

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.4819 of 2012

ORDER:

The action of the respondents, in not refunding 1/3rd of the licence fee towards the loss sustained by the petitioner due to the inaction on the part of the respondents in implementing the A.P.Excise (Grant of Licence of Selling by Bar & Conditions of Licence) Rules, 2005 (for short "the Rules") and in allowing loose sales by A4 licence-holders at Machilipatnam by establishing service rooms attached to their shops in contravention of the Rules, is questioned in this writ petition as being illegal and arbitrary.

In the counter-affidavit, filed by the 5th respondent, it is stated that, as per Rule 26 of the Rules, the licensee of the Bar is required not to sell sealed bottles to customers; he should serve liquor only in pegs or glasses; Rule 4 of the Rules requires liquor to be served in pegs or glasses for consumption within the licensed premises, and not for sale of IMFL and FL bottles removing it out of the licensed premises; on 12.03.2012, the Prohibition and Excise Inspector had inspected the subject premises, and found one person coming, outside the said Restaurant and Bar, with one sealed bottle of officers choice 750 ML whisky; on enquiry he revealed that he had purchased the liquor bottle from the petitioner-Bar, for his personal consumption at his house; the Station House Officer had verified the electronic adhesive label affixed, and had found that its number was 2109882 Batch No.449 dated 23.02.2012, which was supplied to the petitioner-Bar and restaurant by the APBCL on 06.03.2012; the salesman at the Bar

had revealed that the liquor bottle was sold to a person for outside consumption; on verification of the authorised plan it was found that customers were consuming liquor on a table arranged in a shed, unauthorisedly constructed in the place earmarked for parking of vehicles; and, hence, a case in Cr.No.302/2011 was registered, as the petitioner had violated the conditions of the licence and of the Rules. It is also stated that several cases were booked against A4 shops in Machilipatnam town; the respondents were implementing the A.P. Excise Act and the Rules strictly; as against the annual licence fee of Rs.28,00,000/-, the petitioner had achieved a turnover of Rs.79,43,247/- during 2010-11 which was three times the licence fee; during the year 2011-2012, i.e up to February, 2012, the petitioner had achieved a turnover of Rs.50,48,583/-; and it was evident that the licensee was not incurring any loss, and was getting profits.

It does appear that the writ petition is filed on false and baseless claims. Any remission, which a bar licensee can claim, can only be in accordance with the Rules. The fact that A4 shops are permitted to have permit rooms is not one of those conditions which would enable the applicant to seek remission. If, as is contended by the petitioner, they had suffered any loss thereby, it is always open to them to invoke the common law remedy of filing a suit, and seek damages in accordance with law. The petitioner is not entitled to seek an adjudication of his claim of remission, of 1/3rd the licence fee, in proceedings under Article 226 of the Constitution of India.

Disputed questions, as to whether the petitioner had in fact actually suffered any losses; whether such loss, if any, was

occasioned by the Government permitting permit rooms to be established by the A4 shop holders etc, are all matters which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India.

Leaving it open to the petitioner, if they so choose, to avail their common law remedy of filing a suit, the Writ Petition is dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

15th June, 2018
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Date: 15.06.2018

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