

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**WRIT APPEAL NO.581 OF 2018
AND
WRIT PETITION NO.9156 of 2018**

COMMON ORDER:

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in I.A. No.1 of 2018 in W.P. No.9156 of 2018 dated 28.03.2018 whereby the order passed by the Commissioner of Prohibition & Excise, permitting the appellant-4th respondent to shift his business premises to a shop opposite to that of the respondent-writ petitioner, was suspended.

Both Sri O. Manohar Reddy, Learned Counsel for the appellant and Sri U. Muralidhar Rao, Learned Counsel for the respondent-writ petitioner, would agree that, instead of the Writ Petition being kept pending on the file of the Learned Single Judge, this Court may pass a common order in both the Writ Appeal and in the Writ Petition.

The respondent-writ petitioner had earlier invoked the jurisdiction of this Court questioning the order passed by the Commissioner of Prohibition & Excise permitting shifting of the appellant-4th respondent's shop to a premises located opposite to that of the respondent-writ petitioner. The validity of the said order, passed by the Commissioner, was subjected to challenge before this Court in W.P. No.43151 of 2017; and, on the ground that the order passed by the Commissioner was bereft of reasons, the Learned Single Judge suspended the earlier order passed by the Commissioner on 22.12.2017. In appeal, a Division bench of

this Court, by its order in W.A. No.30 of 2018 and W.P. No.43151 of 2017 dated 05.01.2018, set aside the order passed by the Commissioner, and directed him to pass an order at the earliest, and in any event not later than ten days from the date of receipt of a copy of the order, assigning reasons for the decision which he would take, in the exercise of his powers under Rule 28(3) of the A.P. Excise (Grant of Licence of Selling by Shops and Conditions of Licence) Rules, 2012 as amended by G.O.Ms. 112 dated 22.03.2017. The Division Bench had, taking into consideration the request of Sri U. Muralidhar Rao, Learned Counsel, to permit the respondent-writ petitioner to make a representation, made it clear that the order passed by them would not disable the respondent-writ petitioner from making a representation to the Commissioner of Prohibition & Excise, if he so choose.

In its order, in W.A.No.30 of 2018 and W.P.No.43151 of 2017 dated 05.01.2018, the Division bench had faulted the order of the Commissioner dated 22.12.2017 holding that the power, under Rule 28(2), could be exercised by him only for valid reasons i.e., the reasons must not only be valid but must be his, and not that of the applicant or the recommending authorities; and the order made no reference to the reasons which weighed with the Commissioner in granting permission for shifting the premises, much less which, according to him, were valid. The order passed by the Commissioner of Prohibition and Excise was set aside.

Thereafter the Commissioner of Prohibition & Excise passed an order afresh dated 24.02.2018 according permission to the appellant-4th respondent to relocate his shop to the premises opposite to that of the respondent -writ petitioner. The reasons

which weighed with the Commissioner, in granting permission, are as under:

“Heard both sides and examined the materials placed before me and considered the matter afresh as per the directions of the Hon’ble Court on the following grounds:

The selection of the proposed premises at D.No.8-28-57, Kanigiri Nagar Panchayat of Kanigiri Mandal is situated within the same Nagara Panchayat and Mandal and is in accordance to the notification issued wherein Mandal is taken as criteria for establishment of A4 shop and thus it is in accordance with Rule 25 of the A.P. Excise (Grant of Licence of Selling by Shops and conditions of Licence) Rules, 2012.

The existing A4 shop at D. No.9-4-217 Kanigiri Nagara Panchayat has been reportedly outside the Kanigiri Nagarapanchayat due to non-availability of suitable premises in the town limits of Kanigiri Nagar panchayat due to Hon’ble Supreme Court orders Civil Appeal Nos.12164-12166 of 2016 dated 31.03.2017. Since functioning of A4 shop outside the town limits the sales of IMFL & FL is very poor. After relaxations to restrictions on to establishment of A4 shop at Highways by Supreme Court the licensee applied shifting for proposed premises.

The Station House Officer, Prohibition & Excise Station, Kanigiri, Prohibition & Excise Superintendent, Markapur and Deputy Commissioner Proh. & Excise Prakasam have strongly recommended for shifting of the A4 shop to the proposed premises basing on the factual situation at field level and on strict compliance of the rules.

The objections of the rival A4 shop situated within the same locality are not tenable and they do not have locus standi in the light of the orders of the Hon’ble Supreme Court reported in AIR 1971 SC 246 and the Hon’ble High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh reported in 1996(1) ALD 476 (DB); 2003 (4) ALD 519; 2008 (1) ALD 138.

It is not for the rival contender to decide in which premises the licensee shall conduct the business and the extent to which they are making efforts to stall shifting of the A4 shop shows vested interest than genuine concern.

There is no revenue loss due to the proposed premises and existing premises falls in the same licence fee slab as the proposed shifting is with the same Nagar Panchayat and Mandal.”

The second ground is that, as the A-4 shop was functioning outside the town limits, the sale of IMFL and FL was very poor; and after relaxation of the restrictions, for establishment of the A-4 shop on the highways by the Supreme Court, the licensee had applied for shifting of the proposed premises.

In the order under appeal, the Learned Single Judge relying on a Division bench judgment of this Court in **S. Malleswar Rao**,

v. Commissioner of Prohibition and Excise Government of A.P.¹, held that the prospect of a liquor licensee not being in a position to carry on higher quantum of business was not a valid reason for ordering shifting of the premises. On the locus standi of the respondent-writ petitioner, the Learned Single Judge observed that his locus was accepted both when he filed W.P. No.43151 of 2017 as well as W.A. No.80 of 2018; and the Division bench had, in fact, permitted the respondent-writ petitioner to make a representation to the Commissioner against relocation of the subject shop. The Learned Single Judge held that the objection to the locus of the respondent-writ petitioner was not valid. The order passed by the Commissioner was suspended by the order under appeal. Aggrieved thereby the present appeal.

Sri O. Manohar Reddy, Learned Counsel for the appellant would submit that the view expressed by the Division bench in **S. Malleswar Rao**¹, that the prospect of the licensee not being in a position to carry on higher quantum of business could not be a valid reason for ordering shifting of the premises, is a mere direction, without any reasons being assigned for coming to such a conclusion; these observations cannot be understood as a declaration of law binding on a co-ordinate bench; on the other hand a Division bench of this Court, in **D.R. Sridhar Naidu v. Commissioner of Prohibition and Excise, A.P. Hyderabad**², had held that the expression valid reasons was not a defined expression; shifting must be for good and sufficient reasons, and in public interest; and in the light of the judgment of the Division

¹ (2008(2) ALT 421 (D.B.)

² 2007(3) ALD 128 (D.B.)

bench, in **D.R. Sridhar Naidu**², a stray observation in **S. Malleswar Rao**¹ could not be construed as the declaration of law binding on this Court. Learned Counsel would submit that, while this Court had merely left it open to the respondent-writ petitioner to make a representation, the Commissioner of Prohibition & Excise had erred in permitting him to be represented by an Advocate and in putting forth elaborate oral arguments against grant of permission to shift the A-4 shop of the appellant, in terms of Rule 28(3) of the A.P. Excise (Grant of Licence of Selling by Shops and Conditions of Licence) Rules, 2012.

On the other hand Sri U.Muralidhar Rao, Learned Counsel for the respondent-writ petitioner, would submit that not only the second limb but also the first limb of the second ground did not constitute a valid reason; the appellant-4th respondent had established his shop at the existing premises long prior to the order of the Supreme Court; the finding recorded by the Commissioner, that it was because of the order of the Supreme Court that the A-4 shop was established outside Kanigiri town, is perverse; the third ground refers to the recommendation of his subordinates; reliance placed on such recommendations falls foul of the directions issued by this Court in W.A.No.30 of 2018 and W.P.No.43151 of 2017 dated 05.01.2018; and, in such circumstances, the Learned Single Judge was justified in suspending the order passed by the Commissioner of Prohibition and Excise.

As extracted hereinabove, the second ground which weighed with the Commissioner is that the functioning of the A-4 shop, outside the town limits, had resulted in poor sales of IMFL and FL.

We find considerable force in the submission of Sri O. Manohar Reddy, Learned Counsel, that any conclusion which this Court may arrive at must also be supported by reasons and the order of the Division bench, in **S.Malleswara Rao**¹, holding that the prospects of a licensee not being in a position to carry on higher quantum of business was not a valid reason, is a conclusion unsupported by reasons, and may not constitute a declaration of law binding on co-ordinate bench. Judicial discipline would, however, require us either to follow the judgment of the Division Bench in **S.Malleswara Rao**¹, or to refer the matter to a Full Bench. While we were initially inclined to refer the question arising out of ground No.2 for the consideration of a Full Bench, Sri O. Manohar Reddy, Learned Counsel for the appellant-4th respondent, would submit that a reference to the Full bench would only result in continued pendency of the Writ Petition before this Court, resulting in the appellant-4th respondent suffering huge monetary losses in the process. He would submit that, instead, this Court may set aside ground No.2, which weighed with the Commissioner in according permission, and direct him to pass an order afresh.

While ground No.2 falls foul of the observations of the Division bench in **S. Malleswar Rao**¹, ground No.3 refers to the recommendations of officials subordinate to the Commissioner of Prohibition & Excise and, as is observed by a Division bench of this Court in its order inter-parties in W.A. No.30 of 2018 and W.P. No.43151 of 2017 dated 05.01.2018, the reasons which would weigh with the Commissioner, in granting permission under Rule

28(3), must be his, and not that of the recommending authorities. Consequently ground No.3 must also be set aside.

In the exercise of its powers of judicial review, in proceedings under Article 226 of the Constitution of India, this Court would not sit in appeal over the decision of the Commissioner of Prohibition & Excise or substitute its views for that of his. We find no reason, therefore, to interfere with reasons, other than those referred to in grounds 2 and 3, which weighed with the Commissioner in according permission to the appellant-4th respondent to shift his A-4 shop. As ground Nos.2 and 3, of the order impugned in the Writ Petition, are unsustainable, the order of the Commissioner, which is impugned in the Writ Petition, is set aside. The Commissioner of Prohibition and Excise shall pass an order afresh in accordance with law with utmost expedition and, in any event, not later than one week from the date of receipt of a copy of this order. It is open to the appellant-4th respondent to communicate the order, now passed by us, to the Commissioner of Prohibition and Excise.

Before parting with the case, we must express our disquiet at the manner in which the Commissioner of Prohibition & Excise conducted proceedings, pursuant to the earlier order of the Division Bench in W.A. No.30 of 2018 and W.P. No.43151 of 2017 dated 05.01.2018, wherein it was observed that the order passed by the Division bench would not disable the respondent-writ petitioner from making a representation, if he so chooses. That did not justify the Commissioner conducting a full-fledged hearing permitting advocates to represent the appellant-4th respondent on the one hand, and the respondent-writ petitioner on the other.

The power conferred on the Commissioner, under Rule 28(3), is administrative and not quasi-judicial in character. Rule 28(3) does not require the Commissioner to afford an oral hearing either to the applicant who seeks permission to shift their premises, or to any other licensee who objects to such shifting. The earlier Division bench, in its order in W.A. No.30 of 2018 and W.A. No.43151 of 2017 dated 05.01.2018, did not permit the Commissioner to do so. As the representation submitted by the respondent-writ petitioner is before the Commissioner, suffice it to direct him to pass a reasoned order afresh, and in accordance with law, uninfluenced by the recommendations of his subordinates, and after taking into consideration the contents of the application submitted by the appellant-4th respondent, and the objections thereto, made in his representation, by the respondent-writ petitioner. A copy of the order passed by the Commissioner shall be communicated both to the appellant-4th respondent and the respondent-writ petitioner, immediately after the order is passed by him.

Both the Appeal and the Writ Petition are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 10.04.2018

Note: Issue copy by tomorrow.

B/o
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