

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.29971 of 2017

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for respondent Nos.1 and 2 and Smt. Jhansi for impleaded respondent Nos.7 to 9.

In the writ petition, the challenge is to the action of the official respondents in not granting bar licence in favour of the petitioner pursuant to the notification No.249/2017, dated 23.06.2017, issued by the Prohibition and Excise Superintendent, Kakinada, East Godavari District, 2nd respondent herein.

The 2nd respondent issued a Gazette notification bearing No.249/2017, dated 23.06.2017, inviting applications for grant of licences for bar and restaurants. In response to the said notification, the petitioner also made an application, showing the premises as D.No.14-72, Ward No.14, Payakaraopeta, Visakhapatnam District and the licensing authority selected him as licensee on 30.06.2017 and to the said effect, an intimation was also sent by the 2nd respondent on the even date. Thereafter, the 2nd respondent addressed a letter, dated 04.08.2017, to the Deputy Commissioner of Prohibition and Excise, Visakhapatnam, and sent the relevant documents pertaining to the establishment of 2B bar in Payakaraopeta Village, Visakhapatnam, which falls within 2 kms periphery of Tuni Municipality. Subsequently, vide proceedings Rc.No.267/2017/B4, dated 21.08.2017, the Deputy Commissioner of Prohibition and Excise, Visakhapatnam, sent the above said

proposal to the Prohibition and Excise Superintendent, Anakapalli, for necessary verification of the premises and to submit report as per 2B bar rules for further necessary action. In the above background, the grievance of the petitioner in the present writ petition is inaction on the part of the official respondents in granting bar licence pursuant to the notification, dated 23.06.2017, despite compliance of all the necessary formalities.

It is to be noted in this context that earlier the A4 licensees of Payakaraopeta filed W.P.No.29042 of 2017 before this Court, assailing the proposal of the 2nd respondent for granting 2B licence in favour of the 6th respondent therein, who is the petitioner in the present writ petition. This Court, on 30.08.2017, disposed of the said writ petition. The operative portion of the said order reads as under:

“For the aforesaid reasons and having heard the learned counsel for the petitioners and the learned Government Pleader, this Court deems it appropriate to dispose of the writ petition, directing the respondents herein to consider the objections/representations submitted by the petitioners herein before proceeding further, pursuant to the letter bearing Rc.No.A2/51/2017, dated 04.08.2017, after affording opportunity of hearing to the petitioners. It is open for the petitioners herein to submit a fresh representation, if they are advised to do so, for consideration of the respondents within a period of one week from today.”

According to the learned counsel for the petitioner, respondent Nos.7 to 9 do not have any locus standi to object establishment of 2B shop by the petitioner, as the respondent authorities are proceeding strictly in accordance with the provisions of the A.P. Excise Act and the Rules made thereunder. It is the further submission of the learned counsel for the petitioner that in view of the clear language of the provisions of Rule 8 and

the second proviso to Rule 14 of the A.P. Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2017, the objections of respondent Nos.7 to 9, by any stretch of imagination, cannot be sustained.

On the other hand, it is submitted by the learned Government Pleader that the matter is now pending with the Commissioner of Prohibition and Excise and he has already called for a report and also directed the Deputy Commissioner of Prohibition and Excise, Visakhapatnam, to enquire into the matter.

It is submitted by the learned counsel for respondent Nos.7 to 9 that the authorities cannot issue 2B bar licence, as the same would tantamount to exceeding their jurisdiction. It is further submitted that the place i.e., 2 kms from belt area from the municipalities needs to be restricted only to the jurisdiction of concerned Prohibition and Excise Superintendent, but cannot be extended beyond the jurisdiction and is the intention of the Legislature. It is also required to be noted that according to the learned counsel for respondent Nos.7 to 9 pursuant to the orders of this Court, dated 30.08.2017, in W.P.No.29042 of 2017, the impleaded respondents filed a representation on 04.09.2017 before the Commissioner of Prohibition and Excise, A.P., Vijayawada, Krishna District and acting upon the said representation the Commissioner of Prohibition and Excise vide proceedings CR.No.5095/2017/CPE/E2, dated 06.09.2017, instructed the Deputy Commissioner of Prohibition and Excise, Visakhapatnam, to enquire into the representation of respondent Nos.7 to 9. It is

also not in dispute that this Court in W.P.No.29042 of 2017 directed the official respondents to consider the objections/representations of respondent Nos.7 to 9 herein after affording opportunity of hearing to them. Since the action has already been initiated by the Commissioner of Prohibition and Excise and since the issue is pending consideration before him, this Court, keeping in view the interest of all the stakeholders, deems it appropriate to dispose of the present writ petition by directing the Commissioner of Prohibition and Excise to take a final decision in the matter pursuant to the proceedings, dated 06.09.2017, within a period of two weeks from today, after hearing the petitioner and respondent Nos.7 to 9 and pass such appropriate orders. Having regard to the facts and circumstances of the case, the Commissioner of Prohibition and Excise, A.P., Amaravathi, stands impleaded as respondent No.6 in the writ petition and the miscellaneous petitions.

Accordingly, writ petition stands disposed of. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

A.V. SESA SAI, J

Date: 12.09.2017
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