

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.1471 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.22202 of 2017 dated 11.09.2017. The appellant herein filed the said writ petition to declare the action of respondents 3 and 4, in not granting a bar licence in his favour and in postponing drawal of lots, as arbitrary and illegal.

In the order under appeal the Learned Single Judge noted that, of the 4 applications which were received, one such application was that of the appellant-writ petitioner; his application was verified, and the remaining applications were treated as cancelled; the other applicants had approached the District Collector with the grievance that they were unable to obtain a trade licence due to the problems at the office of the Gudur Nagara Panchayat; on enquiry by the Deputy Commissioner, Prohibition and Excise, Kurnool, on the instructions of the District Collector, it was found that the applicants had approached the Gudur Nagara Panchayat Officer for acquiring trade licence; the employees of the office, while informing them that the Municipal Commissioner was on leave for two days, had instructed them to apply on 29.06.2017; when they approached the Municipal Commissioner on 29.06.2017, he ordered the Sanitary Inspector to verify the documents, and process the applications; the Sanitary Inspector endorsed on three applications, and directed the applicants to make payment; when they approached the payment section, nobody was available; they waited upto 5 p.m, but could not make the payment; and, therefore, they could not obtain trade licences in time.

In the order under appeal, the Learned Single Judge observed that the lapses on the part of the officials concerned had resulted in the rights of other applicants being infringed disentitling them from participating in the selection process; and there were, therefore, no grounds to interfere with the action of the respondents in postponing the drawal of lots, and intimating the same to the appellant-writ petitioner. The Learned Single Judge, however, directed that, in case a fresh notification was issued for grant of 2B licence in respect of the subject shop, the appellant-writ petitioner's application shall be treated as an application for participation and drawal of lots.

By his notification dated 30.06.2017, the Prohibition and Excise Superintendent, Kurnool had informed the appellant-writ petitioner that his application, for drawal of lots, was postponed as per the orders of the Collector and District Magistrate, Kurnool, and a re-notification would be issued for the same.

The conditions, governing online enrolment by existing licencees for registration and grant of licences, prescribes the procedure for grant of a licence. Condition No.10 thereof, which relates to drawal of lots by the authority in terms of Rule 8 of the Andhra Pradesh Excise (Grant of licence of selling by Bar and conditions of licence) Rules, 2017 (for short "the Rules"), stipulates that, in case of a Bar where only one application is received, the licence issuing authority shall declare the same in favour of that applicant subject to the condition that all the other conditions have been fulfilled; where there are more than one application, the authority, under whose aegis the drawal of lots may take place, shall proceed with the drawal of lots; one applicant shall be selected and his name shall be declared as selected; and the successful applicant's application shall be accepted, and the remaining rejected. Condition No.13, which refers to Rule (8) of the Rules, enables the

authority, under whose aegies drawal of lots is conducted, to consider whether the drawal of lots should be postponed to a future time and date for any reason, and he may do so after recording reasons therefor.

While the competent authority is entitled, for just and valid reasons, to postpone drawal of lots, he must record reasons for doing so. All that is stated in the notification dated 30.06.2017 is that the drawal of lots was being postponed since the District Collector had so directed. In his counter-affidavit, the District Collector states that, on the evening of 29.06.2017, seven applicants had approached him ventilating their grievance regarding their inability to obtain trade licence from the Gudur Nagara Panchayat Authorities; based on the complaint, he had instructed the Deputy Commissioner over telephone to conduct an enquiry; subsequently, a petition was received from these seven persons alleging that they were unable to obtain trade licence due to problems at the Gudur Nagara Panchayat; when they approached the authorities for payment of trade licence tax, no one was available to collect the tax; and, as such, the trade licences could not be issued in time.

The counter-affidavit also records that a preliminary enquiry was conducted on the spot by the Prohibition and Excise Superintendent, Kurnool, through the Station House Officer, Kodumur, regarding non-issue of trade licences by the Gudur Nagara Panchayat authorities; on a perusal of the report it was, *prima facie*, found that the applicants had approached the Gudur Nagara Panchayat office for acquiring trade licence; the employees of the office, while informing that the Municipal Commissioner was on leave for two days, had instructed them to apply as per procedure and to come on 29.06.2017; on 29.06.2017 when they approached the Municipal Commissioner, he ordered the Sanitary Inspector to verify the documents and process the applications; the

Sanitary Inspector endorsed on three applications, and directed them to make payment; when they approached the payment section, nobody was available; they waited upto 5 pm; and, as the concerned employee did not return, they could not make payment. The District Collector further stated that, as the applicants had sought extension of time for producing the trade licences and to be afforded an opportunity to participate in the selection process, he had directed the Excise Superintendent, in terms of Rule 8(6) and (7) of the Rules, to postpone the drawal of lots, and re-notify the same.

As noted hereinabove Rule 8(6) and (7) of the Rules, as extracted in the counter-affidavit, confer power on the District Collector to postpone the drawal of lots only on recording reasons therefor. If the process of drawal of lots is vitiated for just and valid reasons or a supervening event, which renders holding of the drawal of lots impossible, occurs, or for similar reasons, the District Collector is entitled to postpone drawal of lots. This power, to postpone drawal of lots, cannot be exercised for the mere asking or without assigning reasons which, again, must not be fanciful or arbitrary.

In the present case, the appellant-writ petitioner obtained a trade licence on 13.06.2017 even prior to the notification, inviting applications, was published on 23.06.2017. It is not in dispute that 24.06.2017 was a working day, on which date the other applicants could have submitted their applications for grant of trade licences. While 25.06.2017 and 26.06.2017 were public holidays, there were three days left for a valid trade licence to be produced by the last date i.e 29.06.2017. Absence of the Commissioner for two days (possibly 27.06.2017 and 28.06.2017, though these dates are not mentioned in the counter-affidavit), is said to be the reason for the inability of the other applicants' to procure trade licences. No statutory provision or

rule or an executive order, which disables an application for grant of trade licence to be made or for a trade license to be granted, merely because the Municipal Commissioner is on leave, has been brought to our notice.

Even more disconcerting is that the Municipal Commissioner, whose absence is said to be the reason for postponement of drawal of lots, was not even examined by the officials concerned to ascertain whether his absence would result in bringing the functioning of the Nagara Panchayat to a standstill. Even on 29.06.2017, when the other applicants are said to have approached the Municipal Commissioner, it is not their complaint that there was delay on the part of the Municipal Commissioner. If, as stated by the District Collector, the clerk in the payment section was not available, nothing prevented the other applicants from complaining to the Commissioner. In any event, it is not even the case of the District Collector that the other applicants were unable to obtain a trade licence because of extraneous reasons or because the Municipal Commissioner wanted to ensure that it was only the appellant-writ petitioner who would succeed in being granted a bar licence. Sri K.Chidambaram, learned counsel appearing on behalf of the appellant-writ petitioner, would submit that, on 28.06.2017 and 29.06.2017, more than 190 applications were received by the Nagar Panchayat for grant of trade licences.

In the absence of extraneous factors vitiating the conditions stipulated in the tender notification, and as it is not even the case of the District Collector in his counter-affidavit that denial of trade licences, to the other seven applicants, by the Nagar Panchayat was only to help the appellant-writ petitioner to secure a Bar licence, it is evident that the District Collector was not justified in granting the other applicants

further time to obtain a trade licence and submit their applications afresh, and to indefinitely postpone drawal of lots for grant of license.

The Rules and the Conditions stipulate that, in case only one bidder participates in the tender process, his bid should be accepted without drawal of lots. It is not as if the State would suffer loss of revenue, if the appellant was granted the Bar licence. Learned Government Pleader for Prohibition and Excise (AP) would fairly state that a fixed licence fees is changed, and is required to be paid by the successful bidder; and the selection process does not permit bids being conducted for the payment of licence fees, or to charge a license fee higher than that prescribed in the notification.

Viewed from any angle, the order passed by the District Collector, postponing the process of drawal of lots, does not accord with law. The order, impugned in the writ petition, is set aside. The respondents shall take consequential action, in accordance with law, with utmost expedition.

The Writ Appeal is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

12th October, 2017
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Date: 12.10.2017

