

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

W.A.No.590 of 2018 & W.P.No.7160 of 2018

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

While W.A.No.590 of 2018 is preferred by the 5th respondent in W.P.No.7160 of 2018, against the interlocutory order passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.7160 of 2018 dated 28.03.2018, both Sri P.Venugopal, learned Senior Counsel appearing on behalf of the appellant (5th respondent in the writ petition) and Sri P.V.Ramana, learned counsel for the 1st respondent-writ petitioner, would request this Court to pass a final order in the Writ Petition itself. Consequently, both the Writ Appeal and the Writ Petition are being disposed of by a common order.

The 1st respondent-writ petitioner had earlier filed W.P.No.44946 of 2017 seeking a mandamus to declare the absolute power conferred on the Government under Clause VI Para 2 of G.O.Ms.No.211 dated 01.10.2016 and G.O.Ms.No.223 dated 27.09.2017, for granting licence for establishment of Elite Bars in Madhira Town in favour of, among others, the appellant herein, as arbitrary and illegal. The said writ petition was disposed of by order dated 29.12.2017 directing the Government that, before granting any permission to respondents 5 and 6 therein (the appellant herein is the 5th respondent in W.P.No.44946 of 2017), the objections raised by the writ petitioner in his letter dated 17.10.2017 shall be dealt with, apart from ensuring that respondents 5 and 6 therein strictly adhere to the guidelines issued by the Government for establishment of Elite Bars in G.O.Ms.No.211 dated 01.10.2016 and G.O.Ms.No.223 dated 27.09.2017, and the Rules and Regulations in the Telangana Excise (Grant of Licence of Selling by Bar

and conditions of Licence) Rules, 2005 (for short “the 2005 Rules”) issued in G.O.Ms.No.997 dated 24.05.2005.

Despite the 1st respondent-writ petitioner having put forth their objections, by their letter dated 17.10.2017, the appellant herein was granted an Elite Bar licence by the State Government vide memo dated 19.02.2018 on the basis of the orders passed by the Commissioner dated 22.02.2018 and the Deputy Commissioner of Prohibition and Excise dated 26.02.2018.

In the order under appeal the Learned Single Judge noted that the appellant herein had directly made an application for grant of Elite Bar licence to the Minister of Prohibition and Excise and, on the recommendation of the Minister, licence was granted to the appellant; and, despite a specific direction in W.P.No.44946 of 2017 dated 29.12.2017, the objections of the 1st respondent-writ petitioner were not considered.

Rule 3(b) of the 2005 Rules defines a “Bar” to mean the privilege granted under the Telangana Excise Act to an establishment where food is served, for sale of Indian Made Foreign Liquor and Foreign Liquor, in loose for consumption on the licensed premises. Rule 4 deals with licence and Rule 5 deals with the application for licence. Under Sub-Rule (1) of Rule 5, a person intending to establish a Bar may submit an application in Form-1A to the Commissioner enclosing a challan for Rs.5,000/- to get prior clearance. Sub-Rule (2) of Rule 5 stipulates that the Commissioner, having due regard to requirement and other factors as he deems fit, may grant a prior clearance in Form-2A to such of the applicants covered under sub-rule (1). Rule 5(6) confers power on the Deputy Commissioner, after causing such enquiry as he may deem fit, to grant a licence.

While Sri P.Venugopal, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the appellant had only submitted a representation to the Minister of Prohibition and Excise, who had forwarded the said representation to the Commissioner of Prohibition and Excise, Sri P.V.Ramana, learned counsel for the 1st respondent -writ petitioner, would draw our attention to the proceedings of the Commissioner of Prohibition and Excise dated 22.02.2018, to contend that the application of the appellant, for grant of an Elite Bar licence, was addressed to the Minister for Prohibition and Excise on 25.09.2017 and not to the Commissioner.

Be that as it may, Clauses I to V of Para 2 of the Excise Policy notified in G.O.Ms.No.211 dated 01.10.2016 conferred special powers on the Government to relax the requirement in special circumstances, as may be recommended by the Commissioner of Prohibition and Excise as a special case, for the grant of an Elite Bar licence, with an additional licence fee of 25% for such Bars, if the premises is having the facilities and conditions stipulated in the said G.O. Four conditions are stipulated in Clause VI of Para 2 of G.O.Ms.No.211 dated 01.10.2016. This excise policy of the year 2016-17 was reiterated in G.O.Ms.No.223 dated 27.09.2017.

While the concessions provided in Clause VI of Para 2 of G.O.Ms.No.211 dated 01.10.2016, and G.O.Ms.No.223 dated 27.09.2017, for establishing an Elite Bar, are not specified in the 2005 Rules, the Excise Policy notified in the aforesaid two G.Os must be read harmoniously with the 2005 Rules. Consequently, it is only if an application is made to the Commissioner of Prohibition and Excise, in the form prescribed in the 2005 Rules, can such an application be considered, subject to the conditions stipulated in the Excise Policies

notified in G.O.Ms.No.211 dated 01.10.2016 and G.O.Ms.No.223 dated 27.09.2017, for grant of an Elite Bar licence.

Besides complying with the conditions in Clause VI of Para 2 (fulfilment of which is a pre-condition for grant of permission to establish an Elite Bar license), the Excise Policy, notified in the aforesaid two G.Os, provides for grant of permission for establishing an Elite Bar only in special circumstances, and not for the mere asking. The power conferred on the Government, to relax the requirement of the 2005 Rules in special circumstances, can be exercised only on the recommendation of the Commissioner of Prohibition and Excise, that too in special cases. The Commissioner of Prohibition and Excise is empowered to recommend an applicant's request, to establish an Elite Bar, to the Government only if he is satisfied that special circumstances exist for grant of such permission, and that the applicant's claim is a special case justifying his recommendation to the Government to exercise its special powers of relaxation for establishing an Elite Bar.

The condition stipulated in Clause VI of Para 2, of both G.O.Ms.No.211 dated 01.10.2016 and G.O.Ms.No.223 dated 27.09.2017, is that every application, for establishing an Elite Bar, should be recommended by the Commissioner of Prohibition and Excise. He must record his satisfaction in writing that special circumstances exist which justify his recommendation, and why the applicant's claim must be treated as a special case for grant of permission to establish an Elite Bar. While fulfilment of the conditions in Clause VI of Para 2 is a pre-requisite, even to consider the application for grant of an Elite Bar licence, mere fulfilment of the said conditions would not suffice, and the Commissioner of Prohibition and Excise must, after examining the material placed before him, record his satisfaction in writing that there are special circumstances warranting

recommending the applicant's case for establishing an Elite Bar. It would not suffice for the Commissioner to merely state that special circumstances exist. He must, in his recommendation to the Government, detail the special circumstances which necessitate the applicant's case to be treated as a special case for grant of permission to establish an Elite Bar. Further, on receipt of such recommendation, the Government must be satisfied that it is a fit case for the exercise of its special powers to relax the requirement of adhering to the procedure prescribed in the 2005 Rules, and the population and other criteria stipulated for establishing a bar. It is only if all these requirements are satisfied, can permission be accorded for establishing an Elite Bar.

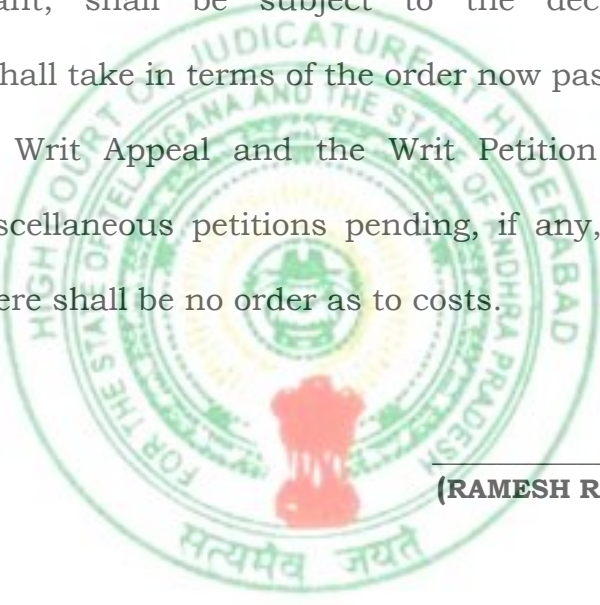
While the 2005 Rules do not require the objections of a rival trader to be considered, and we would, ordinarily, not have called upon the Commissioner of Prohibition and Excise to give the 1st respondent-writ petitioner an opportunity of being heard, the fact remains that the order passed in W.P.No.44946 of 2017 dated 29.12.2017 has attained finality. While it is no doubt true that the Writ Petition was disposed of at the stage of admission, solely on the basis of the concession of the Learned Government Pleader that the objections raised by the 1st respondent-writ petitioner would be considered, and the appellant was not heard before the said order was passed, the appellant herein has permitted the said order to attain finality for he has not preferred any appeal thereagainst.

As the order in W.P.No.44946 of 2017 dated 29.12.2017 (an order *inter-parties*) has attained finality, we consider it appropriate to set aside the orders impugned in W.P.No.7160 of 2018, permit the 1st respondent-writ petitioner, in view of the order passed in W.P.No.44946 of 2017 dated 29.12.2017, to submit a detailed representation, within 10 days from today, to the Commissioner of Prohibition and Excise, and

put forth their objections to the appellant's request for grant of permission to establish an Elite Bar. The Commissioner of Prohibition and Excise shall, at the earliest, pass orders on the appellant's application, taking into consideration the objections raised by the 1st respondent-writ petitioner, and in accordance with the observations made in this order.

Sri P.Venugopal, learned Senior Counsel appearing on behalf of the appellant, would submit that, pursuant to the permission accorded by the Government, the appellant has paid the enhanced licence fee for the Elite Bar license. Needless to state that the amount, so deposited by the appellant, shall be subject to the decision which the Commissioner shall take in terms of the order now passed by us.

Both the Writ Appeal and the Writ Petition are disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

16th April, 2018

Note: Issue C.C in three days.

JSU

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



W.A.No.590 of 2018 & W.P.No.7160 of 2018

Date: 16.04.2018