

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.29591 of 2016

Date: 06.01.2017

Between:

M/s Pavan Wines, Old Post Office, Visakhapatnam,
Rep.by its Proprietor Pampana Raja Sekhar,
S/o Samba Siva Rao, Aged about 62 years,
Occu: Business, r/o. D.No.6-13-30/1, Koyya Street,
East Point Colony, Chinna Waltair, Visakhapatnam.

.....Petitioner

and

The State of Andhra Pradesh, rep.by its Principal
Secretary, Prohibition and Excise Department,
Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Heard Sri E.V.V.S.Ravi Kumar, learned counsel for petitioner, learned Government Pleader for respondents 1 to 4 and Sri M.V.Suresh Kumar, learned senior counsel for 5th respondent.

2. The short but hotly contested issue in this writ petition is, shifting of 5th respondent A4 licence shop from Ward No.6 to Ward No.25 in Visakhapatnam Municipal Corporation limits strongly opposed by petitioner.

3. The facts relevant for consideration are as under:

In pursuant to the notification issued by the Excise Department to grant licence for sale of Indian Made Liquor (IML) and Foreign Liquor by establishing the retail outlets (A4 shops) in Visakhapatnam Municipal limits, the petitioner and the 5th respondent were successful in securing A4 shops in Ward No.24 and Ward No.6 respectively. In pursuant to the temporary licence granted to the 5th respondent, he has established A4 shop in the premises bearing Door No.1-115/1, Ward No.6 of Visakhapatnam town. The Excise authorities closed the shop of 5th respondent on the ground that location of shop is less than 100 meters from a Church. Aggrieved by the same, 5th respondent filed W.P.No.22333 of 2015. Though initially interim order was granted in his favour, by order dated 03.02.2016, the said writ petition was dismissed. However, learned single Judge granted two weeks time for the 5th respondent to shift the shop. Aggrieved thereby, 5th respondent

filed W.A.No.94 of 2016, but the same was also dismissed. Alleging that though he submitted an application for shifting the shop to Door No.25-12-39 in Ward No.25 of Visakhapatnam town, the same is not considered, the 5th respondent filed WP No.18498 of 2016. By order dated 20.07.2016, this Court directed the competent authority to pass appropriate orders upon the application made for shifting of the premises.

4. The Commissioner of Prohibition and Excise, on detailed consideration of the issue of claim of 5th respondent, passed orders on 29.08.2016 accepting the request of the 5th respondent to shift his A4 shop from Ward No.6 to Ward No.25. Petitioner challenges this order in the present writ petition.

5.1. Learned counsel for petitioner contended that it is not permissible to relocate the existing running retail outlet from one Ward to another Ward within the Municipal area. Such relocation is permissible only in case, where in the auctions conducted the shop was not auctioned and was kept vacant. In such an event such shop can be relocated, otherwise relocation is not permissible.

5.2. By placing reliance on the guidelines issued by the Commissioner vide his proceedings dated 05.08.2015 on relocation of shops, learned counsel submitted that even if shop is to be relocated, minimum distance of 500 meters is required to be maintained between existing shop and relocated shop, whereas, as per the measurements taken by the Prohibition and Excise Inspector, Prohibition and Excise Station, Visakhapatnam-I, the distance between the shop of the petitioner and the proposed

location of the shop of 5th respondent is within a very short distance and is contrary to the instructions of the Commissioner.

5.3. By side wind, learned counsel also sought to contend that 5th respondent was only granted the provisional licence and, therefore, question of relocation of the provisional licence to another place does not arise. He would further submit that once licence was granted to ward no.6, it is the responsibility of the successful licence holder to locate in the concerned ward only and relocation of the shop outside Ward No.6 does not arise.

6.1. Learned senior counsel, after referring to the history of the litigation, as noted above, submitted that as a consequent to the closure of his shop in ward no.6, the 5th respondent has made valiant efforts to find out suitable premises for re-locating his shop in Ward no.6; that he has also given advertisement in the newspapers asking for letting out premises for relocation of A4 shop, but he was not successful. As time limit by the High Court was over and licence period was fast running out, 5th respondent was scouting for location of shop at any other place and having found two suitable locations, 5th respondent had applied for shifting of his shop. Application submitted by 5th respondent was accepted for shifting his shop to 25th ward.

6.2. Learned senior counsel submitted that Rule 28 of A.P.Excise (Grant of License of Selling by Shop and Conditions of License) Rules 2012 (for short, 'Rules, 2012'), vests power in the Commissioner to permit shifting of a shop located in one ward to any other place within the Municipal Corporation limits and in exercise of the said power, having regard to the history of the

litigation and having found the claim of the 5th respondent as genuine, the request of the 5th respondent was acceded and orders were passed. He would submit that it was well considered decision on due application of his mind to the facts in issue and, therefore, there is no error in the decision warranting interference by this Court.

6.3. Learned senior counsel further submitted that for no fault of 5th respondent, he is unable to run his shop properly having paid huge licence fee and unless the 5th respondent is allowed to commence his business, he would have to suffer huge losses. He would submit that petitioner is trying to block the establishment of shop of 5th respondent only to gain undue advantage to corner sales at the place of his shop, whereas the shifting of shop of 5th respondent would no way affect the business of the petitioner.

7. Learned Government Pleader would submit that power is vested in the Commissioner under Rule 28 of the Rules, 2012, to grant permission to shift A4 shop from one location to another location within the Municipal limits. Since earlier location was closed as the same was within the 100 meters distance of a Church and having regard to the peculiar facts of this case, the Commissioner has passed orders in favour of 5th respondent.

8. In substance the rival claims of petitioner and 5th respondent is on the issue whether the order of the Commissioner impugned in the writ petition would amount to '**relocation**' of shop of 5th respondent or '**shifting**' of shop by the 5th respondent. Petitioner contended that shop of 5th respondent cannot be

'relocated', on the contrary stand of the 5th respondent is that it is 'shifting' of his shop and, therefore, it is permissible.

9. 'Relocation' and 'shifting' are two distinct terms used in Excise Rules, 2012. Based on the earlier business generated in an area, such as municipality, Municipal Corporation or Mandal etc., the shops are notified and then auctions are conducted. Once shops are fixed at when the notification was issued for an area, ordinarily, there cannot be enhancement of the number of shops that can be established in that area. A detailed exercise being undertaken to identify the licensee and licences are awarded.

10. In the auction conducted, if any shop is not leased out, and there is no possibility of any person evincing interest in taking on lease the shop in a location as originally advertised, it is permissible for the competent authority to relocate the shop to any other place. Such relocation can be within the Municipal limits, if it is notified in the Municipal Corporation area or Municipality or Mandal, as the case may be or outside the Municipal Corporation or Municipality or Mandal as the case may be. Rule 4 of the Rules, 2012 deals with 'relocation' of shop. In other words, an undisposed shop can be relocated and such relocation can be even beyond the Municipal Corporation limits.

11. Rule 28 deals with 'shifting' of shop. Shops which are already auctioned and licences granted, can be shifted subject to fulfillment of conditions mentioned in Rule 28 from one location to another location, but within the territorial limits of the concerned area notified, such as, Municipal Corporation, Municipality or Mandal, as the case may be. Thus, no shop belonging to the

Corporation can be shifted outside the Corporation, similarly, Municipality or a Mandal. Thus, the distinction between 'shifting' and 'relocation' is clear and unambiguous.

12. The scope of 'relocation' was considered by this Court in **B.Venkateswarlu and others v. Government of A.P, Revenue (Excise) Department, rep.by its Prl.Secretary to Government and others**¹.

13. Learned counsel for petitioner vehemently contended that establishment of A4 shop by 5th respondent in 25th ward amounts to 'relocation', and such relocation is contrary to the guidelines dated 05.08.2015 notified by the Commissioner, where under minimum distance required to be maintained is 500 meters. The entire premise of the argument of the learned counsel for petitioner is based on the orders of the Commissioner, dated 05.08.2015. This contention of the learned counsel for petitioner can be appreciated only if the shop is 'relocated'.

14. As noticed by this Court in **B.Venkateswarlu** and on reading of provisions in Rules 4 and 28 of the Rules, 2012, it is clear as crystal that 'relocation' would arise only in case of un-disposed shop and 'shifting' is in case of an existing shop.

15. Shifting of existing shop can be considered if the requirements of Rule 28 are complied with. Rule 28 enables the competent authority to permit shifting if there are valid reasons for such shifting and on payment of one percent of the licence fee or Rs.25,000/-, whichever is higher. Thus, shifting of A4 shop from one location to another location within the Municipal Corporation

¹ 2014 (5) ALT 506

limits is not prohibited by any other consideration i.e., the volume of business or distance from the existing shop located in the area, where shifting is proposed, etc. Once the competent authority is satisfied and by assigning valid reasons accepts the request for shifting, the requirements of Rule 28 are fulfilled.

16. In the instant case, the history of the litigation and the stand of the 5th respondent would show that shifting is for valid reasons. It may be relevant to note that the shop of 5th respondent in the earlier location was closed on the ground that it was within the 100 meters distance of a Church and endeavour made by the 5th respondent to relocate the shop within the same ward was not fruitful. On the contrary, time was running away for the 5th respondent with reference to the limited licence period. This Court directed consideration of the request of petitioner for shifting of the shop. In W.P.No.22333 of 2015, this Court directed 5th respondent to shift the shop to any other location. These are all the mitigating circumstances which may have weighed with the Commissioner to accept request for shifting of A4 shop of 5th respondent.

17. No motive and ill-will is attributed to the Commissioner in passing the orders. In the facts of this case, it cannot be said that Commissioner exceeded his jurisdiction or acted in arbitrary and discriminatory manner in passing orders in favor of the 5th respondent.

18. I do not see any error in the decision of the Commissioner warranting interference by this Court. Writ petition is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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