

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.58, 59 and 60 of 2018

&

Writ Petition Nos.7193 and 23835 of 2016

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

W.A.Nos.58 to 60 of 2018 are preferred against the orders passed by the Learned Single Judge in W.P.Nos.21062, 21058 and 21037 of 2017 dated 05.01.2018 respectively. The appellants, in these three appeals, invoked the jurisdiction of this Court to declare the notification issued by the Prohibition and Excise Superintendent, Vizianagaram, Kadapa and Krishna Districts, notifying certain bars as new bars, instead of existing bars, as illegal, arbitrary and contrary to the policy decision published in G.O.Ms.No.236 dated 23.06.2017, and Rule 6 of the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2017 (hereinafter called the "2017 Rules"). A consequential direction was sought to the Prohibition and Excise Superintendents to renew the licences in favour of the appellants-petitioners.

In the orders under appeal, the Learned Single Judge observed that the appellants-writ petitioners claimed to have been treated differently, and to have been discriminated by treating them as new entrants though they were not new entrants; the learned Government Pleader had submitted that the cases of these nine new entrants stood on a different footing, from that of others, as the petitioners were new entrants; admittedly the 237 licences, granted pursuant to the memo dated 21.12.2015, could not be given effect to, as per the orders of this Court in WPMP No.6527 of 2016 in W.P.No.5115 of 2016 and batch; as the appellants-writ petitioners and others (in all 9

licencees) were new entrants, their cases stood on a different footing from that of the others who were already existing licencees; the Prohibition and Excise Superintendents were justified in notifying the bars of the petitioners in the list of new entrants; and the notifications issued, considering the petitioners as new entrants, could not be termed as illegal and arbitrary, more particularly as the action of the Prohibition and Excise Superintendents, in treating the petitioners and others similarly placed as new entrants, was based on an intelligible differentia. All the three Writ Petitions were dismissed. Aggrieved thereby the present Writ Appeals.

On the basis of the report, submitted by the Commissioner of Prohibition and Excise which was received on 17.12.2015, the Government of Andhra Pradesh issued Memo No.31022/17/2015-EXC-II-REV dated 21.12.2015 according permission to the Commissioner of Prohibition and Excise, Andhra Pradesh to grant 2B bar licences for the year 2016 in Municipal Corporations/ Municipalities to the number which existed as on 30.06.2015, and to grant prior clearance on 'first come first serve' basis subject to fulfilment of the conditions in Form-1A (Application for Prior Clearance) as laid down under Rule 5 of the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short "the 2005 Rules").

Pursuant to the said Memo dated 21.12.2015, the Commissioner granted prior clearance to 237 bar licensees and, thereafter, the concerned Excise Superintendents issued bar licences to all these 237 applicants, (which included the appellants in W.A.Nos.58 to 60 of 2018), on or before 31.12.2015. These licences were granted on a 'first come first serve' basis. The policy decision of

the Government of Andhra Pradesh, to grant licences on a 'first come first serve basis', was subjected to challenge in W.P.No.42888 of 2015 and a Learned Single Judge of this Court, by order in W.P.M.P. No.55284 of 2015 in W.P.No.42888 of 2015 dated 31.12.2015, directed that the Memo dated 21.12.2015 should not be given effect to, and the respondent -authorities therein should maintain *status quo* with regards the existing bar licences; and such bar licence-holders shall, however, pay the enhanced licence fee on a month to month basis pending further orders in the Writ Petition.

Thereafter, the Government of Andhra Pradesh framed a new policy, and notified the same in G.O.Ms.No.19 dated 20.01.2016. While the said policy also provided for grant of bar licences on a 'first come first serve' basis, several other conditions were stipulated therein. This Excise policy was also subjected to challenge in W.P.No.5115 of 2016 and batch and a Learned Single Judge, by a common interim order dated 26.04.2016, suspended the operation and effect of the said G.O leaving it open to the State Government to formulate new policy guidelines.

The 2005 Rules, under which both the excise policies in Memo dated 21.12.2015 and in G.O.Ms.No.19 dated 20.01.2016 were issued, was superseded by the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2017 (for short "the 2017 Rules") which were notified in G.O.Ms.No.235 dated 23.06.2017. On the very same day, the State Government framed a new excise policy which was notified in G.O.Ms.No.236 dated 23.06.2017. Rule 6 of the 2017 Rules relates to existing bar licences granted under the 2005 Rules. The said Rule provides that the 2005 Rules shall cease to operate on the commencement of the 2017

Rules; and all licensees, who were granted licences under the 2005 Rules and continued till the commencement of the 2017 Rules, were entitled for grant of licences under the 2017 Rules subject to payment of non-refundable application fee, non-refundable registration charges and license fees as prescribed, and on fulfilment of the other conditions stipulated under the 2017 Rules.

The bar policy for the period 2017-2022 (i.e from 01.07.2017 to 30.06.2022), for grant of licences for establishment of bars, was notified in G.O.Ms.No.236 dated 23.06.2017. Among others, the said policy stipulated that all bar licences, existing as on 30.06.2017, shall be entitled for grant of fresh licences on filing applications online subject to payment of non-refundable application fee, non-refundable registration charges and licence fees, and fulfilment of the eligibility conditions as per Rules. The said policy also stipulated that new bar licences shall be granted in Urban Local Bodies where there are either no bars, or inadequate number of bars, by following a population criteria of one bar upto 30,000 population, and in its multiples.

The appellants in W.A.Nos.58, 59 and 60 of 2018 were hitherto granted bar licences, under the 2005 Rules, pursuant to the Excise policy in Government Memo dated 21.12.2015, whereby bar licences were to be granted on a 'first come first serve' basis. While the Excise policy, notified in Memo dated 21.12.2015, was interdicted by the interlocutory order passed by a Learned Single Judge of this Court on 31.12.2015, the fact remains that, in the very same order, the Learned Single Judge had directed *status quo* to be maintained and, as a result, the appellants, who were all granted bar licences on

31.12.2015, continued to operate the bars till the end of the 2016-17 Excise Year i.e till 30.06.2017.

The excise policy framed under Memo dated 21.12.2015, whereby bar licences were granted on a 'first come first serve' basis, was subjected to challenge, in the several Writ Petitions, including W.P.No.42888 of 2015. It is, however, not in dispute that all these Writ Petitions have, subsequently, been dismissed as infructuous. It is useful to note that W.P.No.42888 of 2015 was also dismissed as infructuous by our order dated 05.02.2018.

While the view taken by the Learned Single Judge in the interim order passed in W.P.M.P.No.55284 of 2015 in W.P.No.42888 of 2015 dated 31.12.2015, albeit prima-facie, has considerable force, the learned Advocate General, appearing on behalf of the State of Andhra Pradesh, would submit that a similar provision, for grant of mining leases on a 'first come first serve' basis, is prescribed in the A.P. Minor Mineral Concession Rules, 1966. It is wholly unnecessary for us to examine the validity or otherwise of the Excise policies, in Memo dated 21.12.2015 and G.O.Ms.No.19 dated 20.01.2016 granting bar licences on a 'first come first serve' basis, in the absence of any challenge to its validity, (all the Writ Petitions, wherein these Excise policies were subjected to challenge, having been dismissed, on the submission of the Learned Counsel, appearing on behalf of the petitioners therein, that they had become infructuous), and as both the said policies are no longer in force consequent on the 2005 Rules, under which these policies were made, having been superseded by the 2017 Rules; and a new policy having been framed and notified in G.O.Ms.No.236 dated 23.06.2017 whereby the policy for granting bar licences on a 'first come first serve' basis has been given a go-by, and

bar licences are now required to be granted in terms of the said policy only on drawal of lots.

As the Memo dated 21.12.2015 has not been set aside, the bar licences, granted pursuant thereto, continue to remain valid. Since the 2017 Excise policy, notified in G.O.Ms.No.236 dated 23.06.2017, specifically provides that all bar licencees, existing as on 30.06.2017, are entitled for grant of fresh licences, on complying with the formalities prescribed therein, the appellants herein, who were all existing bar licensees as on 30.06.2017, would also be entitled for grant of fresh licences subject, of course, to fulfilment of the conditions stipulated in G.O.Ms.No.236 dated 23.06.2017.

While Sri O.Manohar Reddy, learned counsel for the appellants, would submit that all the appellants in these three Writ Appeals have fulfilled the conditions stipulated in G.O.Ms.No.236 dated 23.06.2017, these are all matters for the Commissioner of Prohibition and Excise, and the concerned Excise Superintendents, to verify. Suffice it to hold that, in case the appellants-writ petitioners fulfil the conditions stipulated in G.O.Ms.No.236 dated 23.06.2017, they shall be granted fresh licences at the earliest and, in any event, on or before 28.02.2018.

W.P.No.7193 of 2016 is filed seeking a mandamus to declare the action of the Commissioner of Prohibition and Excise, the Deputy Commissioner of Prohibition and Excise, and the Superintendent of Prohibition and Excise, Srikakulam, in not granting licence in Form-2B as per Rule 5 of the 2005 Rules, even though he had complied with all the conditions, as well as the recommendations of the authorities, as illegal, improper and in violation of Articles 14 and 19(1)(g) of the Constitution of India. A further direction is sought to

the Deputy Commissioner of Prohibition and Excise, and the Superintendent of Prohibition and Excise, Srikakulam, to grant licence in Form-2B to the petitioner forthwith. A more or less identical relief is sought in W.P.No.23835 of 2016 except that the Prohibition and Excise Officials therein are those working in Visakhapatnam District.

As the learned counsel for the petitioners, in W.P.Nos.7193 and 23835 of 2016 were not present when the matters were called yesterday i.e on 07.02.2018, we had directed both these Writ Petitions to be listed today under the caption “for orders”. Despite both the Writ Petitions being listed today, under the caption “for orders”, neither were the learned counsel for the petitioners present nor was there any representation on their behalf.

The petitioners in W.P.Nos.7193 and 23835 of 2016, who were granted prior clearance by the Commissioner, Prohibition & Excise, for establishing bars before the interim order was passed on 31.12.2015, have invoked the jurisdiction of this Court contending that they are also entitled for grant of bar licences. The fact, however, remains that neither of these petitioners were granted bar licences either before or after 31.12.2015, and did not have bar licences when the 2017 Rules, and the new excise policy in G.O.Ms.No.235, came into force on 23.06.2017.

As noted hereinabove Rule 6 of 2017 Rules stipulates that all licensees who were granted licences under the 2005 Rules, and continued till the commencement of the 2017 Rules (i.e 23.06.2017), were entitled for grant of licence under the 2017 Rules subject to the conditions stipulated in Rule 6. Likewise, Para (a) of the bar policy, notified in G.O.Ms.No.236 dated 23.06.2017, also stipulates that all

bar licencees, existing as on 30.06.2017, shall be entitled for grant of fresh licences on fulfillment of the conditions stipulated therein. Neither of the petitioners, in these two Writ Petitions, had a bar licence as on 23.06.2017 when the 2017 Rules and the bar policy came into force. They were only granted prior clearance by the Commissioner of Prohibition and Excise on or before 31.12.2015; and were not granted bar licences either before or at any time thereafter. As it is only those licencees who were granted bar licences under the 2005 Rules, and continued to hold these licences on the commencement of the 2017 Rules and the bar policy on 23.06.2017, who are entitled for grant of fresh licences, subject to fulfillment of the prescribed conditions, neither of the petitioners can be heard to claim that they should also be granted bar licences. The petitioners are not entitled to the relief sought for in these Writ Petitions.

All the Writ Appeals are, accordingly, disposed of and both the Writ Petitions are dismissed. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

08th February, 2018
JSU

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



**Writ Appeal Nos.58,59 and 60 of 2018
&
Writ Petition Nos.7193 and 23835 of 2016**

Date: 08.02.2018

JSU