

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

W.P.Nos.18432 and 21504 of 2017

COMMON ORDER:

Since the petitioners in these two writ petitions share common grievance, this Court deems it appropriate and apposite to dispose of these writ petitions by way of this common order.

2. Heard Sri Ramachandra Reddy, learned counsel for the petitioner in W.P.No.18432 of 2017 and Sri Laxmikanth Reddy Desai, learned counsel for the petitioner in W.P.No.21504 of 2017 and the learned Government Pleader for Prohibition and Excise for the State of Andhra Pradesh for the official respondents and Sri V.R. Reddy appearing for Smt.Parneetha, learned counsel for R.7 in both the writ petitions apart from perusing the material available before the Court.

3. In both these writ petitions, challenge is to the notice bearing Rc.No.70/2017/A, dated 25.04.2017 and the provisional license issued vide Rc.No.70/2017/A, dated 27.04.2017 by the Prohibition and Excise Superintendent, Chittoor are under challenge.

3. On 24.03.2017, the Prohibition and Excise Superintendent, Chittoor, Andhra Pradesh issued notification for A.4 shops within his jurisdiction and by virtue of the said notification Shop Nos.110 to 118, falling under Punganur Municipal Limits were also notified. In respect of Shop Nos.110 to 117 licenses were granted earlier for the period 2015 to 2017 and the license period for such shops were valid till 30.06.2017. The dispute in these two writ petitions is with regard to shop No.118. Respondent No.7, Smt Sudha Rani and Sri Jayaram were the licensees of Shop Nos.117, 123 and 114 for the period ending by 30.06.2017. In response to the above

said notification, petitioners, 7th respondent, Sudha Rani and Jayaram and Rajanna applied for Shop No.118. The authorities conducted Lots as per Rule 12 of the Rules and pursuant to the same respondent No.7 in W.P.No.18432 of 2017 was declared selected in the Lots conducted on 31.03.2017. In pursuance to the said Lots, the Excise Superintendent, consequent upon the permission granted by the Commissioner of Prohibition and Excise, issued impugned notice bearing Rc.N0.70 /2017/A dated 25.04.2017, calling upon the 7th respondent to submit his willingness to surrender his existing shop for the year 2015-2017 in order to issue license for A.4 shop No.118 of Punganuru Station limits. As a sequel to the same, the Prohibition and Excise Superintendent also issued a provisional license in favour of the 7th respondent vide Rc.No.70/2017/A dated 27.04.2017.

4. In the above background, the present writ petitions have been filed assailing the said proceedings of the Prohibition and Excise Superintendent, Chittoor.

5. A counter affidavit, deposed by the Prohibition and Excise Superintendent, Chittoor is filed and a counter is also filed by the 7th respondent licensee.

6. According to the learned counsel appearing for the petitioners in both the writ petitions, the impugned action is highly arbitrary, without jurisdiction and violative of Article 14 and 19 (1) (g) of the Constitution of India besides being opposed to the very spirit and object of the provisions of Andhra Pradesh Excise Act, 1968 and the Andhra Pradesh Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012.

7. In elaboration, it is further submitted that since the license of the 7th respondent was subsisting till 30.06.2017, the respondent authorities

grossly erred in granting license in favour of the 7th respondent and the said action is in contravention of Rule 12 (8) of the said Rules. It is further submitted that though the petitioner herein submitted a representation on 03.04.2017, the respondent authorities did not take any action on the same. It is further submitted that the respondent authorities ought not to have permitted the existing licensees to participate in the Lots in view of the above provisions of law.

8. On the contrary, it is contended by the learned Government Pleader so also the learned counsel for the 7th respondent 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 on the part of the respondent is not amenable for any judicial review under Article 226 of the Constitution of India. It is the further submission of the learned counsel that Sub-Rule (8) of 2012 Rules has no application and does not debar the 7th respondent from participating in the process and the contingencies stipulated therein can be made applicable only in respect of the current notification and cannot be extended to the leases already granted and existing. It is further submitted that the present writ petitions are also liable to be dismissed on the ground that earlier the 7th respondent herein approached this Court by way of filing W.P.No.12427 of 2017, questioning the inaction on the part of the official respondents in issuing A.4 license and this Court disposed of the said writ petition by way of an order dated 07.04.2017, directing the official respondents herein to consider the representation of the 7th respondent dated 03.04.2017 by allowing him to retain the shop at Sl.No.118.

9. In the above background, now the issue that emerges for consideration of this Court is_ “Whether the impugned action on the part of the respondent authorities is sustainable and tenable?”.

10. The principal contention as evident from the above narration advanced on behalf of the petitioners is that in view of the express provision of Sub-Rule 8 of Rule 12 of the Rules, the respondent authorities grossly erred in granting license in favour of the petitioner herein.

11. On the other hand, as observed supra, the contention of the learned counsel for the 7th respondent is that the said provision of law does not impose any prohibition on the 7th respondent to participate in the process and the said provision cannot be made applicable to the facts and circumstances of the present case. In order to resolve the said issue it may be appropriate to refer to the said provision of law, which reads as under:

“12 (8): No person shall be entitled to hold licence for more than one shop. In the event of a person being selected for a shop, all the other application(s) filed by him in respect of any other shop(s) shall automatically become invalid and the successful applicant, who has filed applications for more than one shop, shall immediately inform the details of other applications filed by him so as to declare them invalid.”

12. In this context, it may also be appropriate to refer to Rule 12 (6) (d) of the Rules, which stipulates that where there are more than one application for a notified shop, the selection shall be by drawl of LOT by the Collector in the presence of applicants. It is also very much evident from a reading of sub-Rule 8 of Rule 12 that there cannot be more than one license in favour of one individual and the said provision of law also imposes obligation on the selected licensee to inform the same to the authorities concerned.

13. As rightly pointed out by the learned counsel for the petitioners, the said provision of law needs to be construed and read in toto, but not in isolation. If it is read in entirety, it can be safely concluded that there is

absolutely no prohibition on the existing licensee to participate in the process pursuant to the fresh notification. It is also significant to note that when the 7th respondent approached this Court questioning the inaction on the part of the respondent authorities, this Court disposed of the said writ petition and this Court in the said order held as under:

“In those circumstances, the writ petition is disposed of directing the respondents to consider the representation dated 03.04.2017 of the petitioner by allowing him to retain the shop at Sl.No.118. No order as to costs.”

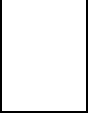
14. Obviously, taking into account the said order passed by this Court, the respondent authorities granted license in favour of the petitioners herein and there is no dispute that the said order passed by this Court is in tact and no appeal is preferred against the said order. In the circumstances, this Court has no traces of doubt to hold that these two writ petitions do not merit any consideration.

15. Accordingly, the writ petitions are dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 06.09.2017

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



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Dated 06.09.2017

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