THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT APPEAL NO.897 OF 2018

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

Heard the learned Government Pleader for Prohibition and Excise and Sri V.V.Raghavan, learned counsel for the respondent-writ petitioner. This appeal is preferred, under Clause 15 of the Letters Patent, against the order passed by the learned Single Judge in W.P.No.11774 of 2018 dated 05.06.2018. The first respondent herein filed the said Writ Petition seeking a mandamus to declare the inaction of appellant Nos.2 and 3, in not considering the petitioners' application dated 07.02.2018 for refund of Rs.1,00,000/- each, as arbitrary and illegal.

A notification was issued by the appellants-respondents on 13.09.2017 inviting applications for grant of license for Retail Liquor Outlets (A4 shops) i.e for 52 shops situated in Mahabubabad District, for the period from 01.10.2017 to 30.09.2019. Clause (3) thereof requires an applicant for license to enclose a demand draft for Rs.1,00,000/-, in favour of the third appellant, towards non-refundable application registration charges for each application.

Questioning the validity of the notification issued by the appellants, the writ jurisdiction of this Court was invoked by Sri Venkat Lal, President of the Mandal Praja Parishad, Garla Village and Mandal in W.P.No.39143 of 2011 which was disposed of by order dated 18.01.2018 holding that the appellants lacked jurisdiction to issue such a notification. Aggrieved thereby, respondents 9 and 10 in the said Writ Petition (in whose favour provisional confirmation orders had been issued) filed W.A.No.366 of 2018 which was dismissed by a Division Bench of this Court by its order dated 08.03.2018.

In its order, in W.A.No.366 of 2018 dated 08.03.2018, the Division Bench held that Rule 4(iv) of the Andhra Pradesh Panchayats Extension to Scheduled Areas (PESA) Rules, 2011, which were applicable to Gram Panchayats in scheduled areas, prescribed 1/3rd of the total voters in the Gram Panchayat as the quorum for holding the Gram Sabha, of which 50% must consist of members of the Scheduled Tribes; on the ground that the quorum, required for passing the resolution, was not available, and licenses for establishing A-4 liquor shops could not be granted to persons who did not belong to the subject Gram Panchayat, the resolution of the Gram Sabha was subjected to challenge before this Court in W.P.No.39143 of 2011; the figures recorded, in the order under appeal, clearly disclosed a lack of quorum; as long as the PESA Rules were in force, the stipulation therein of a quorum necessitated strict adherence; as the validity of the said Rules was not under challenge in the Writ Petition, it was wholly inappropriate for the Court to examine whether or not the Rule was unworkable and, if so, whether the rule should be read down; Rule 8(1)(b) of the PESA Rules stipulated that the license, for establishing a liquor shop, can be granted only to local Scheduled Tribes; Rule 3(ii) of the said Rules stipulated that a village may consist of a habitation/hamlet or groups thereof comprising of a community or communities managing their affairs in accordance with their traditions and customs; and the fact that the appellants were not residing within the limits of Garla Gram Panchayat was not in dispute.

The Division Bench further observed that Rule 8(1)(b) of the PESA Rules must be read in conjunction with Rule 3(ii) of the PESA Rules; when so read, it was clear that a person would fall within the ambit of a 'local Scheduled Tribe' only if he was a member of the Scheduled Tribes from the very same Gram Panchayat, and not from any other Gram Panchayat even if it be within the Scheduled/Agency area; and, for both the reasons, the order of the learned Single Judge should be affirmed. Consequently, the provisional confirmation orders, issued to respondents 9 and 10 in the earlier Writ Petition, were set aside.

As a result of the notification being set aside, and the A4 shop licenses being cancelled, persons, who had submitted their applications for grant of A4 shop licenses, have now invoked the jurisdiction of this Court seeking refund of the said amount with interest thereon. While the learned Single Judge has, in the order under appeal, exhaustively examined the policy as notified in G.O.Ms.No.200 dated 12.09.2017, and has observed that it is contrary to Rule 12(i) of the 2000 Rules and ultra vires the said rules, Learned Government Pleader for Prohibition and Excise, appearing on behalf of the appellants, would submit that the Learned Single Judge ought not to have examined the validity of the policy decision in the absence of its validity even being subjected to challenge in the Writ Petition. The conditions prescribed in the Excise policy clearly stipulate that the application registration charges of Rs.1,00,000/- is non-refundable. This condition would apply only if an application is made pursuant to a valid notification, and it is only then would a person, who has submitted his application, be disentitled for refund of the application registration charges.

In the present case, the appellants have been held to lack jurisdiction to issue the notification inviting applications, for establishment of an A4 shop in Garla Village in a scheduled area, as the pre-requisite, for issuing such a notification, is a resolution being passed by a validly convened Grama Sabha. As noted hereinabove, the resolution passed earlier was by a Gram Sabha which was held even in the absence of the quorum as stipulated in the PESA Rules. As the application submitted by the respondent-writ petitioner is pursuant to a notification which the appellants lacked jurisdiction to issue, the said notification is a nullity; and any application made, in terms thereof, would also not be valid. Having acted without jurisdiction in issuing the notification, inviting applications to establish A-4 shops in Garla Village, the appellants cannot now be heard to contend that any application fee, collected under such an illegal and invalid notification, can be retained by them in terms of condition No.3 of the said notification. Since we are satisfied that the conclusion of the learned Single Judge, in directing the appellant-authorities to refund the application registration charges is valid, suffice it, while dismissing the appeal, to leave the question of law, as to whether the Excise policy is ultra-vires the Rules, open for examination, if need be, in subsequent legal proceedings.

Learned Government Pleader for Prohibition and Excise would request us to set aside the order under appeal atleast to the extent the Learned Single Judge directed the appellants to pay the respondent-writ petitioners interest and costs. Since the prevailing bank rate of interest on fixed deposits is around 6%, we consider it appropriate to direct that the appellants shall refund Rs.1,00,000/-, as directed by the learned Single Judge, with simple interest @ 6% per annum within one (1) month from today. Since the appellants have acted in terms of the notification, the order of the learned Single Judge imposing costs is set aside. It is only to the extent it related to Garla Gram Panchayat, was the notification set aside. Consequently, refund of registration application charges of Rs.1.00 lakhs is also confined only to applications submitted for establishment of A-4 shops in Garla Gram panchayat.

Subject to the aforesaid observations, the Writ Appeal fails, and is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

6th July 2018
RRB