

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION Nos.30211 AND 30217 of 2017

COMMON ORDER:

Since these two writ petitioners share similar grievance, this Court deems it appropriate to dispose of the same by way of this common order.

2. The petitioners are the clubs situated at Secunderabad area. They applied for grant of C-1 licence in their favour for the excise year 2017-2018. The Commissioner of Prohibition and Excise, Government of Telangana, Hyderabad, second respondent herein, vide proceedings in Cr.No.7297/2009/CPE/TS/F1, dated 22.07.2017 and proceedings in Cr.No.7438/2009/CPE(T)/F1, dated 26.07.2017 granted permission to the Prohibition and Excise Superintendent, Secunderabad, fourth respondent herein, to issue licences in Form C-1 in favour of the petitioners herein respectively under Rule 8 of the Andhra Pradesh (Grant of Licence of Selling by In-House and Conditions of Licence) Rules, 2005, subject to payment of licence fee as per rules with permission for liquor consumption area of 12122.77 square meters and 3570.50 sq. meters respectively and also on collection of additional licence fee for the years 2016-17 and 2017-18, as per the recommendations of the Deputy Commissioner of Prohibition and Excise, Hyderabad, third respondent herein, and the fourth respondent, and further subject to condition that the petitioners shall file all papers/documents to prove their ownership and other eligibility, etc. Thereafter, on 01.08.2017, the petitioners submitted separate representations to the second respondent for release of their licences. Subsequently, vide proceedings dated 03.08.2017 and 09.08.2017, the second respondent directed the District Prohibition and Excise Officer, Secunderabad, fifth

respondent herein, to issue provisional licences to the petitioners for a period of three months commencing from 01.07.2017 to 30.09.2017 on condition of submission of self-affidavits (registered deeds and trade licences within a period of three months). In the above background, the present writ petitions are filed questioning the above proceedings dated 22.07.2017 and 26.07.2017 of the second respondent and also his consequential proceedings dated 03.08.2017 and 09.08.2017 in insisting the petitioners for submission of registered deeds and trade licences, apart from granting of licences for a period of three months only instead of one year.

3. According to the learned counsel for the petitioners, the impugned action on the part of the respondents - authorities is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and also in violation of the said Rules. In elaboration, it is submitted by the learned counsel for the petitioners that the petitioners - clubs have been in existence for the last 130 years and the respondents - authorities grossly erred in asking the petitioners for the ownership documents/lease deeds and trade licences.

4. On the contrary, it is submitted by the learned Government Pleader for Prohibition and Excise (Telangana) that there is absolutely no illegality nor there exists any infirmity in the impugned action and, in the absence of the same, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India.

5. The material available before this Court discloses that after receipt of proceedings dated 22.07.2017 and 26.07.2017 of the second respondent, the petitioners herein admittedly submitted

separate representations on 01.08.2017 to the second respondent.

The contents of the said representations, to the extent of their relevancy to the present case, read as under:

“As regards your query advising us to submit the ownership documents in respect of the Secunderabad Club we may mention that Secunderabad Club is the owner of premises No.220, Picket, Secunderabad, having purchased the same more than 130 years back and has been in possession of the said property since then. The Liquor Bar in the Secunderabad Club is in operation for more than 130 years and this fact alone should suffice the query.

In compliance to your letter we are submitting property tax payment receipts for the last 12 years for your reference. It is clearly mentioned that the Secunderabad Club is the owner of Bungalow No.220, Picket, Secunderabad and is in due possession of the said property for more than 130 years.

As regards your query regarding the Trade Licence, we wish to inform that the Secunderabad Club is a non-profit organization and does not trade in any kind of goods or services and as such does not fit into nomenclature “Trade”. We are enclosing herewith Order of Hon’ble High Court of A.P in Writ Petition No.2425 of 1974 wherein it was stated that the Club is not an institution running trade or business and therefore, it is not liable to take any licence. Needless to mention that the Judgment of the Hon’ble High Court in the said matter is in conformity with the judgment passed by the Hon’ble Supreme Court in Cricket Club Vs Labour Union, Bombay ((1) AIR 1969 SC 276). (copy enclosed)

Even otherwise we are advised that in accordance with Section 277(3)(1)(a) of the Cantonment Act 2006 there is no obligation cast upon us to obtain any license from the local authority if the trade or occupation is in existence prior to the commencement of the Act in 2006. Needles to mention that the Secunderabad Club is in existence for more than 130 years and we are governed by the Central Act and Cantonment Act 2006.”

6. Admittedly, on the said representations, no further action has been taken by the second respondent either in the direction of turning down or accepting the same. Since the representations said to have been filed by the petitioners pending consideration before the second respondent, this Court deems it appropriate to direct the second respondent to take appropriate action on the representations dated 01.08.2017 said to have been submitted by the petitioners and to pass appropriate orders thereon, after giving notice and opportunity of hearing to the petitioners, within a period of three

weeks from the date of receipt of a copy of this order. It is further made clear that till a decision is taken by the second respondent, the petitioners shall be permitted to enjoy the benefit of provisional licence. It is also made clear that the petitioners are entitled to make further representation to the respondents – authorities, if they are advised, within a period of one week from the date of receipt of a copy of this order.

7. With the above observations, both the writ petitions are disposed of. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Date: 07.09.2017
TJMR

A.V. SESA SAI, J

