

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.11790 OF 2008

ORDER:

The case of the petitioner is that he was granted IL-24 licence at Koyyuru, Malhar Mandal, Karimnagar District for the excise year 2000-2001 for running a liquor shop under the provisions of the A.P.Indian Liquor and Foreign Liquor Rules, 1970. Later due to threat from extremists, the petitioner submitted an application to the 1st respondent-The Commissioner for Prohibition and Excise, Nampally, Hyderabad, seeking permission to shift the licensed premises from Koyyuru, Malhar Mandal to Mangalpalli Hamlet of Peddampet Village of Kamanpur Mandal, Karimnagar District. The 1st respondent considered the said representation and accorded permission vide G.O.Rt.No.737, dated 23.05.2003 by fixing the license fee @ Rs.4.50 lakhs, as if the population of the Mangalpalli Village is above 10,000. It is submitted that the Government issued Karimnagar Gazette Notification No.23, dated 04.07.2002, exercising the powers under Sub section 4 and 5 of Section 3 of the Andhra Pradesh Districts (Formation) Act, 1974, bifurcating the Jallaram Revenue Village into three villages i.e. Jallaram, Venkataraoopalli and Peddampet revenue villages; that since the Peddampet Village is a separate village and its population is only 3,274 and the licensed premises of the petitioner falls within the limits of Peddampet Village, the respondents ought to have fixed the license fee @ Rs.3.00 lakhs p.a. only as the

population of Peddampet revenue village is less than 10,000. Questioning the same, the petitioner submitted an application dated 17.10.2003 requesting the authorities to fix the license fee @ Rs.3.00 lakhs per annum, and the 2nd respondent-The Prohibition and Excise Superintendent, Karimnagar, by his proceedings dated 04.11.2003 has forwarded the application of the petitioner along with the report of SHO, Godavarikhani and the certificate issued by the Mandal Revenue Officer, Kamanpur, to the 1st respondent. Inspite of the same, the 1st respondent has not taken any action. Challenging the inaction of the 1st respondent in taking action against the application of the petitioner, petitioner filed WP.No.8584 of 2004 and this Court by order dated 13.04.2004, disposed of the said writ petition directing the 1st respondent to consider the representation of the petitioner and pass appropriate orders within a period of four weeks. Thereafter, the 1st respondent by proceedings Cr.No.18909/CPE/2003/G4, dated 01.06.2004, rejected the petitioner's application on the ground that the population of Jallaram as per 2001 census is 11,010. The grievance of the petitioner is that the 1st respondent without considering the certificate issued by the Mandal Revenue Officer, Kamanpur dated 10.01.2003 and the Gazette notification which was issued bifurcating the Jallaram Village into three revenue villages, has arbitrarily fixed the license fee @ Rs.4.50 lakhs per annum by taking into consideration that the licensed premises is situated within the limits of Jallaram

revenue village. Aggrieved by the proceedings dated 01.06.2004 issued by the 1st respondent rejecting the representation of the petitioner, present writ petition is filed.

2. The 2nd respondent filed counter affidavit in the main writ petition as well as amendment petition stating that after receiving the application from the petitioner seeking permission to shift the licensed premises from Koyyuru, Malhar Mandal to Mangalpalli Hamlet of Peddampet Village of Kamanpur Mandal, Karimnagar District, he forwarded the application along with report of SHO, Godavarikhani and certificate issued by MRO, Kamanpur wherein it is stated that the Government issued Karimnagar Gazette Notification No.23, dated 04.07.2002 bifurcating the Jallaram Revenue Village into three villages i.e. Jallaram, Venkatraopalli and Peddampet as revenue villages and that the proposed village where the petitioner want to shift his shop falls within the limits of Peddampet Village and the population of Peddampet Village is 3,274; that the 1st respondent has requested the Government to consider the request of the petitioner for shifting the licensed premises subject to payment of shifting fee of Rs.10,000/- and also payment of differential license fee; and that the Government after careful examination of the matter and in relation of Rule 35(2) of the A.P.Indian Liquor and Foreign Liquor Rules, 1970 (*for short 'the Rules'*) considered the application as a special case and accorded permission for shifting of wine shop as there is threat from extremists subject to payment of shifting fee as well

as differential license fee vide G.O.Rt.No.737, Revenue Department, dated 23.04.2003. It is also stated that the representation dated 17.10.2003 submitted by the petitioner for reduction of license fee was rejected taking into cognizance of the final publication of census-2001, according to which the population of Jallaram is 11,010. It is further stated that the petitioner received impugned proceedings dated 01.06.2004 and in the impugned proceedings earlier proceedings dated 27.02.2004 were also referred. As such, the petition filed by the petitioner seeking amendment for challenging the proceedings of the 1st respondent dated 27.02.2004, after a period of eight years cannot be granted.

4. Learned counsel for the petitioner submits that the petitioner made application for shifting of premises and that by the time of according permission by the 1st respondent vide G.O.Rt.No.737 dated 23.05.2003, Gazette Notification No.23, dated 04.07.2002 was issued bifurcating the Jallaram Revenue Village into three parts i.e. Jallaram, Venkatarapalli and Peddampet revenue villages and that as the population of Peddampet revenue village is less than 10,000 i.e 3274, the respondents should have fixed the license fee @ Rs.3,00,000/- per annum. But, the respondents fixed the license fee @ Rs.4,50,000/- and the petitioner had to pay the same on pressure. He also submits that by the date of according permission to the petitioner to shift his shop, Peddampet village is in existence and as per the certificate issued by the MRO,

Kamanpoor dated 10.01.2003, the population of Peddampet is 3,274 i.e. below 10,000 which fact was not considered by the authorities while disposing of the representation dated 17.10.2003 submitted by the petitioner for fixing the license fee @ Rs.3.00 lakhs. Even the certificate issued by the Mandal Revenue Officer, Kamanpoor dated 10.01.2003 also clearly envisages that the population of Peddampet village is only 3,274.

5. On the other hand learned Government Pleader for Prohibition and Excise submits that as per Rule 3(q) of the Rules, 1970, population means the figure of population as published in the latest census; and that for the excise years 2003-2004 and 2004-2005 as the population of Jallaram village as per the latest census i.e.2001, is more than 10,000 the petitioner has to pay license fee @ 4.5 lakhs per annum. He also submits that at the time of census of 2001, Peddampet was one of the wards in the Jallaram village; and that as per the census of 2001 the population of Jallaram village is 11,010, as such, the respondent authorities have rightly considered the representation of the petitioner and rejected the application of the petitioner for reduction of license fee. He also submits that the petitioner has not challenged the G.O.Rt.No.737, dated 23.04.2003 wherein the application of petitioner for shifting of his shop was granted subject to payment of shifting fee as well as differential license fee, as such, no relief can be granted.

6. In this case, it is necessary to extract relevant provisions of the A.P.Indian Liquor and Foreign Liquor Rules, 1970, which reads as follows;

3 (q): “*population*” means the figure of population as officially published in the latest Census.

(r) ‘*village/town/city etc.*’ shall be as defined in the latest census.

The same is amended vide G.O.Ms.No.151, dated 30.03.2002 by adding the following;

In clause (q) for the proviso the following proviso shall be substituted namely:-

“Provided that for the lease year 2002-2003, the population would mean the figures of population as published in the 2001 census.

In clause (r) for the proviso the following shall be substituted namely:-

“Provided that for the year 2002-2003 they shall be as defined in the 2001 census.”

7. The license fee is fixed basing on the population of the latest census. The population of Jallaram village as per the latest census published in the year 2001 was 11,010 and the same was produced before this Court which shows that Jallaram Village is a revenue village and the population is 11,010. The respondents through G.O.Rt.No. 737, dated 23.04.2003 granted permission to the petitioner for shifting his premises on condition of payment of shifting fee and differential license fee. In the said G.O. it is clearly stated that the

population of Jallaram Village is more than 10,000; and that the existing licensed premises of the petitioner is under the slab of Rs.3.00 lakhs license fee and the proposed place where the petitioner intends to shift the premises is under the slab of Rs.4.50 lakhs, as such, permission would be granted subject to payment of shifting fee and also differential license fee. The petitioner has not questioned the said G.O, but, made application subsequently on 18.08.2003, and the same was rejected by the respondents on 27.02.2004. The petitioner again made an application on 17.10.2003 and the same was also rejected by proceedings dated 01.06.2004. Initially, the petitioner challenged proceedings dated 01.06.2004, but by way of amendment application vide WP.MP.No.20825/2016 the petitioner want to challenge the rejection proceedings dated 27.02.2004. When once the shifting permission is granted by way of G.O.Rt.No.737, dated 23.04.2003, imposing certain conditions, without challenging the said G.O., the petitioner cannot be granted the present relief. Moreso, Peddampet village was not a revenue village at the time of publishing census in the year 2001, as such, the license fee for the year 2003-04 was decided basing on the latest census i.e. 2001. As per Rule 3 (r) the village is defined as per the latest census for granting licenses for the year 2003-2004. As per Rule 3 (q) as amended under G.O.Ms.No.151, dated 30.03.2002, the population would mean the figures of population as published in the 2001 census only. A reading of Rule-3 (q) (r) as amended in G.O.Ms.151, goes

to show that the Jallaram village was the revenue village as per 2001 census and the population is 11,010. In view of the same, when Peddampet village was not a revenue village at the time of publishing latest census in the year 2001, the contention of the learned counsel for the petitioner cannot be acceded to. Further the decisions relied on by the petitioner have no relevance for deciding the *lis* in the present case.

8. In view of the same, I do not see any merits in the writ petition, accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

22.06.2017
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A.RAJASHEKER REDDY, J

