

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.31711 OF 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

The petitioner herein is a licensee of 2B Bar M/s.Kranthi Restaurant and Bar. Earlier on the request made by the petitioner, the Commissioner of Prohibition and Excise vide proceedings C.R.No.3868/2018/CPE/F4, dated 19.06.2018, permitted the petitioner herein, by virtue of the powers conferred under Rule 17(3) of A.P.Excise (Grant of licence of selling by bar and conditions of licence) Rules, 2017, to shift the 2B Bar from D.No.32-12-53/31/A, Moghalrajpuram, Vijayawada to D.No.26-43/6, Rama Rajyam Nagar, Kabela Centre, Gollapudi of Vijayawada Rural Mandal. Now, by virtue of the notice bearing Rc.No.374/2017/B2, dated 27.08.2018, which is impugned in the present writ petition, the Deputy Commissioner of Prohibition and Excise (FAC), Vijayawada, advised the petitioner herein to shift the subject shop from the existing premises to another unobjectionable place within seven days from the date of receipt of the notice. Challenging the said notice, the present writ petition is filed.

According to the learned counsel for the petitioner, under Section 17(3) of the above said Rules, only Commissioner is the competent authority to order such shifting and Deputy Commissioner has absolutely no jurisdiction to do so.

On the contrary, it is submitted by the learned Government Pleader that on the instructions of the Commissioner of Prohibition

and Excise, the impugned notice came to be issued by the Deputy Commissioner, advising the petitioner to shift the shop.

In this context, it is appropriate to refer to Rule 17 of the above said Rules and the said Rules, which reads as under:

“17. Sale permitted at the licensed premises only:-

- (1) The licensee shall sell the liquor only at the premises specified in the licence.
- (2) No change or alteration of the licensed premises shall be made during the licence period without the prior approval of the Deputy Commissioner of Prohibition and Excise.

“Provided that such change or alteration may be permitted for valid reasons by the Deputy Commissioner subject to payment of an alteration fee of Rs.1,00,000/-.”

- (3) No shifting of the licensed premises shall ordinarily be permitted during the licence period from one location to another. However, shifting of the licensed premises may be considered by the Commissioner of Prohibition & Excise for valid reasons within the same Nagar Panchayat, Municipality including its 2KM belt area from the periphery or Municipal Corporation including its 5KM belt area from the periphery, as the case may be, subject to payment of 1% of the non-refundable registration charge and license fee or Rs.25,000/- whichever is higher, as shifting fee and on production of trade license granted by the local authority concerned.”

It is very much obvious from the above said Rules that the power to order shifting is vested with the Commissioner only and not with the Deputy Commissioner. No provision of law is pointed out to show that the Commissioner is empowered to instruct the Deputy Commissioner to advise shifting of the shop. Therefore, it has to be necessary to held that the impugned notice is illegal and without any jurisdiction. Upon the said ground alone, the impugned notice is liable to be set aside.

Accordingly, the Writ Petition is allowed, setting aside the notice vide Rc.No.374/2017/B2, dated 27.08.2018, issued by the Deputy Commissioner of Prohibition and Excise/R.4. However, this order will not preclude the respondents from taking action strictly in accordance with law. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date: 06.09.2018
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