

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**Writ Appeal No.30 of 2018
And
Writ Petition No. 43151 of 2017**

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

Heard Sri O. Manohar Reddy, learned counsel for the appellant, and Sri Unnam Muralidhar Rao, learned counsel for the 1st respondent-writ petitioner, and, with their consent, the Writ Appeal and the Writ Petition are disposed of at the stage of admission.

While several contentions are urged questioning the ad-interim order passed by the learned Single Judge, the fact remains that, even in terms of Rule 28(3) as amended by G.O. Ms. No.112 dated 22.3.2017, shifting of the licensed premises may be permitted for valid reasons within the same notified Mandal/Nagar Panchayat/Municipality/Municipal Corporation, subject to the conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of the licence fee or Rs.25,000/- whichever is higher.

While power is conferred on the Commissioner of Prohibition & Excise, to grant permission for shifting of the licensed premises, such power is circumscribed by the requirement of assigning valid reasons. The impugned order of the Commissioner of Prohibition & Excise dated 22.12.2017 refers to the reasons which weighed with the appellant in making an application for shifting of his A4 shop, and the reasons which weighed with the Prohibition & Excise Superintendent and the Deputy Commissioner of Prohibition & Excise in recommending shifting of the shop. However, all that the Commissioner has stated thereafter is that, after due enquiry and examination of all the relevant reasons and recommendations of the Prohibition & Excise Superintendent, Markapur and the Deputy Commissioner of Prohibition & Excise,

Prakasam, he was according permission for shifting of the licensed premises within the notified unit under Rule 28(3) of the Andhra Pradesh Excise (Grant of licence of selling by shop and conditions of Licence) Rules, 2012 (hereinafter referred to as “the Rules”), subject to payment of shifting fee as per rules.

Since the power to accord permission, for shifting of an A4 shop, is conferred on the Commissioner of Prohibition & Excise, such a power must be exercised by him for valid reasons ie, the reasons must not only be valid but must be his and not that of the applicant or the recommending authorities ie, the Prohibition and Excise Superintendent, Markapur and the Deputy Commissioner of Prohibition & Excise, Prakasam. The impugned order makes no reference to the reasons which weighed with the Commissioner in granting permission for shifting the premises, much less which, according to him, were valid.

On this short ground the order, impugned in the Writ Petition, is set aside. The Commissioner of Prohibition & Excise shall, at the earliest and in any event not later than ten days from the date of receipt of a copy of this order, pass an order afresh assigning reasons for the decision which he intends taking in the exercise of his powers under Rule 28(3) of the Rules as amended by G.O. Ms. No. 112 dated 22.3.2017.

Sri Unnam Muralidhar Rao, learned counsel, seeks permission to the 1st respondent-writ petitioner to make a representation to the Commissioner of Prohibition & Excise against re-location of the subject shop. Suffice it to make it clear that this order shall not disable the 1st respondent-writ petitioner from making a representation, if he so chooses.

Both the Writ Appeal and the Writ Petition are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

5th January, 2018

Note:
Furnish c.c. tomorrow.
b/o
pnb



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