THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.5328 and 10263 of 2018

COMMON ORDER:

Since these two writ petitions are inter-related, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. In W.P.No.5328 of 2018, petitioner is praying for a direction to the Respondents 3 to 7 to close the liquor shops of Respondents 8 and 9.

3. In W.P.No.10263 of 2018, a notice bearing Rc.No.A/06/2018 dated 22.3.2018 issued by the Prohibition and Excise Superintendent, Proddatur is under challenge.

4. Respondents 8 & 9 in W.P.No.5328 of 2018 are the petitioners in W.P.No.10263 of 2018 and petitioner in W.P.No.5328 of 2018 is Respondent No.4 in W.P.No.10263 of 2018. Respondents 8 and 9 in W.P.No.5328 of 2018, who are petitioners in W.P.No.10263 of 2018 were granted A4 licences by the Excise Superintendent, Proddatur by way of proceedings dated 1.7.2017. Petitioner in W.P.No.5328 of 2018 lodged a complaint against the said licenses saying that the authorities granted A4 licence within a distance of 500 mtrs from State Highway and that the same is contrary to the judgment of the Hon'ble Supreme Court in State of Tamilnadu v. K.Balu and others [1]. On the basis of the said complaint, when the licenses of Respondents 8 and 9 in W.P.No.5328 of 2018 were sought to be interdicted, they approached this Court by way of filing W.P.Nos.30044 of 2017 and 30362 of 2017. By orders dated 6.9.2017 and 8.9.2017, this Court allowed

[1] (2017) 2 SCC 281

the said writ petitions, setting aside the said orders, while leaving it open to the Respondent authorities to issue show cause notice and to pass orders, after giving opportunity of hearing to the petitioners as well as interested parties. Subsequent to the above said orders of this Court, the Excise Superintendent, while observing/concluding vide orders dated 9.1.2018 that the shops were located within 500 mtrs from the State Highway, stated that the competent authority to take action is the Commissioner of Prohibition and Excise.

5. Obviously, assailing the said action as abdication of power conferred under A.P. Excise Act on the Excise Superintendent, W.P.No.5328 of 2018 came to be instituted. This Court passed an order on 19.2.2018 in W.P.No.5328 of 2018, directing the Excise authorities to verify the distance and take action. Thereafter, after submission of the report dated 20.3.2018, the Excise Superintendent issued a notice dated 24.3.2018 vide proceedings Rc.No.A1/06/2018, asking the Respondents 8 and 9 in W.P.No.5328 of 2018 and petitioners in W.P.No.10263 of 2018 to shift their shops with a further observation that in the event of there being non-adherence to the same, the licenses stand suspended. While pleading that the said action is highly illegal and arbitrary, W.P.No.10263 of 2018 came to be filed by the Respondents 8 and 9 in W.P.No.5328 of 2018.

6. Heard Sri Sameer Ahmed, learned counsel for the petitioner in W.P.No.5328 of 2018 and Respondent No.4 in W.P.No.10263 of 2018, learned Government Pleader for official Respondents in both the writ petitions and Sri C.Prakash Reddy, learned counsel appearing for Respondents 8 and 9 in W.P.No.5328 of 2018 and petitioners in W.P.No.10263 of 2018, apart from perusing the material available before the Court.

7. Sri Sameer Ahmed, learned counsel contends that the action impugned in W.P.No.5328 of 2018 is highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of A.P. Excise Act, 1968 and the Rules framed thereunder; that the impugned action is a result of abdication of powers on the part of the Excise Superintendent; that having found the contravention of orders of the Hon'ble Supreme Court, the Excise Superintendent, being the authority competent to take action, should have ordered cancellation of licenses. Eventually, the learned counsel prays to allow W.P.No.5328 of 2018 and to dismiss W.P.No.10263 of 2018.

8. The learned Government Pleader contends that as per the orders of this Court in W.P.No.5328 of 2018 dated 19.2.2018, the Excise Superintendent issued the impugned order in W.P.No.10263 of 2018 and by virtue of the said order, the Excise Superintendent, directed shifting of the shop and also ordered deemed suspension in the event of non-adherence of the said direction.

9. Per contra, it is contended by Sri C.Prakash Reddy that in view of the orders of the Hon'ble Supreme Court in M.A.Nos.489-491 of 2018 and batch of Civil Appeal Nos.12164-12116 of 2016 and the consequential instructions issued by the Commissioner of Prohibition and Excise, W.P.No.5328 of 2018 is liable to be dismissed and W.P.No.10263 of 2018 is liable to be allowed.

10. The information available before this Court reveals that the Excise Superintendent granted A4 licence in favour of Respondents 8 and 9 in W.P.No.5328 of 2018 who are petitioners in W.P.No.10263 of 2018.

11. The sum and substance of the case of the petitioner in W.P.No.5328 of 2018 is that the subject shops are located within the distance of 500 mtrs from State Highway and as the said shops are located beyond 2 k.m. from Gram Panchayat limits, the said shops are liable to be closed and the lilcences covered by the said shops are liable to be cancelled.

12. On the other hand, it is the case of the Respondents 8 and 9 that in view of the orders of the Hon'ble Apex Court in the above referred SLPs and the instructions of the State Government, petitioner in W.P.No.5328 of 2018 is not entitled for any relief.

13. In order to resolve this issue, it would be highly essential to refer to the orders of the Hon'ble Apex Court referred to supra. In the order dated 23.2.2018 in M.A.Nos.489-491 of 2018 and batch in Civil Appeal Nos.12164-12166 of 2016, the Hon'ble Apex Court at paragraphs 2, 3, 7 and 8 held as under:

> "Though the reliefs which have been sought in the individual MAs/IAs may differ, during the course of hearing there is a broad consensus that for the purpose of the present proceedings, it would be sufficient if this court were to interpret paragraph 7 of the order dated 11 July 2017. Paragraph 7 is extracted below:
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> > '7. The purpose of the directions contained in the order dated 15 December 2016 is to deal with the sale of liquor along and in proximity of highways properly understood, which provide connectivity between cities, towns and villages. The order does not prohibit licensed establishments within municipal areas. This clarification shall govern other municipal areas as well. We have considered it appropriate to issue this clarification to set at rest any ambiguity and to obviate repeated recourse to IAs before the Court'
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> Learned counsel submitted that the expression 'municipal areas' in the above paragraph was not intended to exclude areas within the jurisdiction of local self-governing bodies. Many of them, it is urged, may be developed in a manner similar to municipalities. Others, may be geographically proximate to an urban agglomeration. Hence it was

urged that an appropriate direction may be issued to obviate uncertainties in application, occasioning the need for repeated recourse to this Court or, as the case may be, litigation in the High Courts.

In the order passed by this Court on 11 July 2017, it was observed that the purpose of the directions contained in the order dated 15 December 2016 is to deal with the sale of liquor along and in the proximity of highways properly understood, which provide connectivity between cities, towns and villages. Having regard to this object it was noted that the order does not prohibit licensed establishments within municipal areas. Indeed, in order to ensure that the order is uniformly understood across the country, this Court clarified that it will govern other municipal areas as well. In the subsequent order of this Court dated 13 December 2017, liberty has been granted to the licence holders to submit a representation to the State Government that the same principle should apply to the licensed establishments of the petitioners, as they apply to municipal areas/MIDC developed areas (in relation to the State of Maharashtra).

Having regard to these directions, we are of the view that the State Governments would not be precluded from determining whether the principle which has been laid down by this Court in the order dated 11 July 2017 in Arrive Safe Society (supra) should also apply to areas covered by local self-governing bodies and statutory development authorities. We are inclined to allow the State Governments to make this determination since it is a question of fact as to whether an area covered by a local self-governing body is proximate to a municipal agglomeration or is sufficiently developed as to warrant the application of the same principle. In deciding as to whether the principle which has been set down in the order dated 11 July 2017 should be extended to a local self-governing body (or statutory development authority) the State Governments would take recourse to all relevant circumstances including the nature and extent of development in the area and the object underlying the direction prohibiting the sale of liquor on national and the State Highways. The use of the expression 'municipal areas' in the order dated 11 July 2017 does not prevent the State Governments from making that determination and from taking appropriate decisions consistent with the object of the orders passed by this Court. We leave it open to individual licensees to submit their representations to the competent authorities in the State Governments if they are so advised upon which appropriate decisions may be taken by the State Governments. We have issued this general direction to obviate both litigation before the High Courts and repeated recourse to applications to this court".

14. In pursuance of the above orders of the Hon'ble Apex Court, the State Government issued instructions vide Memo No.31022/3/2018.EXC.II-REV dated 18.5.2018. The said memo reads as under:

> "In the circumstances, reported by the Commissioner, Prohibition and Excise, in the reference 3rd and 4th cited, the Government after careful examination of the matter, hereby accord permission to the Commissioner of Prohibition and Excise, for applying the principle laid down by the Hon'ble Supreme Court of India in its order dated 11.7.2017 in the reference 1st cited, i.e. permitting establishment of liquor shops/bars as the case may be on the highways that pass within the limits of municipal areas' to all areas covered by statutory development authorities, areas falling within 5 KM from the periphery of any urban local body and to all gram panchayats including areas falling within 2 KM from the periphery of such gram panchayats.
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> 2. The Commissioner of Prohibition & Excise, A.P., shall take further necessary action in the matter accordingly".

15. The office of the Commissioner, Prohibition and Excise vide proceedings in Cr.No.15023/134/2018/CPE/E3 dated 18.5.2018 forwarded the above said Memo of the State Government to all the subordinate authorities to implement the same.

16. It is very much evident from a reading of the above said instructions of the State Government that A4 shops can be located within a radius of 5 k.m. from the periphery of urban local body and 2 k.m. from the periphery of Gram Panchayats on the highways. As per the counter affidavit, the said shops are located within the distance of 2 k.m. from the periphery of Proddutur Municipality. It is also significant to note that the authorities notified the subject shops vide Gazette Notification No.15 dated 24.3.2017

showing the unit as Municipality only, but not the Gram Panchayat. Any amount of evidence produced by the learned counsel for the petitioner in W.P.No.5328 of 2018 to show that the said shops are located beyond 2 k.m. from the periphery of Gram Panchayat is of no consequence. Therefore, the contention of the learned counsel for the petitioner in W.P.No.5328 of 2018 that since the shops are not located within 2 k.m. of Gram Panchayat cannot be sustained. Therefore, by any stretch of imagination, it cannot be concluded that there is prohibition on establishment of A4 shop. It is also pertinent to note that the instructions of the State Government vide Memo dated 18.5.2018 are not under challenge in W.P.No.5328 of 2018.

17. In view of the above reasons, W.P.No.5328 of 2018 is dismissed and W.P.No.10263 of 2018 is allowed, setting aside the notice bearing Rc.No.A/06/2018 dated 22.3.2018 issued by the Prohibition and Excise Superintendent, Proddatur. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 23.8.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.5328 and 10263 of 2018

23.8.2018

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