

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

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO. 23035 OF 2016

Between:

K. Kishore Reddy, S/o K. Pulla Reddy, aged about 30 years

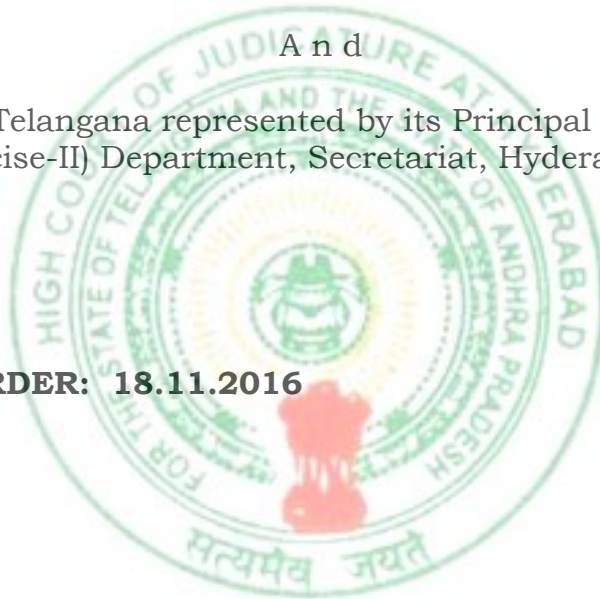
....Petitioner

A n d

The State of Telangana represented by its Principal Secretary,
Revenue (Excise-II) Department, Secretariat, Hyderabad and three
others.

....Respondents

DATE OF ORDER: 18.11.2016



HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION NO. 23035 OF 2016****ORDER:**

Petitioner is one of the applicants for grant of licence to establish bar and restaurant in premises bearing Door No. 12-220/3/D, Vidyanagar, MBNR Road, Kalwakurthy Village and Mandal, Mahaboobnagar District. Challenging the order of the Government dated 30.6.2016 to consider the application of Sri K. Aravind Reddy (4th respondent) for establishing 2B Bar Licence in Kalwakurthy town in terms of guidelines issued in G.O.Ms.No. 148 Revenue (Ex.II) Department dated 26.8.2015, the present Writ Petition is filed. Petitioner also sought for consequential relief to consider his application dated 14.10.2015 for grant of 2B Bar Licence in accordance with the directions issued by this Court in WPMP No. 914 of 2016 in W.P.No. 743 of 2016.

2. So far as second limb of the prayer, as noted above, since the petitioner is seeking enforcement of order passed in WP MP No. 914 of 2016 in W.P.No. 743 of 2016, the petitioner has to independently work out his remedies. Thus, in this Writ Petition, the issue is confined to the order of the Government dated 30.6.2016 impugned.

3. Heard Sri Resu Mahender Reddy, learned counsel appearing for petitioner, Government Pleader for Excise & Prohibition (TG) for respondents 1 to 3 and Smt K. Sesharajyam, learned Senior Counsel appearing for 4th respondent.

4. Learned counsel appearing for petitioner submits that the application submitted by the 4th respondent was considered and the said application was rejected treating that he has no valid licence and his lease was also cancelled. According to the petitioner, when his application is pending, and when the application of the 4th respondent was already rejected, the question of Government entertaining the representation and passing orders is explicitly illegal.

5. Learned counsel also submits that in accordance with the procedure envisaged under the provisions of A.P. Excise Act, 1968, in pursuance to the notification issued calling for applications from the eligible persons, petitioner and 4th respondent submitted their applications. The application filed by the 4th respondent in the said manner was considered and was rejected. No fresh applications were called for and therefore, the question of considering the claim of 4th respondent once again would not arise.

6. A Perusal of the order impugned does not show that the said order of the Government is based on the reports said to have been submitted by the Commissioner, Prohibition and Excise on 30.6.2016. Therefore, this Court directed the Government Pleader to produce original file containing the said letter of the Commissioner. Government Pleader, accordingly, produced the original file containing the letter of the Commissioner.

7. This Court has gone through the letter and requested the senior counsel appearing for 4th respondent also to read the letter.

8. The contents of the letter would show that local MLC recommended for consideration of 4th respondent claim for 2B

licence and basing on such recommendations, the Minister for Prohibition and Excise made an endorsement for consideration. Thereafter, the report of the Commissioner was called. The Commissioner, Prohibition and Excise in turn called for report from the Deputy Commissioner and examined the matter in detail. Having noticed that the application submitted by the 4th respondent was already rejected, for the reasons recorded, he suggested to the government that entertaining of such application is not valid. The Government was also informed that no application in Form 1-A was submitted by the 4th respondent and requisite fee was also not paid. The Commissioner, therefore, pointed out the illegalities in the manner in which the request was made and requested not to process such applications. Contrary to the recommendations of the Commissioner, holding as if the Commissioner has recommended, the Government has passed orders impugned in this Writ Petition.

9. Learned Senior Counsel would only submit that the application of the 4th respondent was considered and rejected on technical grounds, and therefore, such application is deemed to have been pending. She further submitted that the application on which the Government acted favorably can be treated as revision under Section 64 of the Act.

10. Learned Government Pleader sought to justify the action of the Government by placing reliance on the guidelines issued in G.O.Ms.No. 148 dated 26.8.2015. The guidelines only stipulate as to how procedure should be followed in considering the applications for grant of 2B Bar Licence. More particularly,

paragraph 5 stipulates that in case number of applications are filed, they should be processed and if there is more than one eligible applicant claiming Bar licence, the person should be selected by following drawl of lots among all eligible applicants. In para 6, the Government reserved to itself residuary power in relaxation of guidelines stipulated in the earlier paragraphs, for grant of licence. Mere reading of these guidelines would show that prescribed procedure should be followed as indicated, but in a given case, Government may relax the said procedure. However, application for grant of Bar licence is required to be processed in accordance with Provisions of the Act and Rules made there under. Submission of application in pursuance of notification only is a mandatory requirement.

11. It is not in dispute that the application submitted by the 4th respondent was considered and rejected and that said decision of the Superintendent of Excise has become final. Section 63 of the Act provides right of appeal to any aggrieved person. Against the decision of the Superintendent, an appeal lies to the Deputy Commissioner and against the decision of the Deputy Commissioner, a Revision lies to the Government. In the instant case, 4th respondent did not file appeal against the decision of the Superintendent rejecting the application for grant of licence, nor did he prefer Revision. He submitted a representation to the Local MLC and that triggered the Government to pass orders impugned in this Writ Petition. This so called representation is not in accordance with the provisions of the Act. It is not the case where 4th respondent has created exceptionally high quality facilities,

which required preferential consideration in larger public interest, without resorting to the regular procedure envisaged by the Act and Rules and by exercising residuary power. More particularly, it is relevant to notice that the Commissioner had advised not to accept such requests and that it would have serious legal complications.

12. As noticed above, the order is neither in accordance with the provisions of the Act and Rules nor is in accordance with the true spirit of the guidelines formulated in G.O.Ms. No. 148. There is no new material placed before the Government, which necessitated the Government to exercise such extraordinary residuary power to grant order in favour of the 4th respondent.

13. In the facts of this case, the decision impugned in this Writ Petition is liable to be set aside as the same is amounting to improper exercise of power, granting undue favour to 4th respondent without following the regular procedure for grant of 2B Bar Licence, and accordingly, set aside.

14. Accordingly, Writ Petition is allowed in part to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

Date: 18.11.2016
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P. NAVEEN RAO, J