

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

WRIT PETITION No.23082 of 2017

ORDER:

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

- i. To issue a Writ of Certiorari directing the respondents to call for the records pertaining to the orders passed by the Respondent No.3 vide Notice Cr.No.250/ 2017/ P&E/ B4-9 dated 15.05.2017, received by the petitioner on 28.06.2017 rejecting the Petitioners application dated 10.05.2017 and quash the same as being illegal, arbitrary and contrary to the principles of natural justice and
- ii. To declare the tender proceedings conducted by Respondents as arbitrary, illegal and set aside the same.
- iii. To direct the respondents to consider the application filed by the Petitioners on 08.12.2016 and 10.05.2017 and
- iv. pass such other order or orders..."

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise for respondents and perused the prayer in the writ petition with supporting affidavit, counter-affidavit filed by respondent No.3 on behalf of respondent No.2 and the impugned order.

3. It is stated in the affidavit filed in support of the petition that the rejection order is perse illegal, even the application is filed duly as contemplated and it is to do some favour to the others and for extraneous reasons, the rejection is made and it is liable to be set aside.

4. As per the counter-affidavit, contest of the respondents is that the earlier notification dated 14.11.2016 is issued to set up 2 B Bar; the petitioner is one of the

applicants; while it was in process including from the writ petition direction availed by the petitioner as petitioner in W.P.No.14453 of 2017 to consider, where the Commissioner, Prohibition and Excise is not even made a party; subsequent to the Hon'ble Supreme Court judgment dated 15.12.2016 regarding establishment of the liquor shops near Highways, a fresh notification dated 02.05.2017 was issued, withdrawing the earlier notification and the petitioner has applied for the same on 10.05.2017. However, the application is rejected on 15.05.2017, for, the details prescribed were not complied with and the application is lacunae of the information. In fact, the A.P.Excise (Granting of license of selling by Bar and conditions of License) Rules, 2005 covered by G.O.Ms.No.997 (Ex.II) Department, dated 24.05.2005, adopted even for the State of Telangana by adaptation order Rules 2015 is clear from the very counter-affidavit what is contended there from is incomplete information furnished at clause No.4 in Form-I-A regarding details of trade license, that too, when the submission of trade license is controversial. Once such is the case, it is a disputed question of fact and there is a remedy of appeal contemplated under Section 63/ 64 of the Excise Act, to the Commissioner of Prohibition and Excise.

5. Having regard to the above, this Writ Petition is disposed of, giving liberty to the petitioner to file a statutory appeal before the Commissioner, Prohibition and Excise, within 15 days from the date of receipt of copy of this order and the Commissioner to entertain the same without reference to the limitation period prescribed. It is needless to say, if at all the application of the petitioner is in order, the allotment, subsequently, to any third party, will not affect his rights.

6. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.02.2018
pab

