

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.65 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Smt. N. Sasikala, learned counsel for the appellant, learned Government Pleader for Prohibition and Excise and Sri M.V.S.Suresh Kumar, learned Senior Counsel appearing on behalf of the 5th respondent, and, with their consent, the appeal is disposed of at the stage of admission.

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. 29591 of 2016 dated 6.1.2017 dismissing the writ petition after rejecting the appellant-petitioner's contention that the permission accorded by the Commissioner, Prohibition & Excise, Visakhapatnam, for the 5th respondent to move from Ward No.6 to Ward No.25 (the Ward next to Ward No. 24 where the appellant-writ petitioner's shop is located) was a case of re-location and not of shifting. Aggrieved thereby, the present writ appeal.

While Smt. N. Sasikala, learned counsel for the appellant, would contend that the 5th respondent, who was hitherto granted permission to establish a retail outlet at Ward No.6 was permitted to re-locate to Ward No.25 violating the conditions stipulated in Rule 4 of the A.P. Excise (Grant of Licence of selling by shop and conditions of licence) Rules, 2012 (for short 'the 2012 Rules), the submission of Sri M.V.S.Suresh Kumar, learned Senior Counsel, is that the permission accorded to the 5th respondent by the Commissioner was to shift his shop from Ward No.6 to Ward No.25; and such shifting is permissible under Rule 28(3) of the 2012 Rules.

While the submission of Sri M.V.S. Suresh Kumar found favour with the learned Single Judge, it is wholly unnecessary for us to examine this question as we are satisfied that the writ appeal is required to be allowed, and the order impugned in the writ petition set aside, on the short ground that the 2nd respondent had not assigned any reasons for passing the order impugned in the writ petition.

In his order dated 29.8.2016, the 2nd respondent, after narrating the events leading upto the 5th respondent seeking permission, referred to the order passed by this Court in W.P. No.22333 of 2015 dated 3.2.2016 and, thereafter, held that, by virtue of the powers conferred on him under the proviso to Rule 28(3) of the 2012 Rules and, after examining all the provisions and the recommendation of the Prohibition and Excise and Superintendent, Visakhapatnam and the Deputy Commissioner of Prohibition and Excise, Visakhapatnam and since there were valid reasons for proposed shifting, permission was being accorded for shifting of the 5th respondent's shop to Ward No.25 where a retail outlet had been notified, but had not been disposed of; the request of establishing the shop at ward No.25 was considered, and the 5th respondent was permitted, subject to payment of the requisite shifting fee at 1% of total licence fee in single payment, to establish his shop at Ward No.25.

Rule 28(3) of the 2012 Rules stipulates that shifting of the licenced premises may be permitted for valid reasons within the notified area, and subject to such conditions as may be specified by the Commissioner of Prohibition and Excise, subject to payment of 1% of the licence fee or Rs.25,000/- whichever is higher.

Even if the Commissioner was of the view that it was a case of shifting and not of re-location (which is disputed by the appellant-writ petitioner), he was nonetheless required to accord permission only for valid reasons. While the earlier events have been recorded in detail, no reasons are stated in the impugned order for according permission for shifting the shop and, thereby, the requirement of according permission only for valid reasons, as stipulated in Rule 28(3), has been violated by the 2nd respondent. On this short ground, the order impugned in the writ petition is set aside. The 2nd respondent shall at the earliest, and in any event not later than one week from the date of receipt of a copy of this order, consider the matter afresh and pass a reasoned order in accordance with law. All questions raised in the writ petition are left open.

The order under appeal is set aside and the writ appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

22nd February, 2017

Note:

Furnish c.c. by 27.2.2017.

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