

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.357, 359, 364 & 367 of 2018

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

These four appeals are preferred against the common order passed by the Learned Single Judge in W.P.No.41313 of 2017 and batch dated 20.02.2018. The dispute, in these writ petitions, related to relocation of un-disposed A4 shops for the excise years 2017-18 and 2018-19.

In exercise of the powers conferred under Section 72, read with Section 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968, amendments were made to the Andhra Pradesh Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012 (for short "the 2012 Rules") issued in G.O.Ms.No.391 dated 18.06.2012. Rule 4 of the 2012 Rules, after its substitution by G.O.Ms.No.112 dated 22.03.2017, reads as under:

4. Establishment of Shops:

"Subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in a Mandal/Nagar Panchayat/ Municipality/Municipal Corporation before the publication of notification under Rule 5 and may relocate any un-disposed shop(s) anywhere in the State as he thinks fit."

While the amended Rule 4, of the 2012 Rules, confers power on the Commissioner to relocate any un-disposed shop, anywhere in the State as he thinks fit, such a power cannot be exercised at the whim or caprice of the Commissioner; and un-disposed A4 shops should be relocated in a fair and reasonable manner. In the present case, 14 un-disposed A4 shops were sought to be relocated. Relocation of these 14

un-disposed A4 shops was not confined within the same District where these shops were originally fixed, and these A-4 shops were, in fact, relocated in other Districts also.

Contending that there was no rational basis, for relocation of the 14 un-disposed A4 shops, the appellants-writ petitioners invoked the jurisdiction of this Court. In the order under appeal, the Learned Single Judge held that the decision of the Commissioner was arrived at after application of mind to the facts within the excise policy; the said decision was covered by the Rules, and was made in the exercise of the powers conferred on him, after considering the report of his subordinates as to the viability of the un-disposed shops to be allotted in support of such relocation; it could not be said that the Commissioner had not taken into consideration all factors that were required to be taken into consideration in terms of Rules 4 and 5 of the amended Rules; and there was no justification in interfering with the decision of the Commissioner.

Sri O.Manohar Reddy, learned counsel for the appellants-writ petitioners, would rely on the judgment of this Court in **B.Venkateswarlu vs. Government of Andhra Pradesh**¹ to contend that the Commissioner is required to exercise his power to relocate A-4 shops in a just and reasonable manner; his decision must be informed by reason; and he could not have surrendered his discretion and blindly approved the proposals of his subordinates in this regard. In **B.Venkateswarlu**¹, while dealing with a similar Rule, this Court held:

“....While the power to relocate an un-disposed shop may well be unfettered save population - slab restrictions, it cannot be exercised by the Commissioner at his mere whim or fancy. The power conferred by legislation – plenary or subordinate – must be exercised reasonably and should be informed by reason. Article 14 of the Constitution would be attracted even in the matter of trade in liquor. (Kerala

¹ 2014(5) ALD 682

Samsthana Chethu Thozhilali Union vs. State of Kerala : (2006) 4 SCC 327; V.K. Ashokan v. Assistant Excise Commissioner: (2009) 14 SCC 85. The State can, for the purpose of selling the licence, adopt any mode with a view to maximise its revenues but, while doing so, must conform to the equality clause enshrined in Article 14 of the Constitution. (*State of Punjab vs. Devans Modern Breweries Ltd : (2004) 11 SCC 26*). When the State decides to grant such a right or a privilege to carry on trade or business in liquor to others, it cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of selling liquor. The State cannot ride roughshod over the requirement of that Article. (*State of M.P. v. Nandlal Jaiswal: (1986) 4 SCC 566; Devans Modern Breweries Ltd*). The State, while parting with its exclusive privilege or a part thereof, may impose conditions but, once such terms and conditions are laid down by reason of a statute, the same cannot be deviated from. (*Kerala Samsthana Chethu Thozhilali Union*).

It is contended, on behalf of the petitioners, that the Commissioner could not have called for proposals from the Deputy Commissioners of Prohibition and Excise, who have no role to play under the Act and the Rules, for the purpose of issuing licences; and, from the counter-affidavit, it is clear that the Commissioner has merely accorded permission and has not take an independent decision under Rule 4.

The principles of administrative law, such as surrender of discretion and abdication of duty vitiating the decision, would apply in the case of exercise of power conferred by a statute or rules made thereunder or instruments which are statutory in character. (*Irrigation Development Employees Association v. Govt. of A.P : 2004(2) ALD 599 (DB)*). Exercise of statutory power partakes a quasi-judicial complexion. In the exercise of such power, the authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion" to another body it acts ultra vires. Such interference by a person or body extraneous to the power is contrary to the nature of the power conferred on the authority. (*State of U.P. v. Dharmander Prasad Singh : AIR 1989 SC 997*)...." (emphasis supplied)

Taking into account the averments in the counter-affidavit, this Court, in **B.Venkateswarlu**¹, held that, in calling for proposals and in seeking information from his subordinates, the Commissioner had

neither surrendered his discretion nor had he abdicated his duties; and it was the Commissioner who exercised the power conferred on him under Rule 4, and not the Deputy Commissioner who, as his subordinate, had merely submitted proposals, and had furnished the information sought for by him.

Sri O.Manohar Reddy, learned counsel for the appellants-writ petitioners, contended before us that there was no rational basis for relocation of the 14 undisposed A4 shops, and no discernable criteria was adopted in identifying 11 Mandals, in the entire State of Andhra Pradesh, for relocation of the 14 undisposed A-4 shops. As the counter-affidavit, filed before the Learned Single Judge, was not clear regarding the decision making process involved in identifying these 11 Mandals, for relocation of the 14 un-disposed shops, we called for an additional counter-affidavit from the respondents, and asked the learned Government Pleader to produce the records.

In the additional counter-affidavit, filed by the Additional Commissioner of Prohibition and Excise, it is stated that, in the absence of any specific criteria having been fixed for relocation of the 14 undisposed A-4 shops, the Commissioner had taken into account the same criteria applied for fixation of the number of shops, while relocating the un-disposed shops; this criteria included requirement, public order, health and safety, population of the Mandal, number of existing shops and the highest number of applications received for the shops notified for the Mandal during March, 2017; this formed the basis for determining the adequacy of the number of shops of the Mandal in which relocation of one shop each had been permitted; and, besides these factors, public order had also been taken into account to fine tune the decision making process. The other factors, which weighed with the Commissioner for relocation of the undisposed A-4 shops were

the number of villages of the mandal, including hamlets, so as to prevent unauthorised sale of liquor due to inadequate presence of shops in the mandal; the off take values of the shops, existing in the mandal, had also been compared with the average off take value of the district; Mandals with healthy off take values had also been factored into the decision making process; in the meeting held on 11.12.2017, wherein the Deputy Commissioner and the Prohibition and Excise Superintendents participated, all these factors were discussed at length, and instructions were issued to all the Prohibition and Excise Superintendents to submit proposals, duly indicating the Mandals which satisfied the above criteria for relocation of un-disposed A-4 shops; the proposals, submitted as above, were carefully examined; and orders were issued by the Commissioner duly relocating the un-disposed A-4 shops.

To satisfy ourselves whether there was any rational basis for relocating all these un-disposed shops, we had also called for the records. A perusal thereof, discloses that proposals were submitted by several Prohibition and Excise Superintendents and Deputy Commissioners. While some of them had stated that no undisposed A-4 shop should be relocated within their jurisdiction, for the reasons mentioned in the proposal, some others had proposed that one un-disposed A4 shop be re-located in the mandal within their jurisdiction, for the reasons mentioned in the proposal. The proposal submitted by these officers is based on the reasons referred in the said proposal itself, and it is not as if proposals were submitted without any rational criteria.

In judicial review proceedings, under Article 226 of the Constitution of India, this Court would neither sit in judgment over the decision of the Commissioner of Prohibition and Excise, nor would it

examine whether the decision taken by the Commissioner, to relocate the undisposed A-4 shops, is based on mathematically precise criteria. As long as the decision taken by the Commissioner, to relocate the undisposed A4 shops, accords with reason, the mere fact that some other criteria could have been adopted, for relocation of the un-disposed A4 shops, would not justify interference in proceedings under Article 226 of the Constitution of India.

As we are satisfied that the decision taken by the Commissioner of Prohibition and Excise, to relocate the 14 un-disposed A4 shops, does not suffer from unreasonableness, nor can it be said to be so arbitrary as to violate the Article 14 of the Constitution of India, we see no reason to interfere with his decision in relocating the un-disposed A4 shops, among others, to the mandals where the appellant-writ petitioners were granted A4 shops licences.

All these Writ Appeals fail and are, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

22nd March, 2018
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Date: 22.03.2018

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