

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH**

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WRIT PETITION Nos.23729 and 23801 of 2015

BETWEEN

Sri K. Harish Kumar and another.

... PETITIONERS

AND

The Secunderabad Cantonment Board, Rep. by its Chief Executive Officer,
City Civil Court Compound, Secunderabad.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 01.09.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | No |

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ORDER:

The writ petitions are filed by separate petitioners aggrieved by the action on the part of the respondent board under the impugned letter dated 22.07.2015 wherein the business premises of the petitioners where they are carrying on trade in selling liquor was sealed directing stoppage of business forthwith. The aforesaid proceedings are challenged in the respective writ petitions.

2. For the sake of convenience, the facts in WP.No.23729 of 2015 are noted hereunder.

Petitioner states that he is the owner of the premises in question from the year 2000 and is running a wine shop in the said premises from 2008 after obtaining requisite license from the excise department. For the excise year 2014-2015, the petitioner had obtained license from 01.07.2014 to 30.06.2015 and that he has been carrying out the said business in terms of the said license.

It is also stated that when the period of license was due to expire, the Government extended the period of license by further three months up to 30.09.2015. Petitioner states that suddenly on 22.07.2015, without notice, the officials of the respondent board came to the shop and highhandedly locked and sealed the shop and directed stoppage of business under the impugned letter, though nobody complained against the petitioner's shop to the respondent board at any time.

3. Learned counsel for the petitioner contended that though the impugned proceedings refers to non-compliance of having trade license under Section 277 (J) of the Cantonments Act, he emphatically contended that the respondent board had never in the past issued license to any trader and submits that the petitioner had already applied for license as early as on

09.05.2014 but no such license was granted to the petitioner. A copy of the license application form together with the receipt No.N311835 dated 09.05.2014 is produced along with the additional set of material papers. Learned counsel submits that the petitioner also applied for further trade license on 31.07.2015 vide receipt No.N320482 and having not passed any order for grant of trade license to the petitioner, it is not open for the respondent board to seal and seize the business premises of the petitioner on that ground. Learned counsel also placed reliance upon a press note dated 08.02.2014 issued by the respondent board wherein the respondent board announced that it will start the process of issuing trade license to shops and business establishments.

Learned counsel, therefore, submits that the respondent board itself having not granted license to any of the traders in the Cantonment, cannot issue the impugned proceedings sealing the petitioner's premises on the ground of not holding trade license.

4. Respondent filed counter affidavit denying that the action was taken without notice to the petitioners. It is stated that the petitioners shops caused nuisance in the area for women and general public.

It is also stated that the ownership of the petitioners, as alleged, is not recorded in the general register in the Kharkhana area under the Cantonment board and placing strong reliance on Sections 277, 278 and 281 of the Act, the action taken against the shops of the petitioners is sought to be justified. Further averments are also made in the counter affidavit that the premises of the petitioners is maintained in an unhygienic manner and a permit room is constructed unauthorizedly and that the petitioners have intentionally violated the law and therefore, the issuance of notice is a wasteful exercise and will not vitiate the proceedings.

5. Learned senior counsel appearing for the respondent board has placed before the Court the proceedings of the respondent board dated 12.08.2015 wherein the applications of the petitioners for grant of license dated

31.07.2015 and 22.07.2015 respectively were stated to have been scrutinized and returned for certain compliances.

Hence, the learned senior counsel would submit that, as on this date, the petitioners do not hold any trade license and even otherwise are not entitled to carry on the business.

6. Petitioner in WP.No.23729 of 2015 has filed a reply affidavit that no notice was served on the petitioner except after sealing the premises when the impugned proceedings dated 22.07.2015 was served. Petitioner also submits that he had been applying for trade license from 2001 onwards but never in the past any trade license was issued to any trader in the Cantonment including the petitioner. Petitioner also takes a stand that, having applied for license, the same is deemed to have been granted, as no refusal order was passed.

The allegation of nuisance etc. which are made in the counter affidavit are denied on the ground that there is no material in support of the said averments and it is also incorrect to claim that the shop of the petitioner is situated in residential area when it is on a main commercial road where thousands of commercial establishments exist. Petitioner also submits that he is put to serious loss and hardship,

as huge amount of license fee, paid for three months extension granted up to 30.09.2015, would result in serious loss to the petitioner on account of the impugned proceedings dated 22.07.2015. Petitioner also submits that with regard to the action of the respondent board in threatening to highhandedly demolish the premises of the petitioner,

he has already approached the civil Court in O.S.No.114 of 2012 before the I Additional Chief Judge, City Civil Court, Secunderabad and obtained temporary injunction on 12.03.2015 and in spite of such injunction orders, the respondent board has taken the impugned action against the petitioner. It is also specifically alleged that there are 40 wine shops and bars within the jurisdiction of the respondent board and none of them have been given any

trade license and they are carrying on their business without any interference by the respondent board. Thus, for no fault of the petitioner, his premises has been sealed and his business is stopped.

7. Learned senior counsel for the respondent board placed strong reliance upon the decision of the Supreme Court in **ASHOK KUMAR SONKAR v. UNION OF INDIA**^[1] to contend that principles of natural justice are not to be put in a straitjacket formula and the said principle need not be applied in a given case unless prejudice is shown or where the exercise of issuing notice is a futile exercise.

8. I have given my earnest consideration to the contentions on both sides and it appears to me that the petitioner, after obtaining requisite license from the excise department, made an application for grant of trade license. Petitioner asserts that no trade license is issued to any trader in the cantonment and that aspect is not contraverted by the respondent board, which is also evident from the press note of the respondent board mentioned above. In that scenario, when the petitioner's application for trade license is pending, the action of the respondent board in sealing the premises of the petitioner under the impugned proceedings without prior notice to the petitioner cannot be approved. It is evident that the petitioner is seriously prejudiced by the closure of running commercial establishment under the impugned proceedings and it cannot be said that the issuance of notice would have been a futile exercise and would not have served any purpose, as alleged in the counter affidavit. It is also well settled that reasons for impugned action cannot be supplemented by counter affidavit (see **MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER** [(1978) 1 SCC 405]). Further, surprising to note that though the petitioners are carrying on business for over a year, never in the past, the respondent board has even issued any show cause notice but suddenly resorted to sealing, which is clearly highhanded. On the

face of it, I am of the view that the action taken by the respondent board in sealing the premises of the petitioner is clearly arbitrary and unauthorized and violative of principles of natural justice.

9. It may also be mentioned that during the hearing, learned counsel for the petitioner strongly disputed that there is any such power with the respondent board to seal the premises. However, that issue is not necessary to be adjudicated in view of the directions proposed to be issued. In any case, assuming that such power exists, the impugned action, having been found arbitrary on the facts of the case, in my view, is liable to be set aside and is accordingly set aside.

The writ petitions are accordingly allowed. The respondent board is directed to remove the seals forthwith and permit the petitioners to carry on the business, as in the past, subject to:

1. Petitioners shall resubmit their returned applications for trade license, after duly complying with the objections therein within a week from the date of this order.
2. Within one week, thereafter, the respondent board shall pass appropriate orders with regard to the petitioners' request for grant of trade license.
3. The business to be carried on by the petitioners would be subject to the orders that would be passed by the respondent board with regard to trade license, as directed above.
4. It shall be open for the respondent board to impose appropriate conditions regarding maintenance of hygiene and sanitation while granting license.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

September 1, 2015
DSK

[\[1\]](#) (2007) 4 SCC 54