

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

WRIT PETITION Nos.26587 and 25162 of 2017

COMMON ORDER:

Since these two writ petitions are interrelated, this Court deems it appropriate to dispose of these writ petitions by way of this common order.

Heard Sri M. Suryanarayana, learned counsel for the petitioner in W.P.No.25162 of 2017, Smt. K. Sridevi, learned counsel for the petitioner in W.P.No.26587 of 2017 and the learned Government Pleader for Prohibition and Excise for the respondents.

W.P.No.25162 of 2017 is filed for the following relief:

“...to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents 1 to 5 by giving permission to the 6th respondent to shift the liquor shop from Periguchettu Centre, I Town, Eluru, West Godavari District to Ambica Theatre Centre, Eluru, West Godavari District without considering the representations of the petitioner dated 21.07.2017 and 22.07.2017 is illegal, arbitrary and against the principles of natural justice and also violative of Articles 14, 19 and 21 of the Constitution of India and also against the rules of Excise Act and consequently direct the respondents 1 to 5 not to give permission to shift the liquor shop of the 6th respondent liquor shop in the interest of justice.”

W.P.No.26587 of 2017 is filed for the following relief:

“...to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned notice dt.30-07-2017 vide letter e-office No.724749/2017/A1 issued by the 5th respondent as illegal, arbitrary, contrary to the A.P. Excise Act and A.P. Excise (Grant of License of Selling by Shop and Conditions of license) Rules, 2012, and violation of principal of natural justice and set aside the same and consequently direct the respondents not to interfere with the business of the A4 shop of the petitioner.”

The prohibition and excise Superintendent, Eluru, West Godavari District, granted A4 licence in favour of the

petitioner in W.P.No.26587 of 2017 for the period commencing from 01.04.2017 to 31.03.2019 in the premises bearing D.No.4-5-4, Division No.13, Eluru Municipal Corporation vide licence bearing No.WG/6/2017-19, dated 26.07.2017.

According to the petitioner in W.P.No.25162 of 2017, grant of licence in favour of the petitioner in W.P.No.26587 of 2017 is contrary to the provisions of the A.P. Excise Act, 1968 and the Rules framed therein. It is also his case that nearby the subject premises there are Anjaneyaswamy and Ammavari temples, BSNL office and also schools.

On the other hand, it is the case of the petitioner in W.P.No.26587 of 2017 that strictly adhering to the provisions of the A.P. Excise Act and the Rules framed thereunder, the respondent authorities granted A4 licence in favour of the petitioner and in the absence of any violation of the provisions of the statute and the rules, the respondent authorities cannot ask the petitioner to select another premises for no fault of it. It is the submission of the learned counsel that the impugned notice bearing e-office No.724749/2017/A1, dated 30.07.2017, is in patent violation of the principles of natural justice.

Admittedly, the impugned notice, dated 30.07.2017, issued by the Prohibition and Excise Superintendent asking the petitioner to shift the shop is not preceded by any show cause notice. In the considered opinion of this Court, the

said action on the part of the respondent authorities is a clear violation of the principles of natural justice, since it is settled principle of law that any action, which has civil consequences, must necessarily be preceded by a notice and opportunity of hearing to the persons likely to be affected by such action.

In the instant case, the said principle is not followed. Therefore, in the facts and circumstances of these cases and taking into consideration the submissions of the learned advocates and the learned Government Pleader, this Court deems it appropriate to dispose of these writ petitions, keeping it open for the petitioner in W.P.No.26587 of 2017 to submit its explanation to the notice, dated 30.07.2017, by treating the same as show cause notice, within a period of one week from the date of receipt of a copy of this order and if any such explanation is filed within the time stipulated, the same be considered and further action shall be taken in accordance with law, after hearing the petitioners in W.P.Nos.26587 and 25162 of 2017, within a period of two weeks thereafter. There shall be no order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

A.V.SESHA SAI, J

Date: 11.08.2017
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