

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT APPEAL No.1039 of 2016

and

WRIT PETITION No.32633 of 2015

20.10.2016

Between:

Dasari Veeraiah

..Appellant/Petitioner

And

State of Andhra Pradesh,
represented by its Principal Secretary,
Excise Department, Hyderabad and others

..Respondents

Counsel for the appellant/petitioner: Mr.M.S.Prasad, senior counsel
for Mr.Subba Rao Posani

Counsel for respondent Nos.1 to 5: Government Pleader
for Prohibition and Excise (AP)

Counsel for respondent No.6: Mr.Ancha Panduranga Rao

Counsel for respondent No.7: Mr.K.S.Murthy

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by the interim order, dated 12.09.2016, in W.V.M.P.Nos.4326 of 2015 and 3593 of 2016 in W.P.No.32633 of 2015, the writ petitioner filed W.A.No.1039 of 2016.

2. At the hearing, Mr.M.S.Prasad, learned senior counsel representing Mr.Subba Rao Posani, learned counsel for the appellant, learned Government Pleader for Prohibition and Excise (AP) appearing for respondent Nos.1 to 5 and Mr.K.S.Murthy, learned counsel for respondent No.7 have agreed for disposal of the writ petition itself along with the writ appeal. Therefore, we have heard both the writ appeal and the writ petition together for disposal. For convenience, the appellant is referred to as the petitioner.

3. The petitioner has obtained provisional license in *form* A4 for sale of liquor in retail in Division No.21, Magunta Layout, Kondayapalem, Nellore Town. He has pleaded that he entered into a lease agreement with the owner of the property, in pursuance of which, he has constructed a building therein and located A4 shop. Evidently, respondent No.7 has submitted his objections to the location of A4 shop by the petitioner on the ground that the same is located in Division No.20 and not in Division No.21. Relying upon purported report in R.C.No.1510/2015/TDP/G1, dated 21.09.2015, of the Commissioner, Municipal Corporation, Nellore, respondent No.4 has passed the order, dated 26.09.2015, holding that as per the said report, the petitioner's shop is located in Division No.20 and not in Division No.21. The petitioner was, accordingly, called upon to shift the shop within three days to Division No.21, failing which, action in accordance with the provisions of the Andhra Pradesh Excise (Grant of

License of Selling by Shop and Conditions of license) Rules, 2012 will be taken. Feeling aggrieved by this order, the petitioner filed the writ petition. Initially, interim order of *status quo* was passed by this Court on 05.10.2015. The said order was vacated by the learned Single Judge, by the order impugned in the writ appeal.

4. A perusal of the order impugned in the writ petition shows that the sole basis on which the petitioner has been directed to shift the A4 shop from the present location is the purported report, dated 21.09.2015, of the Commissioner, Municipal Corporation, Nellore. The said order does not show that either the said report was furnished to the petitioner or any show cause notice was issued to him giving an opportunity to establish that the A4 shop has been located in Division No.21 as per the license and not in Division No.20. The learned Government Pleader for Prohibition and Excise (AP) has fairly admitted that no such exercise was undertaken by respondent No.4 before the impugned order was passed.

5. In our opinion, based on a report obtained behind the back of the petitioner from the Municipal Corporation, respondent No.4 ought not to have arrived at unilateral conclusion that A4 shop of the petitioner is situated in Division No.20 and not in Division No.21. Such an action constitutes blatant violation of the principles of natural justice and also patent arbitrariness. The petitioner, who has claimed to have invested huge amounts, cannot be denied the valuable opportunity of establishing that A4 shop is located in the Division for which he was granted license.

6. Mr.K.S.Murthy, learned counsel for respondent No.7, has submitted that his client is aggrieved by the location of A4 shop by the petitioner

next to his house and that it is on his complaint that the impugned action was taken by respondent No.4.

7. A perusal of the order impugned in the writ petition, no doubt, shows that the action was initiated on the complaint of respondent No.7 that the petitioner's A4 shop is located in Division No.20 and not in Division No.21. Therefore, if an enquiry is undertaken, respondent No.7 is also entitled to participate in such enquiry to substantiate the contents of his complaint that the petitioner's A4 shop is situated in Division No.20 and not in Division No.21.

8. In the aforementioned facts and circumstances of the case, the impugned order, dated 26.09.2015, is not sustainable and the same is, accordingly, set aside. Respondent No.4 is directed to issue a notice to the petitioner to establish that his A4 shop is situated in Division No.21 and not in Division No.20. Along with the notice, respondent No.4 shall serve on the petitioner, all the material on which he is seeking to place reliance including the report, dated 21.09.2016, of the Commissioner, Municipal Corporation, Nellore. The petitioner shall submit his explanation along with the proof, if any, in support of his plea that the A4 shop is situated in Division No.21 only. Within one week of receipt of the explanation from the petitioner, respondent No.4 shall issue notices to the petitioner as well as respondent No.7, hold an enquiry and pass appropriate orders. This exercise shall be completed by respondent No.4 within one month from the date of receipt of a copy of this order.

9. The Writ Appeal and the Writ Petition are, accordingly, allowed.

10. As a sequel, W.P.M.P.No.42149 of 2015 in W.P.No.32633 of 2015 and W.A.M.P.No.2296 of 2016 in W.A.No.1039 of 2016 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

20th October, 2016
GHN

