

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.10825 OF 2018

O R D E R:

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

2. Petitioner was granted license in form 2B in the name and style of M/s Yelamuri Restaurant & Bar, Tirupati during 2002-03 for carrying on business in the premises bearing Door No.204, Old Tiruchanoor Road, Tirupathi, which was renewed from time to time till 2013-14.

3. Thereafter, a notification dt.19.06.2012 was issued imposing a condition that no shop will be allowed in the area between Railway Station to Alipiri. This notification covered the above premises where the petitioner had been granted license.

4. The 4th respondent gave notice dt.26.03.2014 to the petitioner informing the petitioner to select another suitable premises outside the prohibited wards for shifting of the petitioner's bar premises.

5. Thereafter, petitioner made an application on 18.03.2015 before the 4th respondent requesting permission to shift its bar and restaurant to Ward No.11 to the premises bearing Door No.13-6-772/2, Old Tiruchanur Road, Tirupati, but no orders were passed on the said application.

6. Petitioner then filed W.P.No.7854 of 2015 which was disposed of on 31.03.2015 directing the 2nd respondent to consider

petitioner's representation in accordance with law within two weeks from the date of receipt of the said order.

7. Thereafter, 4th respondent addressed two communications dt.11.04.2015 and 18.04.2015 to 5th respondent to find out factual scenario as to whether the property, for which the petitioner wants to shift, would fall in the prohibited wards.

8. The Commissioner, Tirupati Municipal Corporation informed that the petitioner's premises does not fall within the prohibited wards.

9. In spite of it, the 2nd respondent denied permission for shifting, vide proceedings dt.21.04.2015.

10. Though petitioner questioned it in W.P.No.13312 of 2015, it was withdrawn on 29.09.2016 in view of change of policy.

11. Subsequently, the new policy introduced lifted the prohibition imposed by notification dt.19.06.2012.

12. Petitioner then made application on 10.03.2017 for renewal and shifting of 2B license premises, but no action was taken on the said representation.

13. Petitioner then filed W.P.No.11033 of 2017 which was disposed of on 28.03.2017 directing consideration of petitioner's case within three (03) months. This was also not implemented.

14. Petitioner then filed CC.No.1744 of 2017.

15. Thereafter the 2nd respondent passed the impugned order on 03.11.2017 rejecting the case of the petitioner for renewal and shifting of 2B license.

16. Petitioner contends that in the impugned order, the reason assigned for rejecting petitioner's application is Rule 6 in G.O.Ms.No.235 Revenue (EX.II) Department dt.23.06.2017, where under the new policy was notified; that the said rule allowed only those licenses to be granted in respect of which the licensors had continued to do business till the commencement of new Rules and on the ground that the petitioner was not doing business prior to the introduction of the new Rules after 2014, the said order has been passed.

17. Petitioner also contends that M/s Partha Restaurant & Bar, Tirupati and M/s S.V. Restaurant & Bar, Tirupati were considered as a special case by giving relaxation though there is no such power under the Rules.

18. In the counter affidavit filed by the respondents, the same reasons, as are contained in the impugned order, are assigned for rejecting petitioner's application for renewal of license.

19. It is the case of the respondents that petitioner's bar license having been expired on 30.06.2014 and petitioner had not shifted his licensed bar premises from the prohibited ward and done business elsewhere between 01.07.2015 and 30.06.2017, he is not entitled to grant of license.

20. However, it is not in dispute that petitioner did apply for shifting his bar on 18.03.2015 to 4th respondent as per notice

dated 26.03.2014, but such permission was not granted to him. Also the petitioner did pay Rs.22 lakhs towards license fee for 2014-15 and Rs.10,000/- towards renewal fees for 2015-16, though it is contended that the claim towards license fee was Rs.25 lakhs and there is some shortfall.

21. An issue similar to the issue raised herein was considered by this Court in its order dt.19.03.2018 in W.P.No.2864 of 2018. This Court held in the said case that when the petitioner was prevented from continuing business at the original location where the license was granted due to policy decision of the Government and not because of some business difficulty which the petitioner had, Rule-6 cannot be applied. It held as under:

“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.

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.”

22. The cases of M/s.Partha Restaurant & Bar and M/s. S.V. Restaurant and Bar, Tirupathi, pointed out by the petitioner, were also referred to therein at para 18 and the Writ Petition was allowed and the 2nd respondent was directed to treat the petitioner as the continuing licensee under Rule 16 of 2017 Rules and consider for grant of license under the said Rules within six weeks.

23. Therefore, for reasons alike, this Writ Petition is also allowed; order dt.03.11.2017 passed by the 2nd respondent is set aside; and the 2nd respondent is directed to treat the petitioner as a continuing licensee under Rule 16 of the 2017 Rules and consider for grant of license within a period of six (06) weeks from the date of receipt of a copy of the order. No order as to costs.

24. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

27th April, 2018.

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