

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.2864 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Excise appearing for respondents.

2. Petitioner has assailed proceedings dt.22-09-2017 of 2nd respondent directing the petitioner to pay entire licence fee along with penal interest from 01-07-2014 to 30-06-2017 in order to treat him as having existing bar as on 30-06-2017, and to be considered eligible for grant of fresh 2B bar licence as per A.P. Excise Grant of Licence of Selling by Bar Rules, 2017 (for short '2017 Rules').

3. The admitted facts are that the petitioner had 2B Bar and Restaurant at premises bearing Door No.14-2-192, 193, Prayag Das Road, T.P.Area, Tirupati, prior to 30-06-2014. On 26-03-2014, the area, where the petitioner's Bar viz., M/s.Konark Restaurant and Bar was located, came under a ban imposed by the State Government for certain reasons which ban continued up to 30-06-2017. The petitioner was informed of the same by a notice dt.26-03-2014 issued by 4th respondent and he was informed that his licence will not be renewed in the existing premises. He was requested to select another suitable premises outside the prohibited wards and submit proposals for shifting of the Bar premises at the earliest.

4. Thus, the petitioner was precluded by the ban from continuing the business in the said place on account of ban imposed by the State Government till it was lifted on 30-06-2017.

5. New policy was framed vide G.O.Ms.No.235 Revenue (Ex.II) Department dt.23-06-2017 (hereinafter called 2017 Rules). Rule 6 thereof stated that all the licensees, who have been granted licences under the pre existing 2005 Rules and who continued to do business till the commencement of 2017 Rules, would be entitled for grant of licence under 2017 Rules subject to payment of non-refundable application fee, non-refundable registration charge and license fee as prescribed on fulfillment of other conditions laid down under 2017 Rules..

6. But prior to the coming into force of 2017 Rules, the petitioner made request on 12-05-2016 for grant of licence under the pre existing 2005 Rules. He also made subsequent representations dt.14-06-2017 and 27-06-2017. The petitioner had sought consideration of his case along with on the same lines as that was done in the cases of other Bars in the names of M/s.Partha Restaurant & Bar and M/s.S.V. Restaurant and Bar.

7. Thereafter, the impugned order was passed by 2nd respondent stating that the crucial question was whether petitioner's licence can be renewed or not since it was not in force in 2014-15, 2015-16 and 2016-17 and that if he is to claim a bar licence under the

new Rules, he has to pay bar licence fee along with penal interest from 01-07-2014 to 30-06-2017.

8. Adverting to petitioner's plea to be considered on par with the other two Bars, the 2nd respondent stated that decision in regard to those two Bars had been taken by the State Government; that in those cases, the licensee had paid requisition fee, renewal of the licence fee for the year 2014-15 but in view of the ban in the particular area, where that Bar was located, his licence could not be renewed and the licence fee remitted was also not refunded. It is stated that these factors were taken into account by the State Government to renew the licence of the other two Bars mentioned above for 2015-16 as a special case.

9. Learned counsel for the petitioner contends that the insistence by the 2nd respondent of the petitioner paying the licence fee along with penal interest from 01-07-2014 to 30-06-2017 to consider petitioner as existing Bar on 30-06-2017 to be eligible for grant of fresh 2B Bar licence as per the 2017 Rules is arbitrary and violative of Article 14 of the Constitution of India. According to him, when the petitioner was prevented from doing business in the premises where he was running the Bar in 2013-14 on account of prohibitory orders issued by the Government, his case cannot be treated as a licensee who discontinued business because the discontinuance of business at that premises by the petitioner was not voluntary, but was on account of the then policy. He further

contended that compelling the petitioner to pay the licence fee and penal interest for the period from 01-07-2014 to 30-06-2017 is arbitrary because the petitioner did not do business during that period at all. He pointed out that the State, having prevented him from doing business at the premises where he was doing business in 2013-14, cannot be permitted to take advantage of its own decision in imposing ban on doing business in the said premises and direct the petitioner to pay the entire licence fee along with penal interest during the said period and it would amount to unjust enrichment. He also contended that the other two licencees M/s.Partha Restaurant & Bar and M/s.S.V. Restaurant and Bar, Tirupathi, had also admittedly not done business in 2014-15 because of the same ban, which the petitioner also had to suffer because of the policy decision of the Government, but 1st respondent had granted renewal in 2015-16 of both the said licencees treating them as a special case obviously for extraneous considerations, particularly, when there was no power to relax the Rule.

10. Learned Government Pleader for Excise appearing for respondents however contended that as per the 2017 Rules, only existing licencees can be considered and that 2nd respondent considered the case of the petitioner sympathetically and imposed the said condition by way of pre-clearance though such pre-clearance is not contemplated under the existing Rules. He further stated that the petitioner had choice after the ban was imposed to shift to another

place of business as was suggested in the proceedings dt.26-03-2014 of 4th respondent, and so the petitioner cannot complain of the conditions being imposed by 2nd respondent. He further pointed out that the decision of the State Government to consider the cases of M/s.Partha Restaurant & Bar and M/s.S.V. Restaurant and Bar, Tirupathi, for renewal was done prior to the coming into force into 2017 Rules as a special case by condoning the gap of 2014-15 in relaxation of the Rules though there is no special power to relax the applicable rules even then.

11. I have noted the contentions of both sides.

12. From the facts narrated above, it is clear that the petitioner had a 2B Bar licence in 2014-15 at T.P. Area, Tirupathi. The ward in which this area is located was considered by the State Government to be prohibited area for running of particular Bar and Restaurant for certain reasons at that time and the petitioner was issued a notice on 26-03-2014 informing him that his 2B licence will not be renewed in the existing premises for the lease year 2014-15 commencing from 01-07-2014 and he was requested to select another suitable premises outside the prohibited wards and submit proposals by shifting of the Bar premises at the earliest.

13. The tenor of the said letter shows that 4th respondent gave a choice to the petitioner to continue the business in another place outside prohibited area since obviously 4th respondent could not have

compelled the petitioner to shift to another area which the petitioner considered to be not profitable for doing business.

14. The petitioner was thus prevented from continuing the business at the Prayag Das Road in the T.P.Area, Tirupati. The fact that he did not exercise between 2014-15 and 2017-18 the choice to select another suitable premises outside the prohibited ward cannot be put against the petitioner by the respondents.

15. No doubt Rule 6 of 2017 Rules states that all licensees who have been granted under the 2005 Rules and continued till the commencement of the 2017 Rules are entitled to licences under the latter Rules. In my opinion, this Rule 6 benefit can only be denied to people who by their voluntary action discontinued business and not to those who were prevented from doing business at a particular place on account of a Government ban. It cannot be denied to persons like petitioners who were prevented by State's ban from doing business. Such persons have to be treated as having been in business by fiction of law.

16. Having prevented the petitioner on account of its own policy decision from doing business in the T.P. Area of Tirupathi, the State cannot take advantage of the same and treat the petitioner as a person who did not continue business under Rule 6 of the 2017 Rules since his inability to continue was on account of policy decision taken by the State Government in that regard to ban Bars and Restaurants in

the area where the petitioner had the bar licence in 2013-14 and not because the petitioner, for his own reasons, stopped his business.

17. So having thus prevented the petitioner from continuing his business at T.P. Area, Tirupathi, premises between 01-07-2014 to 30-06-2017 while considering his case under the 2017 Rules, the 2nd respondent cannot ask the petitioner to pay the entire licence fee along with penal interest from 01-07-2014 to 30-06-2017 in order to consider him eligible for grant of fresh 2B bar licence as per the 2017 Rules. In fact, this demand would be illegal apart from being arbitrary and result in unjust enrichment of the State because admittedly for this duration, it was the policy decision of the Government not to permit any business in bars and restaurants in the T.P. Area of Tirupathi, and petitioner did not do any business for this period at his T.P. Area premises.

18. Coming to the cases M/s.Partha Restaurant & Bar and M/s.S.V. Restaurant and Bar, Tirupathi, who were granted renewal of licence for 2015-16, in spite of not running business for 2014-15, as a special case, in relaxation of the rule, it appears that special favour was shown to them for whatever reason. If there is no power to relax the 2005 Rules, such special treatment to those two businesses cannot be justified.

19. In this view of the matter, I am of the opinion that the demand of 2nd respondent that the petitioner shall pay the entire

licence fee along with penal interest from 01-07-2014 to 30-06-2017 to be considered as an existing Bar on 13-06-2017 and be eligible for grant of fresh 2B bar licence as per the 2017 Rules, is arbitrary, illegal and violates Article 14 of the Constitution of India.

20. Accordingly, the Writ Petition is allowed and to the extent the order dt.22-09-2017 directing the petitioner to pay the entire licence fee along with penal interest from 01-07-2014 to 30-06-2017, it is set aside and 2nd respondent is directed to treat the petitioner as a continuing licensee under Rule 6 of the 2017 Rules and consider grant of licence under the said Rules. This exercise shall be completed within six weeks from the date of receipt of a copy of this order. No costs.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-03-2016

kvr