

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No.1526 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri B. Sai Ram Goud, learned counsel for the appellant-4th respondent, Sri K. Gopala Krishna, learned counsel for the 1st respondent-writ petitioner, and the learned Government Pleader for Excise.

The 1st respondent herein, a Flat Owners Association, filed W.P. No. 9147 of 2016 to declare the action of respondent Nos. 2 and 3 therein, in issuing licence and in granting permission to the 4th respondent for sale of liquor in the premises bearing Door No. 3-4-32, Mallapur main Road, Mallapur, Hyderabad, Ranga Reddy District, to be in violation of the rules and notifications issued under the A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012, and to quash the licence.

The 1st respondent-writ petitioner invoked the jurisdiction of this Court contending that they were all residents of Sai Towers Complex; the people residing in those buildings were employees and the self-employed whose children were of different age groups; there was a school on one side of the said apartment, and there was a hospital on its other side; there was a bus stop near the said apartment; the 4th respondent was issued licence by the 3rd respondent, for selling Indian Made Foreign Liquor, for a period of two years from 1.10.2015 to 30.9.2017; the 4th respondent had opened a wine shop, and was carrying on business of selling liquor; members of the petitioner-association had submitted a representation on 28.9.2015 to the Excise and Prohibition Circle

Inspector; and, since no action was taken, they had filed the Writ Petition.

In the counter affidavit filed by him, the Superintendent of Prohibition & Excise, contended that, on the representation of the 1st respondent-writ petitioner, the Station House Officer had conducted an enquiry, and had reported that, with regards the techno-school situated by the side of Sai Towers, it was not a recognized school; the distance between the hospital and the shop was 215 meters; and, after the enquiry was conducted, he had recommended that a licence be issued in favour of the 4th respondent. In his counter affidavit, the fourth respondent contended that the allegations made against them were false; and they had not violated the conditions of licence.

In the order under appeal, the learned Single Judge observed that it was not in dispute that the 4th respondent's shop was located in the cellar of the subject apartments wherein 30 families were residing; there was a hospital near the subject premises; there was also a school on one side of the premises; the distance between the shop of the 4th respondent and the hospital in question was 215 meters; irrespective of the fact whether the school was recognized or not, students studying in the said school were all children; therefore, it could not be said that the action of the respondents, in granting licence, was in accordance with the Rules; however, as the tenure of the licence that was granted to the 4th respondent was to expire by the end of September, 2017, it was but proper to direct the official respondents not to renew the licence of the 4th respondent, and not to grant any licence to anybody in future to run the wine shop in the subject premises. The Writ Petition was disposed of directing the official respondents not to renew the licence granted to the

4th respondent on expiry of the present licence, and not to grant any licence to anybody in future to run a wine shop in the subject premises.

Sri B. Sai Ram Goud, learned counsel for the appellant, would submit that, in the absence of any statutory rules being violated, the appellant-4th respondent could not have been deprived of their right to run a wine shop in the subject premises in future; the school, which is run adjacent to the subject premises, is an un-recognized school; establishment of a wine shop, close to an un-recognized school, is not prohibited; the learned Single Judge has himself recorded that the distance between the wine shop and the hospital is more than 200 meters; and, in such circumstances, the learned Single Judge had erred in directing that no wine shop should be established in the subject premises.

Sri K. Gopala Krishna, learned counsel for the 1st respondent-writ petitioner, would submit that the distance, as measured by the Excise Superintendent, is erroneous; the mere fact that there was a road divider, and the hospital was situated on the other side of the road, did not justify the distance being measured on the basis of the entire length of the road, instead of the shortest distance between the hospital and the premises; and location of the wine shop in the cellar of the apartment, where families reside and children study, should not be permitted.

Learned Government Pleader for Prohibition and Excise would submit that the appellant's licence period expired on 30.9.2017; the subject shop was put to auction by drawal of lots; the appellant-4th respondent was not granted a fresh licence as lots drawn favoured somebody else; and no prejudice would be caused to the appellant-4th respondent by the said order.

While fairly stating that the appellant was not granted an A4 licence from 1.10.2017, Sri B. Sai Ram Goud, learned counsel for the appellant-4th respondent, would submit that it is always open to the appellant to enter into a partnership with an existing A4 shop licence holder, and to run a shop within the distance permitted under the Rules.

The jurisdiction under Article 226 of the Constitution of India is discretionary, and would be exercised by this Court to safeguard larger public interest. It is not as if this Court would interfere for the mere asking, or set aside the order under appeal merely because a technical flaw, which does not affect larger public interest, has been electronically detected.

In the order under appeal, the learned Single Judge had observed that children were studying in a school adjacent to the subject residential apartments; there was a hospital nearby; and, in such circumstances, permitting a wine shop to be operated in the cellar of the apartment complex would adversely affect the families residing there. The learned Single Judge, has exercised his discretion, under Article 226 of the Constitution of India, to safeguard larger public interest. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal necessitating our interference. In any event, the appellant's licence period has expired and if, as is contended by Sri B. Sai Ram Goud, learned counsel for the appellant, the appellant has a long lease in their favour, the order under appeal would not preclude them from using the subject premises, for any purpose other than to run a wine shop or a bar.

We do not see any reason, therefore, to interfere with the order under appeal. The Writ Appeal is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

16th October, 2017

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