

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.4760 of 2012

ORDER:

This writ petition calls in question the proceedings dated 21.02.2012 issued by the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, whereby the petitioner's application for grant of prior clearance for establishing a Bar at Door No.17-1-14 Pamur Road, Kandukur, Prakasam District, was rejected.

The ground for rejection as is apparent from a reading of the impugned proceedings was that there were five shops and four Bars already functioning in the municipality which were more than sufficient to cater to its needs and therefore, grant of a new Bar licence was likely to affect public health adversely through unhealthy competition in the municipality. The petitioner alleged in the affidavit filed in support of this writ petition that rejection of his application was based on the criteria specified in G.O.Ms.No.723, Revenue (Excise-II) Department, dated 02.08.2010 though the impugned proceedings did not specifically refer to it. He further asserted that the application of the criteria mentioned in the said G.O. could not be sustained and therefore, rejection of his application was untenable.

The Joint Commissioner, Prohibition and Excise, Andhra Pradesh, Hyderabad, filed a counter-affidavit adverting to the merits of the matter and reiterating that there were sufficient number of Bars and Wine shops in the municipality to cater to the needs of populace and that grant of permission to the petitioner to open one more Bar would impact the business of the existing Bars and shops and would lead to unnecessary health hazards. He further stated that the statutory criteria of requirement and other factors were taken into account while dealing with the petitioner's application and the same was rejected without reference to any of the criteria mentioned in G.O.Ms.No.723

dated 02.08.2010.

The learned Assistant Government Pleader for Excise pointed out that under Rule 5(6) of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for brevity 'the Rules'), the Deputy Commissioner, after causing such enquiry as he may deem fit, may grant the licence. Rule 5 of the Rules deals with application for licence to establish a Bar and was substituted by G.O.Ms.No.596, Revenue dated 26.05.2006.

The only challenge of the petitioner to the rejection of his application was on the surmise that the excise authorities had applied the criteria mentioned in G.O.Ms.No.723 dated 02.08.2010. However, the same is not demonstrated to be correct before this Court as neither the impugned proceedings nor the counter-affidavit filed by the excise authorities indicate that any recourse was taken to G.O.Ms.No.723 dated 02.08.2010 while dealing with the petitioner's application. As the excise authorities independently had power under Rule 5(6) of the Rules to cause such enquiry as they deemed fit while dealing with the application of the petitioner and as they have exercised such power, this Court finds no reason to interfere in the matter.

The writ petition is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Date:28.09.2015

GJ