

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.39385 OF 2016

Dated:07.12.2016

Between:

Ambarkar Narayana, S/o. A. Ulugoji Rao,
Aged 46 years, Occ: Prop.of M/s. Nicolas
Wines, Alur Village and Mandal, Kurnool .. Petitioner

And

The State of Andhra Pradesh, rep.,
by its Secretary, Department of
Prohibition and Excise, Secretariat,
Velagapudi, Guntur and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.39385 OF 2016****ORDER:**

Heard learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise.

2. With the consent of learned counsel for the parties, the Writ Petition is disposed of at the stage of admission.

3. Petitioner challenges notice dated 29.10.2016, wherein he was informed to shift his A-4 Shop on the ground that the said shop is located at a distance less than 96 meters from the existing Government Junior College and High School, Alur.

4. When the licence was granted to the petitioner, the distance shown by the petitioner was 100 meters and therefore the Court felt it necessary to ask the Deputy Commissioner, Prohibition and Excise, Kurnool District, the 2nd respondent, to conduct fresh measurements of the distance from the shop to the Educational Institutions in the presence of the petitioner, if necessary, by taking the help of a Surveyor and file report. Accordingly, the 2nd respondent visited the subject premises on 03.12.2016 and measured the distance, as directed by this Court, and filed report, dated 06.12.2016, along with the Panchanama proceedings. As per the said report, the measurements were taken by the 2nd respondent along with the Mandal Surveyor and others and the distance from A-4 shop of the petitioner to the Government Junior College and High School is 94 meters.

5. According to Rule 25 of the Andhra Pradesh Excise (Grant of License of Selling by Shop and Conditions of License), Rules, 2012 (for short, 'the Rules'), the minimum distance required to be maintained is 100 meters from the distance of an Educational Institution to an A-4 shop. However, the order impugned as well as the report now filed by the 2nd respondent would show that the distance is less than 100 meters. Even if there is marginal variation in the measurement, the Rule of 100 meters has to be understood to mean that at no point of time, it should not be within 100 meters but more than that and marginal variation also to be factored against establishment of A-4 shop.

6. Learned counsel for the petitioner vehemently contends that the measurement was not properly taken in accordance with the Rules and the distance would have been easily above 100 meters. He submits that petitioner has independently measured with the help of Panchayat Secretary and it shows that distance was more than 100 meters. How far a Panchayat Secretary can undertake the said job, is a matter for consideration.

7. Learned Government Pleader for Prohibition and Excise, on instructions, submits that since the petitioner alleges that the measurements were not properly taken, it is open to the petitioner to file an application before the 2nd respondent for re-measurement of the distance by placing before him the substantial material in support of his claim and if the 2nd respondent is satisfied, he can re-measure the same.

8. A perusal of the record shows that no serious endeavour was made to undertake correct measurement when the

original licence was granted to the petitioner. In view of the measurements now undertaken, I see no illegality in the notice issued by the 3rd respondent for relocation of A-4 shop of the petitioner. No relief as sought for by the petitioner can be granted. However, the petitioner is at liberty to file an application before the competent authority for re-measurement of the distance with cogent material. If such application is filed, the competent authority shall consider the same and pass appropriate orders as expeditiously as possible, preferably within a period of six (6) weeks from today.

9. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Date:07.12.2016

KH

P. NAVEEN RAO, J