

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No. 21037 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“....to issue a writ of mandamus or any other appropriate writ or direction declaring the notification issued by the 4th respondent in Gazette No.46/ KSP/ 2017, dated 23.06.2017, in so far notifying the Bars at Gazette S.no.134 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 AP Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2017 and consequently direct the 4th respondent to renew the licence in favour of the petitioners and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.”

2. I have heard the submissions of *Sri O.Manohar Reddy*, learned senior counsel appearing for the petitioners, and of the learned Government Pleader for Prohibition & Excise appearing for the respondents 1 to 4. I have perused the material record.

3. The submissions made on behalf of the petitioners, in brief, are as follows:

The petitioners are the licensees of Bars and licences were granted to them on 30.12.2015. The existing licence holders in Form 2B questioned G.O.Ms.no.481, dated 21.12.2015, before this Court. They also questioned the memo, date 21.12.2015, issued by the Government. This Court has given interim directions directing the authorities not to give effect to the said memo and further directed that *status quo* be maintained as regards the existing bar licence holders. On 19.01.2016, the 1st respondent issued comprehensive policy guidelines for grant of Bar licences for the Excise Year 2016. In the policy guidelines, the 1st respondent mentioned in paragraph (8) that the excise

authorities have already granted licences in favour of 237 licensees and the said licensees are saved. The said Government Order, dated 19.01.2016, was again made a subject matter of W.P.no.5115 of 2016 and batch. This Court passed interim orders initially. Thereafter, an order was passed, on 27.04.2016, observing that the 1st respondent shall continue the existing Bar licences temporarily subject to such licensees paying the enhanced licence fees. This Court further observed that it would be appropriate that the Government formulate new policy guidelines in this regard expeditiously. Insofar as clause (8) of the GO is concerned, this Court observed that 237 licences granted pursuant to the said memo cannot be given effect to, being in violation of the above interim orders and the fate of such licences would have to wait the result of the cases filed against the said memo. The writ petitions are pending adjudication. While so, G.O.Ms.no.236, dated 23.06.2017, was issued. In the said GO, bar policy for the period 2017-2022, that is, from 01.07.2017 to 30.06.2022 for grant of licences for establishment of bars is mentioned. In the policy decision, it was mentioned that all the holders of 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 charge and licence fee and fulfilment of eligibility conditions as per rules. Clause B of the policy decision reads that new licences shall be granted in urban local bodies where there are either no bars or inadequate number of bars by following population criteria of 'one bar upto 30,000 population and in its multiples'. Basing on the policy decision issued by the Government, the 4th respondent issued a notification published in District Gazette no.46/ KSP/ 2017 dated 23.06.2017, notifying in a list 121 bars as existing bars for online enrolment for registration by the existing licensees for grant of licence for 2017-2022 in Krishna Excise District and notifying 3 bars in the list of new bars for online enrolment for registration. The action of the 4th respondent in issuing notification treating the bars for which the licences

have been granted in favour of the petitioners as new bars instead of as existing bars is not legal and the same is arbitrary and contrary to the policy decision of the 1st respondent. Questioning the said acts, the present writ petition is filed.

4. From the pleadings in the writ petition and the submissions made by the learned senior counsel for the petitioners and the learned Government Pleader, the following facts and aspects are discernable:

Under the impugned G.O.Ms.no.19, dated 20.01.2016, the Government of Andhra Pradesh purported to issue comprehensive policy guidelines for grant of bar licences for the excise year 2016. The Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for brevity, 'the Rules of 2005') promulgated in exercise of powers conferred by Section 72 read with Sections 17, 28 and 29 of Andhra Pradesh Excise Act, 1968 (for brevity, 'the Act of 1968'), are the statutory rules which govern the grant of licences to bars. Under the afore-said GO, the Government superseded G.O.Ms.no.481, dated 21.12.2015, and the memo dated, 21.12.2015, while issuing the comprehensive policy guidelines for grant of bar licences for the excise year 2016. The said GO was challenged in a batch of writ petitions in W.P.no.5115 of 2016 & batch. The said writ petitions are pending adjudication. This Court, by a common order disposed of the miscellaneous petitions filed in the said batch of writ petitions. This Court in the said common orders passed in the said miscellaneous petitions noted certain demonstrable lacunae in some of the clauses of the said GO and held that the policy guidelines fall short in certain regards. This Court also noted in the said common order that supersession of G.O.Ms.no.481, dated 21.12.2015, may not automatically revive G.O.Ms.no.723, dated 02.08.2010, and that if the Government treated G.O.Ms.no.723, dated 02.08.2010, as superseded by G.O.Ms.no.481, dated 21.12.2015, there was no need for it to again refer to it in G.O.Ms.no.19, dated 20.01.2016, and therefore, there was sufficient basis for the confusion

entertained by the petitioners therein as to the present status of G.O.Ms.no.723, dated 02.08.2010. This Court also held that if the Government treats G.O.Ms.no.723, dated 02.08.2010, as having been revived, there is no reason for it to devise a new procedure and methodology, which is wholly contradictory to the one prescribed in G.O.Ms.no.723, dated 02.08.2010. This Court, ultimately, held in the common orders that there is no coherence or consistency in the multiple attempts by the Government to formulate new policy guidelines for grant of bar licences for the excise year 2016 and that the impugned G.O.Ms.no.19, dated 20.01.2016, not only gives room for arbitrariness but also results in discrimination, as it purports to create a “level playing field” but, in effect, it completely overlooks the ample scope for manipulation and nepotism introduced into the process. Eventually, by the common orders, this Court suspended the operation of the said GO by observing *inter alia* that the said impugned orders shall not preclude the Government from formulating coherent and transparent policy guidelines afresh in accordance with law. It is also stated in the said common orders that pending such exercise, the Government shall continue the existing bar licences temporarily, subject to such licensees paying the enhanced licence fees. Insofar as clause 8 of the said GO is concerned, though the Government sought to protect there under the action taken by it under the memo, dated 21.12.2015, this Court held that it is not open to the Government to seek to validate the action taken by it pursuant to the said memo as this Court specifically directed, by way of interim orders in a batch of writ petitions filed against the said memo, that it should not be given effect to. This Court finally held in the common orders that, therefore, the 237 licences granted pursuant to the said memo cannot therefore be given effect to, being in violation of the above common interim orders and the fate of such licences would have to await the result of the cases filed against the said memo. While so, G.O.Ms.no.236, dated 23.06.2017, was issued stating the bar policy for the year

2017 to 2022, that is, from 01.07.2017 to 30.06.2022 for grant of licence for establishment of bars. In the said GO, it is mentioned that all bar licences existing as, on 30.06.2017, shall be entitled for grant of fresh licenses on filing applications online subject to payment of non refundable application fee, non refundable registration charge and licence fee and fulfilment of eligibility conditions as per rules. It is also stated in the said GO that the 4th respondent will issue the notification in the District Gazette calling for applications for disposal of new bars and that in case of more than one application for a bar notified, the selection of applicants will be by drawl of lots by the District Collector. Accordingly, the 4th respondent issued a notification. The same was published in District Gazette no.46/ KSP/ 2017, dated 23.06.2017, stating that the drawl of lots will be conducted at 3 PM on 30.06.2017 at Conference Hall, Collector's office, Machilipatnam, by the authority as specified under Rule 8 of Andhra Pradesh Excise (Grant of licence of selling by bar and conditions of licence) Rules, 2017. To the said notification issued by the 4th respondent, the terms and conditions governing drawl of lots are appended. Under the said Gazette, the 4th respondent notified a list of existing 121 bars situated in Vijayawada District for online enrolment for registration by existing licensees for grant of licence for 2017-2022 in Vijayawada Excise District and notified three (3) bars in the list of new bars for online enrolment for registration, as per the submissions of the petitioners. In this stated background, the petitioners are aggrieved as their shops for which licences have been granted in the year 2016 are also shown as new bars and for which fresh applications are called for.

5. The petitioners submit as follows: 'The action of the 4th respondent in issuing the notification treating the bars for which licences have been granted in favour of the petitioners as new bars instead of as existing bars as illegal, arbitrary and contrary to the policy decision of the 1st respondent. The policy decision taken by the Government and the publication in G.O.Ms.no.236, dated

23.06.2017, clearly reflects that all bar licensees existing as on 30.06.2017 shall be entitled for grant of fresh licences on filing applications online. Admittedly, the 4th respondent has extended the licences and the licences are valid upto 30.06.2017. In that view of the matter, the licences granted in favour of the petitioners are in force and are in existence as on 30.06.2017. Hence, the petitioners shall be treated as existing licensees and their licences shall be automatically renewed subject to payments and fulfilment of eligibility conditions as per the rules. The 4th respondent is not justified in treating the existing licensees as new licensees. Their licences continued till the commencement of the Rules. The rules are very clear. There is also no dispute that the petitioners are continuing their businesses and that the licences granted in their favour are in force. Hence, the petitioners are entitled for automatic renewal as per Rule 6 of the Rules, subject to fulfilment of conditions regarding payments and other conditions.'

6. In reply to the above submissions, the learned Government Pleader would first submit that the petitioners herein and the petitioners in the other two writ petitions are not entitled to the reliefs claimed and that the notification issued by the 4th respondent is valid under facts and in law. He would further submit as follows: 'G.O.Ms.no.19 was challenged in a batch of writ petitions. As rightly stated by the petitioners, this Court, by a common interim order in the miscellaneous petitions in the said batch of writ petitions held specifically that (237) licences granted pursuant to the memo, dated 21.12.2015, cannot be given effect to, being in violation of the interim orders in a batch of writ petitions filed against the said memo and that the fate of such licensees would have to wait the result of the cases filed against the said memo. The cases are pending adjudication. In all, 237 licences were granted, pursuant to the Government memo. But, all such licences cannot be given effect in view of the orders of this Court. The (237) licences, which this Court directed not to give effect are the existing licences. Only nine licensees are

new entrants. Hence, except those new licences of the new entrants, all the remaining licences are being extended month to month by collecting proportionate licence fee. G.O.Ms.nos.235 and 236, dated 23.06.2017, announce a new bar policy for the year 2017-2022 and prescribe a particular procedure to be adopted for both the eligible existing licensees as well as new licensees in the respective urban local bodies. As such, nine licences granted for the year 2016 have been notified in the category of new bar licences; and, they are not deprived of participation as per the terms of the notification. Hence, the writ petition is liable to be dismissed.'

7. From the contentions of the petitioners, it appears that they are contending that they have been treated differently and were discriminated by treating them as new entrants though they are not new entrants in the light of their contentions and submissions, which are already recorded supra. Learned Government Pleader would submit that the cases of nine new entrants, that is, of the writ petitioners herein and others similarly placed stand on a different footing from that of the others as these petitioners are new entrants. Admittedly, (237) licences granted pursuant to the memo, dated 21.12.2015, cannot be given effect to, as per the orders of this Court being in violation of the interim orders of this Court in a batch of writ petitions filed against the said memo. Except the licences of the new entrants like the petitioners herein and some others, who are similarly placed, all other licences are being extended on month to month basis by collecting proportionate licence fee. In view of the memo, the challenge to the memo and the common orders of this Court in the WPMP no.6527 of 2016 in W.P.no.5115 of 2016 & batch and as the petitioners herein including some others, in all, nine licensees are new entrants, as rightly contended by the learned Government Pleader, their cases stand on a different footing than that of the others, who are already existing licensees and are not new entrants like the petitioners herein. On the above analysis, this Court finds that the 4th respondent is justified in notifying the

bars of the petitioners in the list of new entrants. Therefore, the notification considering the petitioners as new entrants cannot be termed as illegal and arbitrary, more particularly as the act of the 4th respondent treating the petitioners and others similarly placed as new entrants is based on an intelligible differentia. In that view of the matter, this Court finds that there is no merit in this writ petition and the writ petition is liable to be dismissed.

8. In the result, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

05th January, 2018
RAR

M. SEETHARAMA MURTI, J

