

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.28321 OF 2017

ORDER:

Heard Mr.Balaji Medamalli for petitioner, the learned Government Pleader for Prohibition and Excise and Mr.O.Manohar Reddy holding for Kambhampatui Ramesh Babu for respondent No.4.

The petitioner prays for Mandamus declaring proceedings Cr.No.4287/2017/CPC/E2 dated 07.08.2017 of 2nd respondent as illegal, void and contrary to the A.P.Excise (Grant of Licence of Selling by Shops and Conditions of Licence) Rules, 2012 (for short 'Rules 2012').

The averments, in brief, are stated thus:

The petitioner and the 4th respondent are holders of Form-A4 licence issued by respondent No.3. The petitioner is granted privilege of sale of Indian Made Foreign Liquor (IMFL) vide G.S.No.NL/239, Licence No.47/2017-19/GDR dated 15.07.2017 for a shop in Sy.No.112, Nellipudi Village, Vakadu Mandal, SPSR Nellore District. The 4th respondent has licence G.S.No.NL/238, Licence No.46/2017-19/GDR for the shop in Sy.No.114, Ashok Pillar Centre, Vakadu, SPSR Nellore District. The period of licence commences from 01.07.2017 for a period of two years. The 4th respondent submitted representation dated nil to 2nd respondent seeking permission for shifting the licenced premises in Sy.No.114, Ashok Pillar Centre, Vakadu to a shop located Sy.No.112, Nellipudi Village, Vakadu Mandal i.e., in the same village adjoining MDR Road.

The representation was processed and forwarded to Additional Commissioner of Prohibition and Excise through Rc.No.143/2017/A6 dated 01.07.2017. The Commissioner of Prohibition and Excise/ 2nd respondent in exercise of the jurisdiction conferred on him by Rule 28 of Rules 2012 issued the proceedings impugned in the writ petition, permitting shifting of shop from Sy.No.114, Ashok Pillar Centre, Vakadu to Sy.No.112, Nellipudi Village, Vakadu Mandal. Henceforth, for convenience, these are called licenced premises and proposed premises respectively. Hence, the writ petition.

The petitioner challenges the order firstly by referring to loss the petitioner would suffer in business, if the 4th respondent is allowed to do business next to petitioner's premises and according to petitioner, the order passed is contrary to Rules 2012. The petitioner refers to a few ancillary and incidental circumstances in support of two grounds raised against the proceedings impugned in the writ petition. For brevity, this Court is not referring to those averments and likewise the averments stated in the reply affidavit filed by petitioner. The point is considered from the perspective of Rules 25 and 28 of Rules 2012.

On 23.08.2017, this Court granted interim order. The respondents filed WVMs and also counter affidavits.

The Prohibition and Excise Superintendent/3rd respondent does not dispute the introductory facts or the right stated by the petitioner, or the 4th respondent, as licencees for the period 2017-19. According to 3rd respondent, the 4th respondent applied for A4

licence much earlier to the clarification regarding State Highways was not made by the Government of Andhra Pradesh and likewise established the shop at a distance of 220 metres from State Highway i.e., Gudur to Duggarajapatnam. The Government of Andhra Pradesh through G.O.Ms.No.28, Transport, Roads and Buildings (R.IV) Department dated 04.07.2017 notified a few roads in the District as Major District Roads. The 3rd respondent denies that the proceedings impugned in the writ petition are issued without enquiry and verifying the ground reality. According to him, the proposals for shifting the shop of 4th respondent were forwarded after enquiry by the local Station House Officer, Vakadu, and the Unit Officer, Gudur Excise Unit, who recommended for shifting of licenced premises of 4th respondent to proposed premises. The 2nd respondent exercised the powers vested in him by Rule 28 of Rules 2012 and permitted shifting of licenced premises to proposed premises. There is no restriction for establishment of A4 shops even if it results in location of business is side by side. According to 3rd respondent, the successful licencees under Rule 25 of Rules 2012 have liberty to establish A4 shops anywhere in the notified area or shift the licenced premises within the Mandal, as Mandal is treated as a unit under Rules 2012. The 3rd respondent while supporting the decision taken by the 2nd respondent that Rule 25 confers liberty to establish A4 shops anywhere in the notified area or shift the licenced premises, however, the same shall be without affecting the other criterion stipulated in Rule 25 of Rules 2012. Therefore, he submits that no valid ground is made out for interfering with the proceedings impugned in the writ petition.

The 4th respondent while explaining the circumstances in which the request for shifting the shop from licenced premises to proposed premises, objects to the maintainability of writ petition under Article 226 of the Constitution of India, at the instance of a rival trader. He further contends that Rule 28 of Rules 2012 deals with sale of IMFL at the licenced premises only. Power is available and the 2nd respondent is authorised to permit shifting the shop from one premises to another but for valid reasons, and within the notified area. According to 4th respondent, only a fetter on the discretion conferred the 2nd respondent imposes in the matter of shifting the premises, is that the shifting shall be within the notified area. In this context, the 4th respondent places strong reliance on Rule 25 of Rules 2012 which deals with selection of licenced premises that the licensee can select premises of his choice.

This Court directed the learned Government Pleader for Prohibition and Excise to produce the file of proceedings impugned in the writ petition. The file is made available for inspection of this Court and the counsel appearing for contesting parties are permitted to process the file.

Mr. Balaji Medamalli contends that the proceedings impugned in the writ petition are taken up and orders passed as a matter of course. In support of his contention that from the beginning there is non-application of mind on the request of 4th respondent for shifting the shop, he relies on reference No.1 in the proceedings dated 07.08.2017 viz., recommendation said to have been forwarded by the Deputy Commissioner of Prohibition

and Excise, Prakasam, whereas the subject Mandal is in Nellore District. He further contends that firstly there are no valid reasons which weigh with the 2nd respondent for ordering shifting of premises and secondly that the reason stated in the proceedings impugned in the writ petition cannot and could not at any rate be treated as reasons for authorizing shifting of premises from one place to another. According to him, Rule 25 of Rules 2012, after licence is granted provides an option to the licensee to select the premises of one's choice within the notified area, however, subject to other guidelines prohibiting establishment of A4 shop within a distance of a few establishments/places of worship etc. Once the premises, according to one's choice and convenience is exercised by a licensee, the request for shifting the premises, if considered under Rule 28 of Rules 2012, is considered and decided only for valid reasons. According to him, the 4th respondent, having selected a premises which conforms to Rule 25 of Rules 2012, cannot, for reasons viz., commercial reasons be allowed horizontally to get into another area where a licenced premises is granted privilege. Even without recognizing this fact, if orders for shifting are passed, then the purpose and sanctity of licenced premises, location of licenced premises and shifting from one locality to another, for valid reasons etc., would all be rendered ineffective. He submits that the petitioner, being the neighbour to the proposed shop, is a person interested in the matter and the interest of petitioner ought to have also been considered by 2nd and 3rd respondents.

Mr.Balaji Medamalli, after going through the file produced from the office of 2nd respondent, contends that the decision making process on an issue where discretion and jurisdiction conferred on 2nd respondent are vitiated and without going into other aspects of the matter on the ground that the decision making process suffers from illegality and impropriety, is liable to be set aside and the matter remanded to 2nd respondent.

Mr.Devanand appearing for 2nd respondent refers to the stand taken in the counter affidavit and contends that the challenge to proceedings impugned in the writ petition is not on the grounds of lack of jurisdiction, but suffers from faulty decision making process. The proceedings impugned in the writ petition contain the reasons which weighed with the 2nd respondent for shifting premises from Sy.No.114, Ashok Pillar Centre, Vakadu to Sy.No.112, Nellipudi Village, Vakadu Mandal. Therefore, no ground is made out. After perusing the file, to the pointed query of the Court, whether the “agreed” endorsement by 2nd respondent can be treated as the reasons perceived by the 2nd respondent in passing the proceedings impugned or not, he submits that except the endorsement agreed, the 2nd respondent, from the record, it appears, has not recorded reasons or given his opinion on what are the valid reasons for permitting shifting of premises. He alternatively submits that Rule 2012 provides for grant of licence, identification of premises and also continuation of licences granted during the excise period. The 2nd respondent is entitled to take a decision on all these aspects within the period of licence. This Court

if is not satisfied with the decision making process of 2nd respondent, he submits that the proceedings impugned in the writ petition can be set aside and remitted to 2nd respondent for consideration afresh. The learned Government Pleader after perusing the record has made the above submissions.

Mr.O.Manohar Reddy, appearing for 4th respondent, contends that the petitioner is a rival trader. The challenge to proceedings in favour of a trader at the instance of a rival trader, according to him, is no more *res integra*. He prays for dismissing the writ petition on this ground alone. Adverting to the challenge of petitioner to the proceedings impugned in the writ petition, he contends that Rules 2012 take care of all situations viz., grant of licence, selling of liquor by shop and conditions of licence etc. According to him, the excise auctions are conducted with reference to notified area. In the case on hand, Mandal is the notified area. Rule 25 does not prohibit selecting a premises for establishment of licenced shop by a licensee, excepting that the location so chosen shall conform to explanation appended to Rule 25. Therefore, either at the commencement of licence period or during and in the course of excise year, there is no prohibition for shifting premises from place A to B. However, the request is not considered and accepted as a matter of course. In the case on hand, according to him, the request is neither considered nor accepted for the sake of asking by the 4th respondent. Therefore, in other words, after looking at the record, he contends that the procedure is to apply to 3rd respondent, which has been done and

who in turn has called for report from the Station House Officer, Prohibition and Excise Station Vakadu. The recommendations were made to 2nd respondent and they have been accepted and no exception can be taken to the decision of 2nd respondent. He further contends that the Rules give ample discretion by using the words “valid reasons” for shifting the premises. Therefore, insisting upon anything more than that would be reading into the applicable rule than what is intended by the rule making authority. He submits that there is justification for making the request to shift the licenced premises, for on account of the order of Hon’ble Supreme Court in *ARRIVE SAFE SOCIETY OF CHANDIGARH v. UNION TERRITORY OF CHANDIGARH AND ANOTHER* (SLP (CIVIL) No.10243 OF 2017) dated 11.07.2017, sales in shops are affected. The shops are re-located into mandal development roads and the business of 4th respondent is affected. Further, the residents of the locality where 4th respondent is carrying on business are also petitioning against 4th respondent. He relies on the decision reported in *ROPAN SAHOO AND ANOTHER V. ANAND KUMAR SHARMA AND OTHERS*¹ for the proposition that non-mentioning of reasons by 2nd respondent by itself does not vitiate the decision making process of 2nd respondent. The liberal approach to the power of judicial review of this Court, if is adopted, the petitioner failed to make out a ground for interfering with the proceedings impugned in the writ petition and he prays for dismissing the writ petition.

¹ (2013) 14 SCC 184

I have taken note of the submissions of the counsel appearing for the parties. Perused the record in the writ petition and also the record produced from the office of 2nd respondent. Briefly stated, the 4th respondent filed an undated representation requesting for shifting the licenced premises, as noted above. The representation refers to re-location of shop on the State and National Highways into major district roads and also the objections raised by the residents of the locality. From the file produced by 2nd respondent, check list and report are prepared on 26.07.2017 and forwarded to the Prohibition and Excise Superintendent, Gudur. The Prohibition and Excise Superintendent, Gudur in turn through the Deputy Commissioner, Prohibition and Excise, Nellore filed Rc.No.78/2017 and has forwarded the recommendation to the Additional Commissioner of Prohibition and Excise, A.P., Vijayawada. The communication dated 07.08.2017 does not refer to the letter dated 26.07.2017 of Station House Officer, Vakadu. It refers to a report dated 31.07.2017. The 2nd respondent by referring to the letter dated 09.08.2017 of Deputy Commissioner of Prohibition and Excise, Prakasam (sic) Nellore accepted the proposal for shifting the premises.

The scope of judicial review, particularly in matters of establishment of premises or shifting of premises is agreed to be limited, still the point for examination in the instant case is whether the decision of 2nd respondent satisfies the limited scope of judicial review of this Court or not. Apart from the omissions noted above, to appreciate the decision making process, even for the limited

purpose of judicial review, the following is excerpted from the record produced from the office of 2nd respondent:

“In view of the aforesaid reasons and keeping in view of the above rule position, on the recommendation of the Station House Officer, Vakadu, the request of the licence of G.SI.No.NL/238/2017-19 may be considered for shifting of present premises i.e., Survey No.114, Vakadu (V) of Vakadu (M) to proposed premises i.e., Survey No.63/1p, Nellipudi (V) of Vakadu (N4). In view of the above, the Deputy Commissioner of Proh & Excise, Nellore has submitted herewith the report of Station House Officer, Proh & Excise Station, Vakadu and Proh & Excise Superintendent, Gudur requested for necessary orders at an early date.

In view of the reports of the Proh & Excise Superintendent, Gudur and Deputy Commissioner of Proh & Excise, Nellore and above rule position necessary orders may be passed.

Submitted for orders.

KRISHNA PRASAD NALAGANDLA
(SENIOR ASSISTANT)

Note#2

The licensee of G.SI.No.NL/238/2017-19, Vakadu Mandal has submitted a representation with a request to shift her A4 shop from present premises i.e., Survey No.114, Vakadu (V) of Vakadu (Md) premises i.e., Survey No.63/1p, Nellipudi (V) of Vakadu(M) due to public protest against the establishment of A4 shop and state highway roads are converted in Mandal headquarters and Municipalities as major district roads and particularly the local villagers made an allegation to shift the A4 shop from the existing premises to new premises to safeguard their peace.

The P&E.S., Gudur further reported that he along with staff visited the inspected the new premises and found that the proposed premises is in accordance with Rule 25 of the A.P. Excise Rules 2012, and he is also submitted that there are no places of public worship, educational institutions and hospitals within 100 mts of proposed premises of A4 shop and permit room premises and 220 mts away from the outer edge of the State highway.

In view of the above rule position, on the recommendation of the Station House Officer, Vakadu, the request of the licensee of G.SI.No.NL/238/2017-19 may be considered for shifting of

present premises i.e., Survey No.114, Vakadu (V) of Vakadu (M) to proposed premises i.e., Survey No.63/1p, Nellipudi (V) of Vakadu(N4)., Gudur requested for necessary orders at any early date.

VENKATA VARA LAKSHMI DONDAPATI
(SUPERINTENDENT)

Note # 3

The request of the licensee of G.SI.No.NL/238/2017-19 for shifting of present premises i.e., Survey No.114, Vakadu (V) of Vakadu (M) to proposed premises i.e., Survey No.63/1p, Nellipudi (V) of Vakadu (N4), Gudur may be considered.

DEVA KUMAR MERIGA
(JOINT COMMISSIONER)

Note#4

agreed

P.LAKSHMI NARASIMHAM
(SPECIAL COMMISSIONER)

Note#5

DEVA KUMAR MERIGA
(JOINT COMMISSIONER)

Note#6

VENKATA VARA LAKSHMI DONDAPATI
(SUPERINTENDENT)

Note#7

As per the above note orders draft is put up below for approval

KRISHNA PRASAD NALAGANDLA
(SENIOR ASSISTANT)

Note#8

Draft approved

CHANKRA SEKHAR NAIDU ANAMANENI
(JOINT COMMISSIONER)

A look at the status or the file movement discloses that the file is moved by the Senior Assistant, endorsed by Superintendent and Joint Commissioner. The 2nd respondent has noted "agreed". This Court is not particular about the word used by 2nd respondent in matters of this nature. The file is moved for a decision to be taken by 2nd respondent under Rule 28 of Rules 2012. Ultimately a reason if

recorded by 2nd respondent is available, then, at least, it can be argued as a valid reason, and then this Court cannot and ought not to sit as a Court of appeal and re-examine the issue. It looks like the report of SHO has become either the basis or reasons for shifting the shop. The scheme and operation of issuing notification, declaration of notified areas, procedure for selection, acceptance of selected application as licensee and the application to obtain licence are stated in sufficient detail in Rules 2012. After obtaining licence, choice is given to a licensee to select the premises and such selection shall conform to the requirements of explanation of Rule 25. In the case on hand, the petitioner as well as 4th respondent selected the premises of their choice. The 4th respondent, now this Court is not pronouncing any view on the reasons stated by the 4th respondent for permitting shifting the licenced premises to the proposed shop i.e., the shop of petitioner. May be that the rules do not prohibit establishment of shops next to one another. The 4th respondent now after commencement of excise year, complaining losses and other inconveniences, requests for shifting the premises next to petitioner's shop. The record does not disclose the details of shops in the same locality or within the premises. It is in this background that the decision making process of 2nd respondent attracts importance and the decision must reflect the process undergone and finally the reasons that weighed with the 2nd respondent for permitting shifting the shop of 4th respondent from the existing premises to proposed premises. The observation of this Court ought not to be appreciated as expressing any view as a Court of appeal, but this Court is compelled to remark that the file

moved by Senior Assistant, lays emphasis upon the report of Station House Officer and, hence, it can be recommended. Therefore, right from the beginning there is no comprehensive examination of the request of 4th respondent and the jurisdiction conferred on 2nd respondent by Rule 28 of Rules 2012. At this point, this Court deals with the legal objection raised by counsel for 4th respondent by relying on the decision referred to above. Firstly, the decision relied on is distinguishable for the reason recorded by the High Court for interdicting with an order passed by the Government is that the final recommending authority has not referred to provision of law under which such a recommendation can be made. The Hon'ble Supreme Court after verifying the facts of the case found that the officers subordinate to Commissioner have referred to the power and jurisdiction for such a recommendation and, therefore, the order of the High Court was reversed. The decision making process, in the case on hand, is already excerpted above and this Court ought not to place reliance on the decision relied on by the 4th respondent in spite of noticing the irregularities in the decision making process and reject the writ prayer. As the petitioner is also not questioning or challenging the jurisdiction of 2nd respondent to consider a request for shifting the shop within the notified area, this Court is of the view that the writ petition can be ordered as follows:

The proceedings impugned in the writ petition are set aside and the matter is remitted to the 2nd respondent for consideration and disposal of request of 4th respondent in accordance with Rule

28 of Rules 2012 within one week from date of receipt of a copy of this order.

The petitioner, if so advised, is given liberty to send a representation by enclosing a copy of this order to 2nd respondent for consideration on the request of 4th respondent for shifting the premises.

The writ petition is, accordingly, ordered. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, stand closed.

26th October, 2017

*Issue CC in (2) days
B/o Stp/Lrkm*



S.V.BHATT, J