

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE**

**AND**

**HON'BLE SRI JUSTICE S.V. BHATT**

**W.A. No.393 of 2015**

**PC:** *(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)*

This writ appeal is directed against the order dated 29.04.2014 dismissing the writ petition filed by the appellant challenging the order of the 2<sup>nd</sup> respondent dated 31.12.2014, as illegal, arbitrary and contrary to Rule 28(3) of the A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short, 'the Rules').

By this order, the 2<sup>nd</sup> respondent has allowed the application made by respondent No.5 seeking permission to shift his shop from Ward No.22 to Ward No.24.

We have heard the learned counsel for the appellant.

He assailed the order passed by the learned Single Judge on three grounds. Firstly, he submitted that valid reasons as contemplated by Rule 28(3) of the Rules were not recorded by the Commissioner while passing the impugned order. Secondly, he submitted that one of the grounds for allowing the application viz., distance between the existing and the proposed premises is only 100 metres is factually incorrect, and thirdly, on the ground that there was no application of mind.

We have perused the order passed by the learned Single Judge and in our opinion the learned Single Judge has considered all the aspects in proper perspective and has rightly observed in the impugned order that there is no rule requiring minimum distance between the two shops. The appellant's contention was that in view of shifting of the shop of respondent No.5 from Ward No.22 to Ward No.24, his business has been affected since the distance between the two shops would be hardly 20 metres.

We do not find any force in his submissions for simple reason that the Rules do not prescribe any criteria requiring minimum distance between the two shops. Merely because some factual error is committed in the order of the Commissioner in respect of distance between the existing and the proposed premises would not mean that the order is wrong. Power of the Commissioner to allow to shift shop is not in dispute. From perusal of the order of the Commissioner, it cannot be stated that he did not record reasons and there was no application of mind. The learned Single Judge has taken all the aspects into consideration in proper perspective. The relevant observations made by learned Single Judge in the order read thus:

“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 contention urged by the learned counsel for the appellant that there was no application of mind and no reasons are recorded by the Commissioner also in our opinion deserves to be rejected outright. Thus, we do not find any force in the appeal.

Writ Appeal is dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

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**DILIP B. BHOSALE, ACJ**

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**S.V.BHATT, J**

Date: 02.06.2015

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