

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.35026 of 2017

ORDER:

The only grievance of the petitioners in this writ petition, under Article 226 of the Constitution of India, is non-consideration of the petitioners' objections, dated 25.9.2017, 01.09.2017 and 31.08.2017, opposing the request of the 6th respondent for shifting of his Bar & Restaurant from the present licensed premises bearing H.No. 15-1-320/321, Rangampet, Warangal, to the proposed new premises bearing H.No.14-1-142, Pochamma Maidan, Warangal, Warangal District.

1.1 In this writ petition, a consequential direction is sought to direct the official respondents not to grant permission to the 6th respondent for shifting of his Bar & Restaurant from the present premises to the proposed new premises, as desired by the 6th respondent in his application, dated 06.09.2017.

2. I have heard the submissions of *Sri A.Prabhakar Rao*, learned counsel appearing for the petitioners; learned Government Pleader appearing for respondents 1 to 5; and of *Sri K.Ravinder Reddy*, learned counsel appearing for the 6th respondent. I have perused the material record including the copy of the lease deed, dated 23.08.2017, in respect of the property bearing H.No.14-1-142, situated at M.G.Road, Narasampet Road, Warangal (Urban), produced at the time of hearing.

3. Learned counsel for the petitioners would submit that if the objections aforesaid of the petitioners are considered before a decision is taken by the 2nd respondent on the application of the 6th respondent, the grievance of the petitioners would be redressed.

4. However, the learned counsel for the official respondents, having placed on record, the written instructions, dated 26.10.2017, received from District Prohibition & Excise Officer, Warangal Urban, would submit as follows:

The licence of the 6th respondent's Bar & Restaurant was already renewed for the year 2017-2018 in the present (existing) premises. The earlier writ petition was closed recording the submission of the Government Pleader that the licence of M/s. Venkateshwara Restaurant & Bar, that is, the 6th respondent, was renewed for the year 2017-2018 in the old premises and the proposal for shifting was not submitted as on that date. However, the Station House Officer, Warangal, has enquired into the objection petition submitted by the residents of Pochamma Maidan, Warangal, and submitted a report. In the said report it is stated that the proposed new premises is situated on the main road leading to M.G. Road to Pochamma Maidan towards Narsampet and that the proposed new premises is in a commercial area and not in a residential area. Further, the owner of the building/ new proposed premises, Rama Veera Swamy, has submitted consent letter for the 6th respondent running the Bar & Restaurant business in his premises, that is, the proposed new premises. No objections are received from the local people. The District Prohibition & Excise Officer personally visited the premises/ new proposed premises and found that the same is situated on the Hanamkonda-Warangal main road and that it is amidst commercial area but not in residential area and that the building is surrounded by compound wall and that it is not in a dilapidated condition as being alleged by the petitioners herein and that there are two Bar & Restaurants and two retail liquor shops within 100 meters radius of the new proposed premises and that no objections are received from the

people of surrounding areas. After such personal visit and recording the contents of the report of the Station House Officer and his findings, the District Prohibition & Excise Officer, Warangal Urban, disposed of the objection petition of the petitioners by office proceedings in Pc.No.712/ 2009/ P&E/ 3, dated 26.10.2017. In view of the disposal of the objections raised by the petitioners by the said officer by means of the said proceedings, dated 26.10.2017; that too, after considering all the facts and circumstances there is no need to give any further directions.

5. However, learned counsel for the petitioners would submit that no copy of the proceedings, dated 26.10.2017, of the District Prohibition & Excise Officer, Warangal, whereby, the objections of the petitioners were stated to have been disposed of is served upon the petitioners. Learned counsel for the petitioners would further point out that the competent officer to consider and dispose of the objections is the Commissioner, Prohibition & Excise, Hyderabad, State of Telangana, but not the District Prohibition & Excise Officer, Warangal, and that, therefore, the said proceedings are not valid. The learned Government Pleader and the learned counsel for the 6th respondent fairly conceded that the competent officer is the Commissioner but not the District Prohibition & Excise Officer who issued the proceedings, dated 26.10.2017.

6. Be that as it may. Learned counsel for the 6th respondent having drawn the attention of this Court to the counter filed by the 6th respondent contended as follows:

The writ petition is got filed by the business rivals of the 6th respondent, who are running businesses in the same locality in which the

proposed new shop is located. The writ petition is a proxy petition. The owner of the present existing premises is insisting upon the 6th respondent to vacate his premises. Hence, the necessity to shift the Bar & Restaurant of the 6th respondent has arisen. The averments in the writ petition are concocted. This 6th respondent made an application in accordance with law to the authority concerned seeking permission to shift his Bar & Restaurant from the present existing premises (old premises) to the proposed new premises. After calling for a report from the concerned Station House Officer and after making personal visit and after considering all the facts & circumstances, the District Prohibition & Excise Officer, Warangal, issued the proceedings, dated 26.10.2017 stating that the objections of the petitioners are not valid. Since the objections of the petitioners are already considered and disposed of, the writ petition is liable to be dismissed.

6.1 Learned counsel for the 6th respondent relied upon a decision in *Siva Priya Bar and Restaurant v. Commissioner of Prohibition and Excise*¹ in support of the following propositions: 'There is no restriction for grant of licence even in middle of Excise Year or at any time. Generally, licence period is divided into four quarters. Each quarter consists of three months period. If the licence is granted after completion of two quarters, licence fee has to be paid for six months, i.e., for the last two quarters. Whenever a request is made by the license holder for shifting of licensed premises, it can be considered by the Commissioner, Prohibition & Excise, who is the competent authority to permit such shifting. The rules do not require the said authority to record any reasons while according permission for shifting. Rule 13 of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and

¹ 2007 (6) ALD 485

Conditions of Licence) Rules, 2005, only states that ordinarily shifting of licensed premises shall not be permitted. The word 'ordinarily' employed in the said Rule does not envisage recording of reasons for granting permission for shifting of a licensed Bar & Restaurant from one premises to another.'

6.2 He also placed reliance on a decision of this Court in W.P.No.38355 of 2015, wherein it was held as follows:

"Learned counsel is unable to demonstrate before this Court that the people of the locality would be legally entitled to a hearing in the context of the proposed shifting of a wine shop. In the absence of such a requirement in law, it is not open to the petitioners to insist upon being given an opportunity of hearing in the matter. Further, there is no indication of the shifting of the subject wine shop having been permitted till date. There is thus no cause of action for the petitioners to have approached this Court."

In the afore-stated decision, this Court held that the objectors therein, that is, the people of the locality are not legally entitled to a hearing in the context of the proposed shifting of a wine shop. In this decision, it is not laid down that the objections of any third parties need not be considered before a decision is taken on the request of a licence holder of a Bar & Restaurant for shifting of his Bar & Restaurant from the existing premises to a new premises. It is only laid down that the objectors are not entitled to personal hearing. Insofar as the propositions in the decision in Siva Priya Bar and Restaurant (1 supra), there is no dispute.

7. However, in the case on hand, the issue is not with regard to whether the Commissioner who is the competent authority is required to pass a reasoned order or not. The only issue is as to whether the said authority has to consider the written objections filed by the petitioners

before taking a considered decision on the application of the 6th respondent with regard to shifting of his licensed Bar & Restaurant from one premises (old premises) to another (proposed new premises). Further, it is not disputed that the Commissioner, who is the competent officer to take a decision in the matter, has not yet taken a decision and that the proceedings of the District Prohibition & Excise Officer, dated 26.10.2017, who is not competent to issue such proceedings overruling the objections of the petitioners, are not valid in the eye of law as he is not the competent officer to issue such proceedings as per the submissions made before this Court and the admitted legal position obtaining. The Commissioner is the only competent authority to take a decision in the matter was also laid down in the decision in Siva Priya Bar and Restaurant v. Commissioner of Prohibition and Excise (1 supra). Hence, the Commissioner is required to take an appropriate decision in the matter.

8. On the above analysis, this Court finds that the request of the petitioners that their objections deserve to be considered by the Commissioner (Prohibition & Excise), Hyderabad, State of Telangana, before he takes a considered decision on the application of the 6th respondent, merits consideration.

9. In the result, the Writ Petition is allowed directing the 2nd respondent to consider the objections, dated 25.9.2017, 01.09.2017 and 31.08.2017 of the petitioners before taking a considered decision on the application, dated 06.09.2017, submitted by the 6th respondent for shifting of his Bar & Restaurant, i.e., M/s. Venkateshwara Restaurant & Bar from the present licensed premises to the proposed new premises bearing H.No.14-1-142, Pochamma Maidan, Warangal, Warangal District;

and dispose of the said application in strict accordance with the procedure established by law, as expeditiously as possible and preferably within three weeks from the date of receipt of a copy of this order; and communicate a copy of the decision taken thereon to the 6th respondent as well as the learned counsel for the petitioners under proper acknowledgment within a week thereafter. It is made clear that the Commissioner shall take an independent decision in the matter without being influenced by the proceedings of the District Prohibition & Excise Officer, which are held to be not valid, and that the petitioners are not entitled to personal hearing in the matter.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

09th November, 2017
RAR

M. SEETHARAMA MURTI, J



