

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.35006 OF 2016

ORDER:

Petitioners filed this Writ Petition aggrieved by the action of the 2nd respondent-Commissioner of Prohibition and Excise, Vijayawada, in permitting the 5th respondent to shift the Bar and Restaurant from D.No.30-445, NRT Road, Vinukonda to D.No.23-526 and 23-527, Palnadu Road of Vinukonda Municipality.

The sum and substance of the arguments of the learned counsel for the petitioners is that both the petitioners are the licensees having been granted A4 licences under the A.P. Excise (Grant of License of Selling by Bar and Conditions of License) Rules, 2005, for sale of the liquor, and on earlier the distance between the petitioners' shop and the 5th respondent's Bar and Restaurant was about 800 metres, whereas, on account of the shifting, it has been reduced to 20 meters. On account of the permission granted in favour of the 5th respondent for shifting the Bar and Restaurant to the present premises, petitioners would suffer huge financial loss. It is also the contention of the learned counsel for the petitioners that the petitioners had offered higher amount of licence fee in open auction considering the potentiality of sales and also considering that there is no competition in the vicinity. It is also the contention of the petitioners that they are also required to have a permit room where the liquor is consumed and thereby they are also extending the same services as bar owners. In that view of the matter, as the petitioners would be suffering huge loss, the permission ought not to have been granted and the objections raised by the petitioners, in the context of the order dated 26.07.2016 passed by this Court in W.P.No.24776 of 2016, are not properly appreciated.

Learned Government Pleader would support the order and would submit that various factors, including the turnover achieved by the petitioners, have been taken into consideration and as a matter of fact, petitioners' shops have already reached eight times of the turnover of license fees as on the date and they have already achieved more than normal sales. It is also further contended that the petitioners' shops are located nearby to the bus stand and in the busy locality, with a huge floating population, and there is no truth in the allegation that the petitioners would suffer irreparable loss.

On the other hand, learned counsel appearing for the 5th respondent would submit that the petitioners cannot have any objection for shifting of the Bar to the present location, as the petitioners as well as the respondents operate their businesses in different arenas. There is a difference between the licenses granted to the petitioners and the 5th respondent i.e., petitioners were granted A-4 shops licence, whereas 5th respondent was granted 2B bar and restaurant license. The permission granted to shift the premises cannot be found fault as the authorities had considered the material on record and particularly on the circumstances under which the petitioners are forced to seek shifting. The reasons for the petitioners to seek shifting of the bar to a new premises are that the dilapidated conditions of the premises and to ensure the safety of the customers. The respondent authorities had taken into consideration of the parameters which are required to be considered in terms of Rule 13(3) of the Rules. Under the circumstances, the learned counsel prays to dismiss the writ petition.

Having considered the respective submissions the aspect of the power of the respondent authorities to consider the shifting of

the bar and restaurant is not in dispute. It is also not the case of the petitioners that the objections raised by them have not been considered. It may also be noted that, in law there is no requirement of even considering the objections of existing shop owner as the rules do not provide for such thing. However, as a matter of fact, petitioners were permitted to make objections by virtue of the order dated 26.07.2016 passed in W.P.No.24776 of 2016 and said objections were also considered and dealt with by the authorities. As pointed out by the learned counsel for the 5th respondent, the Commissioner had considered the relevant facts viz.,

- The A4 shop is Off-licence and 2B bar is Onlicence and are different licences to cater the needs of different kinds of consumers.
- As per Rule 2(1)(u) of A.P. Excise (Grant of licence of Selling by shop and conditions of Licence) Rules, 2012, A4 shop means a privilege granted under the rules of sale of Liquor in sealed or capsuled bottles or packages or tins to an individual in quantities not exceeding the limits as prescribed without permitting consumption on the licensed premises and as per Rule (3) (b) of bar Rules, bar means the privilege granted under the Act to an establishment where food is served, of sale of liquor in loose for consumption on the licensed premises.
- The proposed shifting is at a distance of 800 mtrs., from the existing licensed premises and there are two A-4 shops functioning at a distance of 20 mtrs., to the proposed shifting premises. However, there is no change of demand of liquor due to same vicinity and do not affect of sales of nearby A-4 shops and the area/location is compiled with huge commercial establishment.
- There are no restrictions or bar on the maintaining of distances between the A-4 shops to 2B bards in the rules and regulations.
- The mode of functioning of the A-4 shops and 2B Bars are quite different. The contention of the petitioners is not correct, if the Bar is shifted within a distance of 100

meters, the petitioners would be put to lot of financial hardship.

- The contention of the petitioners on the shifting of above 2B Bar to the adjacent to their A_4 shops getting huge financial hardship is not correct, as the both A-4 shops have achieved 8 times and 7.9 times of turnover on the licence fee as on date.

It may be true to some extent that there is a possibility of petitioners' business turnover coming down, but that by itself cannot be a ground for objecting the shifting of a bar license, as there is a difference between A-4 shop and bar & restaurant, one being licence under A4 and another being licence under Form-2B. It may also be noted that only precaution that is required to be taken under Section 13(3) of the Rules by the authorities, while permitting shifting, is that the shifting cannot be done to the locality outside the local area, for which originally license was granted. In those circumstances, there are no grounds to interfere with the impugned order.

Accordingly, the Writ petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

CHALLA KODANDA RAM, J

Date:09.03.2017.
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