

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

**WRIT PETITION Nos.21708, 21744, 21754, 21775, 21829,
21848, 21881 & 21896 OF 2017**

COMMON ORDER:

As the issue involved in all these writ petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

2. All these writ petitions are filed assailing the action of the 4th respondent-the Prohibition & Excise Superintendents in Gajuwaka at Sheelanagar, Anakapalli and Visakhapatnam, rejecting the applications of the petitioners for establishment of A4 shops/2-B bars on the ground that the premises selected by the petitioners falls within 500 meters to the National Highway No.16 through impugned orders in the writ petitions.

3. In all the writ petitions, the petitioners are seeking licences or renewal of licences for establishing A4 shops/2-B bars. In pursuant to notification vide Gazette No.18, dated 24.03.2017 issued by the Prohibition & Excise Superintendent, Visakhapatnam inviting intending applicants to file their applications for consideration to grant of licence through draw of lots, the petitioners enrolled themselves for the same through online. There were totally 154 numbers of A4 shops notified in Greater Visakhapatnam Municipal Corporation ('for short 'GVMC') limits and that the registration of applications is through online only. All the petitioners have become successful bidders in the drawal of lots held on 31.03.2017. It is stated that as per the

notified Excise Policy, lots have to be drawn shop wise and the selected applicants would be given liberty to establish shop anywhere in the Mandal/Nagarpanchayat/Municipality/Municipal Corporation as the case may be. All the petitioners have submitted required documents for grant of permission to establish the subject shops at their respective premises within the limits of GVMC, by paying required licence fee through challan within time stipulated along with bank guarantee for the equal amount towards the second year licence fee from the Nationalized Bank, before the 4th respondent-Prohibition and Excise Superintendent, who in turn received and acknowledged the same. But quite surprisingly, petitioners received impugned orders from the 4th respondent-Prohibition & Excise Superintendent, rejecting their applications on the ground that the premises in which the petitioners are proposed to establish A4 shops/2-B bars, falls within 500 meters to National Highway which is in contravention of the judgment of the Hon'ble Supreme Court made in Civil Appeal No.12164 to 12166 dated 15.12.2016 and also Rule 25(1)(i)(b) of A.P. Excise (Grant of License of selling shop and conditions of License) Rules, 2012 & Rule 11 (iii) of the A.P. Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2017. It is also stated in the impugned order that the Project Director, National Highway Authority of India (NHAI), PIU, Visakhapatnam has stated that the stretch passing through Visakhapatnam city is NH-16, since no de-notification is issued and basing on the said letter of the Project Director, NHAI, PIU,

Visakhapatnam, the present impugned orders have been issued. Aggrieved by the same, present writ petitions are being filed.

4. Heard learned counsel for the petitioners, learned Government Pleader for Prohibition & Excise and Sri S.S.Varma, learned Standing Counsel for National Highways Authority of India.

5. Learned counsel for the petitioners submits that the Government of India issued Gazette notification No. S.O.689 (E), dated 04.04.2011, in exercise of the powers conferred by sub-sections (2) and (3) of Section 2 of the National Highways Act, 1956 (48 of 1956), and in supersession of the notification of the Government of India in the Ministry of Road Transport and Highways, issued vide number S.O.542 (E), dated 5th March, 2010, except as respects things done or omitted to be done before such supersession, the Central Government substituted the schedule to the National Highways Act, 1956, mentioning the National Highway numbers in force before the said notification as “old National Highway (NH) numbers” under column (4) and New National Highway numbers as per the said notification under column (2) of the Schedule. In the said notification National Highway -16 is constituted within old National Highway numbers i.e., 5, 6, 60 & 217. He further submits that subsequently, the Government of India issued another notification by the Ministry of Road Transport and Highways on 01.05.2015 amending the earlier notification of the Government of India by the Ministry of Road Transport and Highways published in the Gazette of India vide No.S.O.689 (E), dated 04.04.2011 with regard to Serial No.49

and National Highway No.16, wherein there is no mention of 'Visakhapatnam', as such, the same was omitted. He further submits that only basing on the letter of the Project Director, NHAI stating that the stretch of National Highway is passing through Visakhapatnam, the applications of the petitioners were erroneously rejected by the Prohibition and Excise Superintendent. He further submits that when they applied under Right to Information Act, 2005 seeking clarification with regard to Gazette Notification No.S.O.1150 (E), dated 01.05.2015, MORTH re-aligned portion of new NH No.16, in the State of Andhra Pradesh and also whether the Ministry of Road Transport and Highways is required to issue a separate notification under sub-section 3 of Section 2 of the Act of 1956, if any substitution is made to the entries in the schedule of the said Act as seen in the case of Gazette Notification No.S.O.1150 (E), dated 01.05.2015, the said aspect was clarified by concerned authority under the Government of India, Ministry of Road Transport & Highways, dated 24.05.2017 in negative. He also submits that in similar circumstances counter affidavit is filed by the 4th respondent in W.P.No.19074 of 2017 and that this Court, after considering the averments in the said writ petition granted interim orders, suspending the rejection of the application of the petitioners therein. Hence, sought for setting aside the impugned orders in the writ petitions.

6. Learned Government Pleader for Prohibition & Excise submits that the premises selected by the petitioners falls within 500 meters of National Highways as per the letter submitted by

the Project Director, NHAI, as such, the Prohibition & Excise Superintendent rightly rejected the applications of the petitioners, as licenses cannot be granted in such premises in view of Judgment of Hon'ble Supreme Court in Civil Appeal No.12164, dated 15.12.2016.

7. Counter affidavit filed by the 4th respondent in W.P.No.19074 of 2017 is placed before this Court and the learned counsel appearing for the petitioners also states that similar issue arose in the said writ petition.

8. In the counter affidavit filed by the 4th respondent in W.P.No.19074 of 2017, it is stated that the concerned authority i.e., Project Director, National Highway Authority of India, PIU, Visakhapatnam has stated that the stretch passing through Visakhapatnam City is the N.H.16 (since no de-notification issued) vide Lr. No.NHAI/12500-E/PIU-VSP/RTI/2014/20340, dated 16.05.2017. It is also stated that the rejection orders are issued by the 4th respondent is to comply with the Supreme Court Judgment dated 15.12.2016 in Civil Appeal No.12164-12166 of 2016 and as per Rule 25 (1)(i) (b) of A.P. Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012 and that the same was confirmed by the concerned authority i.e., Project Director, NHAI, vide proceedings dated 16.05.2017, as such, action taken by the 4th respondent is legal and valid as per law.

9. In view of above factual background, in order to appreciate the rival contentions, it is necessary to extract relevant provisions of law. It is to be seen that relevant Rules for granting of licence in respect of A4 shops/2-B bars are contained in G.O.Ms.No.391,

Revenue (Excise-II), Department, dated 18.06.2012 known as Andhra Pradesh Excise (Grant of Licence of Selling by Shops and Conditions of Licence) Rules, 2012 and same are amended vide G.O.Ms.No.112, dated 22.03.2017. In the said Rules 2 (h) was substituted and reads as follows:-

“Highway means a National Highway or a State Highway as notified by the competent authority”

Rule 25 (1) (b) of the Rules as amended, reads as follows:

(b) No shop for the sale of liquor shall be (i) visible from a national or state highway (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 Mts. of the outer edge of the national or state highway or of a service lane along the highway”.

As per Rule 3 (k) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2017, contained in G.O.Ms.No.235, dated 23.06.2017 (for short ‘Rules 2017’) ‘High Way” means National Highway or State Highway as notified by the competent authority. Rule 11 of the said Rules, 2017 provides for restrictions on the grant of licence.

Rule 11 (1) A licence in Form-2B or 2B(P) shall not be granted.

(i) Unless the premises has:-

(a).....

(b).....

(c).....

(d).....

(e).....

(ii)

(iii)

(iv) Within a distance of 500 Mts. of the outer edge of the national or state highway or of a service lane along the highway and the premises shall not be either visible or directly accessible from a national or state highway.

Provided that in case of areas comprised in local bodies with a population of 20,000 or less, the distance shall be 220 Mts.”

Section 2 of the National Highways Act, 1956 reads as follows:

“2. Declaration of certain highways to be national highways_

- (1) Each of the highways specified in the Schedule is hereby declared to be a national highway
- (2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.
- (3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.

Section 3 of the National Highways Act, 1956 reads as follows:

“3. Definitions:- In this Act, unless the context otherwise requires,

- (a) “competent authority” means any person or authority authorized by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;

As per Notification issued by the Government of India, Ministry of Road Transport and Highways, dated 04.04.2011, in exercise of powers conferred by sub-sections (2) and (3) of Section 2 of the National Highways Act, 1956 (48 of 1956), the stretch of NH 16 corresponding to NH 5, 6, 60 & 217 is passing through Visakhapatnam and accordingly the same is substituted in the S.No.49 of Schedule to the Act. Notification dated 04.04.2011 reads as follows:

“SCHEDULE
(See Section 2)
National Highways

Sl. No.	New NH No.	Description of National Highways (NHs)	Old NH No.
49	16	The highway starting from its junction with NH-19 near Kolkata connecting Kharagpur in the State of West Bengal, Baleshwar and Bhubaneswar in the State of Orissa, Vishakhapatnam , Vijayawada, Nellore in the State of Andhra Pradesh and terminating at its junction with NH-48 near Chennai in the State of Tamil Nadu	5, 6, 60 & 217

However, the said notification was amended by the Government of India by issuing Notification, S.O.1150 (E), dated 01.05.2015, exercising powers conferred by sub-section (2) of Section 2 of National Highways Act, 1956 (for short ‘the Act of 1956’), which reads as follows:

“MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

NOTIFICATION
New Delhi, the 1st May, 2015

S.O.1150(E).__In exercise of powers conferred by sub-section (2) of Section 2 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Road Transport and Highways published in the Gazette of India, Extraordinary. Part II.Section 3, Sub-section (ii) vide number S.O.689 (E), dated, the 4th April, 2011, namely:-

In the Schedule, for serial number 49 and entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)
49	16	The highway starting from its junction with NH-19 near Kolkata connecting Kharagpur in the State of West Bengal, Baleshwar and Bhubaneshwar in the State of Orissa, Anandapuram, Pendurthi, Anakapalli, Vijayawada, Nellore in the State of Andhra Pradesh and terminating at its junction with NH-48 near Chennai in the State of Tamilnadu”.

In the aforesaid notification dated 01.05.2015, Visakhapatnam stood deleted/omitted. When a clarification is sought under Right to Information Act, on 22.05.2017 with regard to assignment of any National Highway Number, after Gazette Notification No.S.O.1150 (E), dated 01.05.2015 issued by the Government of India, Ministry of Road Transport & Highways and also whether the Ministry of Road Transport and Highways is required to issue a separate notification under sub-section 3 of Section 2 of the Act of 1956, if any substitution is made to the entries in the schedule of the said Act, the concerned authority replied vide proceedings dated 24.05.2017 in negative which is

referred to supra. The clarification dated 24.05.2017 given by Ministry of Road Transport and Highways, reads as follows:

**“No.NH-15016/23/2017-P&M
Government of India
Ministry Road Transport & Highways**

Transport Bhawan,
No.1, Parliament Street,
New Delhi, Dated 24th May, 2017.

To:

Shri Mohan Krishna Grandhi,
Door No.45-58-1/7, Flat 401, 402,
Vivek Towers, Narasimha Nagar,
Visakhapatnam,
Andhra Pradesh-530024.

Subject: Application under RTI Act, 2005-providing information thereof.

Sir,

Sir with reference to your RTI application registration number MORTH/R/2017/51037 dated 22.05.2017, the information pertaining to this zone is as follows:-

Information sought	Reply
Is Ministry of Road Transport and Highways required to issue a separate notification under sub-section 3 of Section 2 of the said act if any SUBSTITUTION is made to the entries in the SCHEDULE of the said act as seen in the case of Gazette Notification No.S.O.1150 (E) dated 01.05.2015.	No

2. The Appellate Authority is Mrs. Maya Prakash, Director (P&B), Ministry Road Transport & Highways, Room No.237, Transport Bhawan, 1-Parliament Street, New Delhi-110001 and his official telephone number is 011-23710454.

Yours faithfully

Sd/-
(Manish Kumar Singh)
Under Secretary to the Government of India & de-facto IPO
Tel.No.23714001”

**“No.NH-15016/23/2017-P&M
Government of India
Ministry Road Transport & Highways**

Transport Bhawan,
No.1, Parliament Street,
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To:

Shri Mohan Krishna Grandhi,
Door No.45-58-1/7, Flat 401, 402,
Vivek Towers, Narasimha Nagar,
Visakhapatnam, Andhra Pradesh-530024.

Subject: Application under RTI Act, 2005-providing information thereof.

Sir,

Sir with reference to your RTI application registration number MORTH/R/2017/51038 dated 22.05.2017, the information pertaining to this zone is as follows:-

Information sought	Reply
In Gazette Notification No.S.O.1150 (E) dated 01.05.2015, the MORTH re-aligned a portion of new NH No.16 in the State of Andhra Pradesh. The stretch of the said NH which falls under the old route (portion before realignment) is not assigned any new NH number and is not specified in the SCHEDULE of the National Highways Act, 1956. Can this particular stretch of the Highway still be treated as a National Highway despite it not being specified in the SCHEDULE of the National Highways Act, 1956	No

3. The Appellate Authority is Mrs. Maya Prakash, Director (P&B), Ministry Road Transport & Highways, Room No.237, Transport Bhawan, 1-Parliament Street, New Delhi-110001 and his official telephone number is 011-23710454.



Yours faithfully

Sd/-
(Manish Kumar Singh)
Under Secretary to the Government of India & de-facto IPO
Tel.No.23714001”

In view of above clarification issued by the concerned authority, it can be concluded that “Visakhapatnam” was deleted/omitted from the earlier notification issued by the Government of India, Ministry of Road Transport & Highways dated 04.04.2011. As such, it cannot be said that National Highway No.16 is passing through ‘Visakhapatnam’.

10. A perusal of the impugned proceedings goes to show that the Projector Director, NHAI, issued letter dated 16.05.2017 stating that earlier notification was not de-notified, deleting the Visakhapatnam from the NH-16, as such, the applications of the petitioners were rejected. Section 2(3) of the Act of 1956 provides

that Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway. Admittedly, the Government of India, Ministry of Road Transport & Highways by notification dated 01.05.2015, substituted S.No.49 of Schedule to the Act pertaining to National Highway-16 and Vishakhapatnam does not find place in the Schedule. As per sub-section 1 of Section 2 of the Act, each of the highways specified in the Schedule is declared to be a national highway. The Project Director, NHAI, without properly understanding the purport of notification dated 01.05.2015, issued a certificate erroneously, which was relied on by the licencing authority-4th respondent, the competent authority. More so, the licencing authority-4th respondent should have issued notice before rejecting the applications of the petitioners and should have clarified the same. Admittedly, no notice was issued to the petitioners before passing orders rejecting the applications of the petitioners.

11. When once Schedule to the Act as amended by notification dated 01.05.2015 does not contain Vishakhapatnam, question of de-notification or omitting as per Section 2(3) of the Act does not arise. Even as per clarification given by Central Government referred to above, de-notification under sub-section 3 of Section 2 of the Act is not required and the particular stretch in S.No.49 pertaining NH -16 omitted in notification S.O.1150 (E), dated 01.05.2015 cannot be treated as National Highway.

12. Moreover, Rule 25 of the Andhra Pradesh Excise (Grant of Licence of Selling by Shops and Conditions of Licence) Rules, 2012, which are amended vide G.O.Ms.No.112, dated 22.03.2017 and Rule 11 (iv) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2017 introduced by virtue of Judgment of the Hon'ble Supreme Court referred to supra, contains prohibitions for granting of licences within 500 meters from State High Ways also apart from National High Ways. Since the rejection of applications of the petitioners for grant of A4 shop licences and Form 2-B Bar licences is on the ground that the proposed shops are within 500 meters of National High Ways only, but not State Highways, as such, this court has not expressed any opinion on that aspect. It is for the licencing authority to consider that aspect while reconsidering the applications.

13. It is also brought to the notice of this Court that some of the petitioners carried on business in the same premises and notices were issued for shifting the premises basing on the judgment of the Hon'ble Supreme Court referred to supra, several writ petitions were filed, wherein this Court granted interim orders. When once 'Visakhpatnam' is not found in Schedule to the Act of 1956, as part of National Highway No.16, rejection of applications of the petitioners on the ground mentioned in the impugned order is erroneous and without any application of mind.

In view of above facts and circumstances, the impugned orders in all the writ petitions are set aside and the respondents are directed to consider the applications of the petitioners, by taking into account the schedule to the Act as substituted by

Notification No.S.O.1150(E), dated 01.01.2015, if they are otherwise in order as per Rules in force and pass appropriate orders accordingly, in accordance with law.

Accordingly, all the writ petitions are allowed. There shall be no order as to costs. As a sequel to the disposal of these petitions, miscellaneous petitions, if any, pending shall stand disposed of.

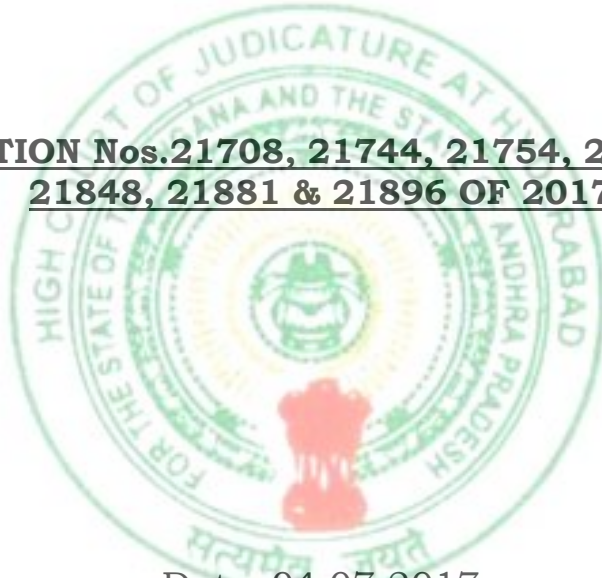
A.RAJASHEKER REDDY,J

04-07-2017
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

**WRIT PETITION Nos.21708, 21744, 21754, 21775, 21829,
21848, 21881 & 21896 OF 2017**



Date: 04.07.2017

kvs

