

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.30095 of 2010

ORDER:

1. Heard learned Counsel for the petitioner and learned Government Pleader for respondents.

2. The petitioner is a bar and restaurant situated at Main Road, Hanamkonda, Warangal District. It was running under 2-B (Bar) licence vide Licence No.16/2006-07 dated 06.07.2006. The petitioner paid prescribed licence fee and complied with all necessary formalities. Necessary permission was accorded by respondent No.3 under Rules 5 and 11 of the A.P. Excise (Grant of Licence of selling by Bar and conditions of licence) Rules, 2005. While so, the Audit Officers of Accountant General, A.P., Hyderabad, during audit inspection of records have verified the approved blue print map (plan) of the petitioner and pointed out that the enclosures for the purpose of consumption of liquor shown in the map (plan) are non-contiguous by way of interposition of different utilities and hence attract 10% of additional licence fee as per Rule 10 (2) of the A.P. Excise (Grant of Licence of selling by Bar and conditions of licence) Rules, 2005. Thereafter, the matter was reported to the Commissioner of Prohibition & Excise, A.P., Hyderabad, seeking necessary instructions and clarification. The Commissioner of Prohibition & Excise has issued instructions to respondent Nos.3 and 4 to jointly inspect the bar premises and take a decision on the contiguity or otherwise of the consumption liquor. Accordingly, respondent Nos.3 and 4 have jointly inspected the premises on 27.11.2009 and 09.12.2009 and found one liquor serving area is interposed by other utilities like Kitchen, Pantry and Restaurant and hence non-contiguous and held that additional

licence fee for one non-contiguous enclosure is collectable. Accordingly, respondent No.3 has issued instructions to respondent No.4 to issue demand notice to the petitioner for payment of 10% additional licence fee for the years 2006-2007, 2007-2008, 2008-2009 and 2009-2010. Respondent No.4 has issued a demand notice on 20.05.2010 directing the petitioner to pay an amount of Rs.8,09,600/-. Aggrieved by the same, the petitioner has filed an appeal before respondent No.3. After hearing both sides, respondent No.3 set aside the said demand notice and remanded the matter to respondent No.4 with a direction to issue a show cause notice to the petitioner and pass appropriate orders after examining his explanation. Thereafter, on 31.08.2010, respondent No.4 has issued a show cause notice to the petitioner as to why the demand should not be raised for collection of 10% additional license fee. The petitioner has submitted his explanation dated 27.09.2010 to the said show cause notice. As the explanation submitted by the petitioner is not convincing, respondent No.4 has issued the impugned demand notice dated 26.10.2010.

3. The only ground raised in the present writ petition is that the utilities like kitchen, pantry and restaurant are contiguous areas, whereas it is the case of the respondents that they are non-contiguous and additional license fee for one non-contiguous enclosure is collectable.

4. The present demand notice is issued pursuant to a show cause notice and explanation. The show cause notice was issued pursuant to the order passed by the Deputy Commissioner of Prohibition and Excise, Warangal, on 26.06.2010.

5. Since the matter involves determination of fact on the basis of the record available with the authorities and in view of the

availability of an alternative remedy of appeal, this Court is not inclined to entertain the present writ petition, but gives liberty to the petitioner to file an appeal before the third respondent within a period of four weeks from today and the third respondent shall consider the same in accordance with law and pass orders thereon as expeditiously as possible.

6. The Writ Petition is accordingly disposed of. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

10-03-2016

Note: Furnish CC in one week.

(Bo)

Gsn