“6. It may be worthwhile to restate and explain at this state certain well known principles of Interpretation of Statutes: Words are but mere vehicles of thought. They are meant to express or convey one's thoughts. Generally, a person's words and thoughts are coincidental. No problem arises then, but, not infrequently, there are not. It is common experience with most men, that occasionally there are no adequate words to express some of their thoughts. Words which very nearly express the thoughts may be found but not words which will express precisely. There is then a great fumbling for words. Long winded explanations and, in conversation, even gestures are resorted to. Ambiguous words and words which unwittingly convey more than one meaning are used. Where different interpretations are likely to be put on words and a question arises what an individual meant when he used certain words, he may be asked to explain himself and he may do so and say that he

meant one thing and not the other. But if it is the legislature that has expressed itself by making the laws and difficulties arise in interpreting what the legislature has said, a legislature can not be asked to sit to resolve those difficulties. The legislatures, unlike on individuals, cannot come forward to explain themselves as often as difficulties of interpretation arise. So the task of interpreting the laws by finding out what the legislature meant is allotted to the courts. Now, if one person puts into words the thoughts of another (as the draftsman puts into words the thoughts of the legislature) and a third person (the court) is to find out what they meant, more difficulties are bound to crop up. The draftsman may not have caught the spirit of the legislation at all; the words used by him may not adequately convey what is meant to be conveyed; the words may be ambiguous; they may be words capable of being differently understood by different persons. How are the courts to set about the task of resolving difficulties of interpretation of the laws? The foremost task of a court, as we conceive it, in the Interpretation of Statutes, is to find out the intention of the legislature. Of course, where words are clear and unambiguous no question of construction may arise. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the real basis of the so called golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them. A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the Legislature to other as well as judges. Intention of the legislature and not the words is paramount. Even where the words of statutes appear to be prima facie clear and unambiguous it may some times be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world.

7. Parliamentary intention may be gathered from several sources. First, of course, it must be gathered from the statute itself, next from the preamble to the statute, next from the Statement of Objects and Reasons, thereafter from Parliamentary debates, reports of Committees and Commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too.

8. Once Parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the court to give the statute a purposeful or a functional interpretation,

this is what is meant when, for example, it is said that measures aimed at social amelioration should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several unanticipated forensic situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the 'primary situation'. It will then become necessary for the court to impute an intention to Parliament in regard to 'secondary situations'. Such 'secondary intention' may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation.

9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no neck and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary.”

24. In the case of **V.K. ASHOKAN** (*supra* 2), the Hon'ble Apex Court at paragraphs 36 and 37, held as follows:

“36. The very fact that the State in exercise of its rule making power amended the rule in terms whereof the original clause (b) was deleted is a clear pointer to show that a conscious step was taken not to take recourse of forfeiture of deposit in a case where licence is cancelled in terms of Rule 6(30). The principles contained in the Heydon's Rule shall squarely be attracted in this case.

37, It is a settled principle of interpretation of statute that when an amendment is made to an Act, or when a new enactment is made, Heydon's rule is often utilized in interpreting the same. {See Philips Medical Systems (Cleveland) Inc. v. [Indian MRI Diagnostic and Research Ltd.](#) For the purpose of construction of Rule 6(30), as it stands now, the Court is entitled to look to the legislative history for the purpose of finding out as to whether the mischief prior to such amendment is sought to be rectified or not. Applying the Heydon's rule, we have no other option but to hold that such was the intention on the part of the Rule making authority.”

25. In the case of **SURJIT SINGH** (*supra* 3), the Hon'ble Apex Court at

paragraphs 36 and 50, held as follows:

“36. In the Mimansa system, the literal rule of interpretation is called the Shruti (or Abhida) principle, and ordinarily it is this principle which is to be applied when interpreting a text. However, there are exceptional situations when we have to depart from the literal rule and then certain other principles have to be resorted to e.g. (1) the Linga (also called Lakshana) principle or the suggestive power of words or expressions, (2) the Vakya principle or syntactical arrangement, (3) the Prakarana principle, which permits construction by referring to other texts in order to make the meaning clear, (4) the Sthana (position) principle which means the relative position of one text with reference to another, (5) the Samakhya (name) principle which means the connection between different passages by the indication accorded by the derivative words of a compound name.

50. Thus, in both systems of interpretation, the Mimansa system as well as Maxwell's system, it is emphasised that the intention of a statute has often to be seen to properly interpret it, and it is not that the court can never depart from the literal rule of interpretation. It all depends on the context, the subject-matter, the purpose for which the provision was made, etc.”

26. There is absolutely no reason as to why the fourth respondent did not wait for the succeeding day after the drawl of Lots and as to why the fourth respondent did not adhere to Rule 16 of the Rules, which enables the selected candidates to deposit 1/3rd licence fee on the succeeding day of drawl of Lots also and as to why the earnest money deposit was forfeited on 06.07.2015 itself and the grant was confirmed in favour of the fifth respondent. If the interpretation sought to be pressed into service by the learned Government Pleader and the learned counsel for the fifth respondent is accepted, the very object and intention behind the amended provisions of Rule 12 (6) (d) and (dd) would be frustrated and there would be no meaning absolutely for the amendments also. This Court also finds sufficient force in the contention of the learned counsel for the petitioner that the petitioner herein cannot be penalised for the ambiguity in the said Rules. As evident from the material on record, the only ground assigned by the fourth respondent to refuse confirmation in

favour of the petitioner herein is the absence of the writ petitioner, at the time of drawl of Lots. The said ground in the considered and definite opinion of this Court cannot be sustained in the eye of law in view of the above factual situation and the legal position.

27. This Court is also of the opinion that in view of the subsequent amendments to Rule 12 (6) (d), neither the authorities nor the fifth respondent herein can fall back on Rule 12 (6) (g) for justifying the impugned action.

28. In view of the above reasons, the issues A and B are answered in favour of the petitioner and against the respondents herein.

29. Coming to issue 'C'— According to the learned Government Pleader, appearing for the respondents 1 to 4, since the petitioner herein has the effective, efficacious alternative remedy, by way of approaching the Commissioner of Prohibition and Excise under Rule 61 of the Rules, the present writ petition is not maintainable. In order to appreciate the said contention, it would be appropriate to refer to the said provision of law. Rule 61 of the Rules read as infra:

“61. Removal of difficulties:

If there is any doubt or dispute regarding the application or interpretation of any of these rules, the decision of the Commissioner of Prohibition and Excise thereon shall be final.”

30. A reading of the above provision of law, makes it abundantly clear that the said provision of law which enables the Commissioner of Prohibition and Excise to render opinion in the event of their being any doubt or dispute regarding the application or interpretation of any of the Rules, in the considered opinion of this Court, is a provision, which enables the authorities to seek necessary clarification. Therefore, the said provision of law cannot be pressed into service for the purpose of asking the petitioner herein to approach the Commissioner of Prohibition and Excise for redressal of his grievance.

31. In view of the above reasons, issue 'C' also is answered against the respondents.

32. The above narration in clear and vivid terms drives this court, towards the irresistible conclusion that there is no justification on the part of the respondent authorities in confirming the licence in favour of the fifth respondent herein while denying the same to the petitioner. The contention that since the order confirming the licence in favour of the fifth respondent is not specifically questioned, the petitioner herein is not entitled for any relief, pales into insignificance, in view of the above conclusions and the said contention which is obviously a technical one, does not merit consideration. It is also required to be noted that Rule 7 of the Rules mandates issuance of entry pass and except saying that the petitioner herein did not take the entry pass for Shop No.14, there is no other evidence to show that the authorities made an attempt to issue entry pass to the petitioner having issued in respect of other shops. Vide WPMP.No.38861 of 2015, the petitioner herein has filed the call data pertaining to Airtel Mobile No.9248028444, to demonstrate that the petitioner herein tried to contact the fourth respondent herein on cell-phone.

33. It is contended by the learned counsel for the fifth respondent that the same cannot be taken into account since it is a disputed fact. Even if the said information furnished by the fifth respondent vide WPMP.No.38861 of 2015 is ignored, in view of the above reasons, the petitioner herein is entitled for indulgence of this Court under Article 226 of the Constitution of India, as such, the issue 'D' is answered in affirmative in favour of the petitioner herein.

34. For the aforesaid reasons, the writ petition is allowed, setting aside the notice Rc.No.B/162/2015 dated 06.07.2015 confirming the A4 Shop No.14 in favour of the fifth respondent and the proceedings Rc.No.B/162/2015 dated 06.07.2015, ordering forfeiture of 10% of earnest money deposit issued by the Prohibition and Excise

Superintendent/fourth respondent herein, and consequently the official respondents herein are directed to confirm the A4 Shop No.14 in favour of the petitioner herein. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date: 15.09.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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W.P.No.21398 of 2015

Dated 15-09-2015

grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No. 21398 of 2015

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Between:

T.Sridhar Reddy

... Petitioner

And

The State of Andhra Pradesh and others.

... Respondents

JUDGMENT PRONOUNCED ON:

15th September, 2015

SUBMITTED FOR APPROVAL:

15th September, 2015

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers

May be allowed to see the Judgment?

No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

[\[1\]](#) AIR 1986 SC 1499

[\[2\]](#) (2009) 14 SCC 85

[\[3\]](#) (2009) 10 SCC 722