

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No. 1506 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 interlocutory order passed by the learned Single Judge in W.P.M.P. No. 40265 of 2015 in W.P. No. 32368 of 2017 dated 21.9.2017. The appellant herein is the petitioner in the writ petition. He sought a mandamus to declare the action of the 4th respondent, in issuing proceedings dated 13.9.2017 to conduct drawal of lots for grant of Licence to sell Indian Made Foreign Liquor (IMFL) and Foreign Liquor (FL) in Scheduled area shops, as arbitrary and illegal. By way of an interlocutory application, he sought stay of all further proceedings including drawal of lots to be conducted on 22.9.2017 pursuant to the proceedings of the Superintendent, Prohibition & Excise dated 13.9.2017.

By the interlocutory order under appeal, the learned Single Judge directed the respondents to adhere to the provisions of the Excise Act, 1968; the Telangana (Grant of licence of selling by Shop and Conditions of licence) Rules, 2012 and the PESA Rules, 2011 while granting the licences.

Part IX of the Constitution of India relates to Panchayats and Article 243M (1) stipulates that nothing in Part IX shall apply to the Scheduled Areas referred to in Clause (1) and the Tribal Areas referred to in Clause (2) of Article 244 of the Constitution of India. Article 243M(4)(b) stipulates that, notwithstanding anything in the

Constitution, Parliament may, by law, extend the provisions of Part IX of the Constitution to the Scheduled Areas and the Tribal Areas referred to in Clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of the Constitution for the purpose of Article 368.

In the exercise of its powers under Article 243M(4)(b) of the Constitution of India, Parliament enacted the Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter referred to as “Act 40 of 1996”). Section 3 of the said Act stipulates that the provisions of Part IX of the Constitution, relating to Panchayats, are extended to Scheduled Areas subject to such exceptions and modifications as are provided in Section 4. Section 4 of Act 40 of 1996 deals with the exceptions and modifications to Part IX of the Constitution and stipulates that, notwithstanding anything contained in Part IX of the Constitution, the Legislature of a State shall not make any law under Part – IX which is inconsistent with the features mentioned in Section 4. Clause m(i) of Section 4 stipulates that, while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, the State Legislature shall ensure that the Panchayats, at the appropriate level, and the Gram Sabha are endowed specifically with the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant. In view of Section 4(m)(i) of Act 40 of 1996, the State Legislature, while endowing Panchayats in the Scheduled Areas with such power as may be deemed necessary to enable them to function as

institutions of self-government, was obligated to ensure that the Gram Sabhas were specifically endowed with the power to enforce prohibition or regulate or restrict the sale and consumption of any intoxicant.

In exercise of the power conferred by Section 4 of Act 40 of 1996, the State Legislature amended the A.P. Panchayat Raj Act, 1994 and inserted Part VI-A thereto, by Act 7 of 1998. Part VI-A of the A.P. Panchayat Raj Act, 1994 are the special provisions relating to Panchayats and Zilla Parishads located in Scheduled Areas. Section 242-I, thereunder, relates to the powers and functions of Gram Panchayats and Mandal Parishads in Scheduled Areas. Under Sub-Section (i)(a) thereof, the Gram Panchayat or, as the case may be, the Gram Sabha shall exercise such powers and perform such functions, in such manner and to such extent, as may be prescribed in respect of the enforcement of prohibition or regulation or restriction of the sale and consumption of intoxicant.

In the exercise of the powers conferred by Section 242-I of the A.P. Panchayat Raj Act, the Government of Andhra Pradesh made the Andhra Pradesh Panchayats Extension to Scheduled Areas (PESA) Rules, 2011 (hereinafter referred to as “the PESA Rules”) which were notified in G.O. Ms. No. 66 dated 24.3.2011. Rule 8(I)(b), of the PESA Rules, requires the Gram Sabha to be consulted before the grant of any licence to open liquor shop in the village, for the Gram Sabha to convey its opinion in the form of a resolution within four weeks, and for the licence to be granted only to the local Scheduled Tribes. Clause(c) of Rule 8(I) requires the concerned department to issue a speaking order for grant or non-grant of licence to open liquor shops/bars in the village under

intimation to the concerned Gram Sabha, and makes the Gram Sabha resolution final and binding. Clause (d) of Rule 8(1) empowers the Gram Sabha to determine the quantity of traditional liquor that may be brewed/produced by the Scheduled Tribes living in a village for their consumption, but not for sale, having regard to the traditions, customs relating to consumption of local liquor during marriage and other social and religious ceremonies and their cultural identity.

In terms of Rule 8(I)(b) of the PESA Rules, the Gram Sabha is required to be consulted before the grant of licence to open a liquor shop in a village located within the Scheduled Areas. On being so consulted, the Gram Sabha is required to convey its opinion, in the form of a resolution, within four weeks which is final and binding. Even in case the Gram Sabha, by its resolution, conveys its approval to the grant of license to open a liquor shop/bar in their village located in the Scheduled Areas, the said licence is required to be granted only to those persons who are from the local Scheduled Tribes. Rule 8(I)(c) obligates the concerned department, after the Gram Sabha conveys its consent by way of a resolution, to issue a speaking order for the grant or non-grant of a licence to open a liquor shop/bar in the village under intimation to the concerned Gram Sabha. As the resolution of the Gram Sabha is final and binding, no license can be granted to open a liquor shop or a bar in any village in a Scheduled Area in case the Gram Sabha resolves not to grant approval.

Learned Government Pleader for Prohibition and Excise (Telangana) would, however, rely on the Andhra Pradesh Excise (Grant of Licence of Selling by Shops and Conditions of Licence)

Rules, 2012 (for short “the 2012 Rules”). The 2012 Rules were made in the exercise of the powers conferred by Section 72 read with Section 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968 (for short “the Excise Act”). The second proviso to Rule 24 of the 2012 Rules stipulates that no licence shall be issued in Scheduled Areas unless the concerned Gram Sabha gives its consent, or is deemed to have given its consent, to grant a licence to establish a liquor shop/bar. Under the Explanation thereto, for the purpose of the second proviso, a Gram Sabha shall be deemed to have given its consent to establish the shop if it fails to indicate its consent or otherwise, for establishment of the shop in the concerned village, within 30 days of seeking the same.

Prima facie, the second proviso to Rule 24 of the 2012 Rules and the Explanation thereto, which provide for deemed consent of the Gram Sabha, is in violation of Section 4(m)(i) of Act 40 of 1996, Section 24I(i)(b) of the A.P. Panchayat Raj Act and the PESA Rules, more particularly Rule 8(I)(b) and (c) thereof which make a Gram Sabha resolution, with regards grant of any licence, final and binding. The PESA Rules do not permit deemed consent of the Gram Sabha. Consequently it is only if the Gram Sabha conveys its approval, by way of a resolution, for grant of a license to open a liquor shop/bar, can such a license be granted by the Government. Failure of the Gram Sabha to convey its consent even beyond 30 days would not, in terms of Rule 8(I)(b) and (c) of the PESA Rules, enable the grant of a license.

But for the insertion of Part VI-A into the A.P. Panchayat Raj Act, 1994, and the PESA Rules, prima-facie, no liquor shop/bar could have been established in a Scheduled Area in terms of the

2012 Rules, as Para 5(2) of the V Schedule to the Constitution confers powers on the Governor to make regulations for the peace and good government of any Scheduled Area. It is only on ensuring strict compliance with the PESA Rules can the very object, of extending Part IX of the Constitution of India to Scheduled Areas, be achieved. The second proviso to Rule 24 of the 2012 Rules and the Explanation thereto are made under the A.P. Excise Act, and cannot be so read as to negate the PESA Rules or Section 4(m)(i) of Act 40 of 1996 which requires the Gram Sabhas in Scheduled Areas to be endowed with the power to impose prohibition or regulate or restrict the sale and consumption of any intoxicant. The second proviso to Rule 24 of the 2012 Rules read with the Explanation thereto, in effect, no longer obligates the authorities to await approval of the Gram Sabha beyond 30 days, and enables them to proceed and grant a license. Thereby the power of the Gram Sabha, to impose prohibition or regulate/restrict the sale and consumption of liquor, would be diluted and, in certain situations, even negated.

We consider it appropriate, therefore, to direct that the power conferred by the second proviso to Rule 24 of the 2012 Rules read with the Explanation thereto cannot be exercised by the authorities concerned, to grant a liquor shop or a bar licence, without a specific resolution of the Gram Sabha according approval in writing for the grant of licence to open a liquor shop/bar in a Scheduled Area. The order of the learned Single Judge is modified and the authorities concerned are directed, pending further orders in the Writ Petition, not to grant a licence to open a bar or a liquor shop in the Scheduled Areas without a specific resolution being

passed by the concerned Gram Sabha according to its written consent to the grant of such a license.

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.

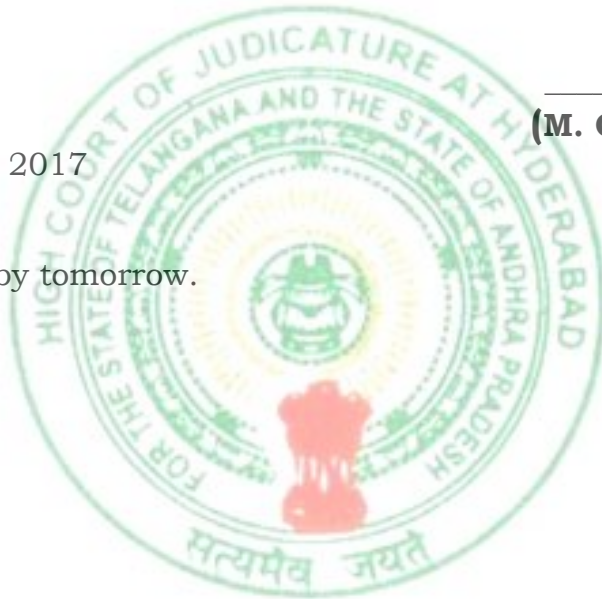
Learned Government Pleader for Prohibition and Excise is present in Court, and undertakes to inform the respondents of their obligations under this order.

(RAMESH RANGANATHAN, ACJ)

12th October, 2017

Note:
Furnish c.c. by tomorrow.
b/o
pnb

(M. GANGA RAO, J)



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO



Writ Appeal No. 1506 of 2017

Date: 12.10.2017

pnb

