

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

WRIT PETITION No.25691 of 2017

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the action of respondents 3 and 4 in sealing and locking the petitioner's A4 shop, M/s.Swapna Wines, located at Door No.12/73, Kothapeta, Pedana Municipality, Krishna District.

Heard Smt. S. Nanda, learned counsel for the petitioner, learned Government Pleader for Prohibition & Excise appearing for respondents 1 to 4 and Sri Suresh Kumar Potturi, learned counsel for respondent No.5, apart from perusing the material available before this Court.

Petitioner is the licensee of A4 shop situated at door No.12/73, Kothapeta, Pedana Municipality, Krishna District. The Prohibition & Excise Superintendent, Machilipatnam, Krishna District, fourth respondent, vide proceedings in Rc.No.170/2017/A2, dated 06.07.2017, granted the said licence in favour of the petitioner for the period commencing from 01.07.2017 to 30.06.2019 to run the shop at the said premises. According to the petitioner, pursuant to the said grant of licence, he conducted business in the above premises only for a period of three days i.e., on 06.07.2017, 07.07.2017 and 08.07.2017. It is

pleaded in the affidavit filed in support of the writ petition that on 09.07.2017, a Dharna took place against the sale of liquor in the said premises and the Prohibition & Excise Inspector, Machilipatnam, Krishna District, third respondent, sealed and locked the petitioner's shop located in the said premises, on telephonic instructions of the fourth respondent. It is also the complaint of the petitioner that no notice was issued to the petitioner prior to the said action. With the above background, the present writ petition is filed.

According to the learned counsel for the petitioner, the questioned action on the part of the official respondents is highly illegal and arbitrary and is opposed to the very spirit and object of the provisions of the Andhra Pradesh Excise Act, 1968 and the Rules framed thereunder. It is further argued that in the absence of any violation of law on the part of the petitioner, there is no justification on the part of the official respondents in locking the subject premises, thereby, depriving the petitioner to carry on the business as per the licence granted on 06.07.2017. According to the learned counsel, the fourth respondent granted licence in favour of the petitioner only after thoroughly undertaking enquiry and after calling for a report from the third respondent, who recommended for grant of licence in favour of the petitioner in the subject premises.

On the other hand, it is submitted by the learned Government Pleader, on instructions, that on 07.07.2017, certain people of the locality have approached the fourth respondent for closure of the subject shop and basing on the representations submitted by them, a notice was issued to the licensee to secure another suitable place and to submit the proposal for establishment of A4 shop. It is stated in the said instructions, dated 10.08.2017, placed on record by the learned Government Pleader, that on 10.07.2017, before opening of the shop, certain local people along with women organizations organized a Dharna in front of the petitioner's shop and in view of the law and order situation, the shop was closed on 10.07.2017 and from then onwards, the shop is under closure in view of the law and order situation.

Learned counsel for the fifth respondent, reiterating the averments in the counter-affidavit filed by the fifth respondent, submits that the authorities ought not to have granted licence in favour of the petitioner to run A4 shop at the subject premises and according to the learned counsel, the respondent authorities before granting the licence did not take into consideration the objections raised by the residents of the locality for running A4 shop in the subject premises. According to the learned counsel, it is the responsibility of the respondent authorities to act in accordance with the Directive principles of the State policy. It is

also the submission of the learned counsel for the fifth respondent that the running of A4 shop at the subject premises would cause lot of inconvenience to the residents of the locality including the fifth respondent.

There is absolutely no dispute that the fourth respondent by virtue of the proceedings in Rc.No.170/2017/A2, dated 06.07.2017, granted licence in favour of the petitioner for running A4 shop at the premises bearing Door No.12/73 of Kothapeta, Pedana Municipality, for the period commencing from 01.07.2017 to 30.06.2019. It is also not in dispute that the petitioner paid all the amounts to the official respondents for running the business as per law. The report submitted by the third respondent to the fourth respondent before granting the licence in favour of the petitioner is also placed on record. In the said report, the third respondent indicated the distances from the educational and religious institutions and turned down the objections submitted by the residents. There is also no controversy, in reality, that as on date, licence granted in favour of the petitioner is intact and subsisting. It is also not the case of the official respondents that the petitioner has contravened any provision of law.

In the considered opinion of this Court, so long as the licence granted in favour of the petitioner continues to be in

force, the official respondents cannot meddle with the business activities of the petitioner. It is made clear that if the fifth respondent has any grievance against the running of A4 shop in the subject premises, it is always open for the fifth respondent to agitate before appropriate forum of law. In fact, against the orders of the fourth respondent, Section 63 of the Andhra Pradesh Excise Act, 1968 provides for an appeal to the Deputy Commissioner. It is always open for the fifth respondent or any aggrieved party to avail the said remedy before the Deputy Commissioner for redressal of the grievance, if any, against the grant of licence.

For the aforesaid reasons, this writ petition is disposed of, directing the official respondents not to meddle with the business activities of the petitioner in terms of the licence granted by the fourth respondent vide proceedings in Rc.No.170/2017/A2, dated 06.07.2017, so long as the said licence continues to be in force. However, this order will not preclude the official respondents from proceeding in accordance with law, for taking action, if any.

Consequently, Miscellaneous Petitions, if any pending in this Writ Petition, shall stand closed. No order as to costs.

A.V.SESHA SAI, J

10th AUGUST, 2017.

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