

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

WRIT APPEAL NOS.1593 AND 1611 OF 2017

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

These two appeals, seeking grant of license for A-4 shop No.118, have been filed by the unsuccessful applicant, in the drawal of lots, held on 31.03.2017 for grant of license for the said shop. The unofficial respondent herein (petitioner in W.P. No.12427 of 2017) was, hitherto, granted a licensee for A-4 shop No.117 for a period of two years from 01.07.2015 upto 30.06.2017. For shop No.118 no license was granted earlier and, consequently, the licence of shop No.118 was subjected to drawal of lots on 31.03.2017 in which the unofficial respondent was successful. However, on the ground that he was an existing licensee for A-4 shop No.117, he was denied licence for A-4 shop No.118. Aggrieved thereby, the unofficial respondent filed WP.No.12427 of 2017 and, by order dated 07.04.2017, a learned Single Judge directed the official respondents to consider his representation dated 03.04.2017, allowing him to retain shop No.118.

The representation of the unofficial respondent was considered, and a notice was issued to him on 25.04.2017 directing him to submit his willingness to surrender his existing license of A-4 shop No.117, for the years 2015-17, in order to issue a new license to him for A-4 shop No.118 from 01.04.2017 onwards; and, on his submitting his willingness to do so, his licence for shop No.117 was cancelled, and he was granted license for shop No.118 from 01.04.2017 onwards. Consequent upon expressing his willingness to surrender shop No.117, the unofficial respondent had to forego the license fee paid by him for shop

No.117 from 25-4-17 (when he surrendered the license) till 30.06.2017. In addition, he also had to pay the license fee for shop No.118 from 01.04.2017 onwards. On the unofficial respondent having surrendered his license for shop No.117, the said shop was subjected to drawal of lots, and license for shop No.117 is said to have already been issued to another person, who is not a party to these proceedings.

WP.No.18432 of 2017 was filed by the appellant herein to declare the action of the Superintendent, Prohibition & Excise on 25.04.2017 granting the unofficial respondent provisional license on 27.04.2017 for sale of IMF Liquor in shop No.118, as arbitrary and illegal. WP.No.18432 of 2017 was dismissed by a Learned Single Judge, by his order dated 06.09.2017, holding that Rule 12(6)(d) of the Andhra Pradesh Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012 ("the Rules" for brevity) must be read in conjunction with Rule 12(6)(d) and Rule 12(8) of the Rules and, when read in its entirety, it was clear that an existing licensee was not prohibited from participating in the drawal of lots held pursuant to a fresh notification. The Learned Single Judge further observed that when the unofficial respondent had approached this Court, filing WP.No.12427 of 2017, his representation was directed to be considered; and, since no appeal was preferred against the said order, the Writ Petition filed by the appellant necessitated rejection.

Section 33 of the A.P. Excise Act, 1968 ("the Act" for brevity) provides for surrender of license. Under sub-section (1) thereof, any holder of a licence, granted under the Act to sell an excisable article, may surrender his license on the expiration of one month's notice in writing given by him to the Prohibition and Excise

Superintendent of his intention to surrender the same, but the licence fee proportionate, to the unexpired portion of the licence for which it would have been current but for such surrender, shall not be refunded. The obligation, placed by Section 33(1), is for an existing licensee to give one month's notice for surrendering his license.

In the exercise of the powers conferred by Section 72, read with other provisions of the A.P. Excise Act, the Government of Andhra Pradesh made the 2012 Rules. Rule 12 thereof related to submission of applications, and selection of applicants, for grant of license. Rule 12(6)(a) stipulated that the selection process shall be taken up shop-wise as notified in the District Gazette. Rule 12(6)(b) stipulated that, at the commencement of the selection process, the licensing authority shall first announce the names of persons, and the number of persons who have filed applications for a particular shop. Rule 12(6)(d) stipulates that, where there are more than one application for a notified shop, selection, among the eligible applicants for grant of license, shall be by drawal of lots by the Collector in the presence of the applicants who are available at the time of selection. Rule 12(8) stipulates that no person shall be entitled to hold a license for more than one shop; in the event of a person being selected for a shop, all the other applications filed by him, in respect of other shops, shall automatically become invalid; and the successful applicant, who has filed applications for more than one shop, shall immediately inform details of the other applications, filed by him, so as to declare them invalid.

While Sri R. Ramachandra Reddy, learned counsel for the appellant, would submit that, in view of the embargo placed by Rule 12(8) of the Rules, an existing licensee is not entitled to

participate in the drawal of lots, unless he has already complied with Section 33 of the Act and has surrendered his license by giving one month's notice, Sri V.R. Reddy Kovvuri, learned counsel for the unofficial respondent, would submit that Rule 12(6)(d) of the Rules must be read in conjunction with Rule 12(8) and, when so read, the prohibition in Rule 12(8) of the Rules is only for a fresh applicant to be denied grant of license for more than one A-4 shop, and does not prohibit an existing licensee from participating in the drawal of lots with respect to another shop.

The embargo placed by Rule 12(8) of the Rules is unambiguous. It stipulates that no person shall be entitled to hold a license for more than one shop. The construction placed, on Rule 12(6)(d) and Rule 12(8) of the Rules, by Sri V.R. Reddy Kovvuri, learned counsel for the unofficial respondent, if accepted, would mean that, while a fresh applicant is prohibited from holding a license for more than one shop, an existing licensee is not disabled from doing so. Such a construction, placed on Rule 12(8) of the Rules, would defeat the very object of such a prescription, as the intention of the rule making authority is evidently to ensure that no person simultaneously hold licenses for more than one A-4 shop at the same time.

Rule 12(6)(b) and Rule 12(8) of the Rules are made in exercise of the powers conferred by Section 72 of the Act, and must be read in harmony with Section 33 thereof. When harmoniously read, Rule 12(6) and Rule 12(8) of the Rules would require an existing licensee to surrender his license by giving 30 days notice before he participates in the drawal of lots for grant of license for another shop. It is only if the unofficial respondent had surrendered his license for A-4 shop No.117, by giving one month's

notice before 31.03.2017, could he have participated in the drawal of lots for shop No.118 held on 31.03.2017. It is no doubt true that such a construction, of Section 33 of the Act read with Rule 12(8) of the Rules, would result in a licensee running the risk of losing his existing license for the unexpired period of the license, though he may not be successful in the drawal of lots for grant of license for another A-4 shop, but then no applicant, seeking grant of an A-4 shop license, can claim, as of right, that he should be permitted to participate in the drawal of lots for an A-4 shop while continuing to retain his license for another.

While permitting the unofficial respondent, to participate in the process of drawal of lots on 31.03.2017, may not accord with the provisions of Section 33 of the Act read with Rules 12(6)(d) and 12(8) of the Rules, the fact remains that the unofficial respondent was permitted to surrender his existing license for A-4 shop No.117 from 25.04.2017 onwards, and had to forego the balance license fee paid by him for A-4 shop No.117 for the period 26.04.2017 till 30.06.2017, even though he did not operate the shop. In addition, the unofficial respondent also had to pay license fee for shop No.118 from 01.04.2017 onwards. As a result, there is no loss of revenue to the public exchequer. The surrendered A-4 shop No.117 has also been subjected to drawal of lots, in which the unofficial respondent did not participate, and license for the said shop was given to a third party who is not before this Court.

Allowing these appeals would result in the unofficial respondent being denied a license for both shop Nos.117 and 118. For the error committed by the official respondents, in permitting him to surrender his license for A-4 shop No.117 more than two months before expiry of the license period, the unofficial

respondent cannot be unduly penalised. He has paid the license fee for shop No.118 from 01.04.2017 onwards, and has foregone his license fee for shop No.117 from 25.04.2017 till 30.06.2017. It would be wholly unjust to now interfere and cancel the license granted to him for shop No.118 though he was successful in the drawal of lots held, for grant of A-4 license for the said shop, on 31.03.2017. It is not as if the appellant would be automatically granted license for shop No.118, even if his appeal were to be allowed and the license granted in favour of the unofficial respondent for shop No.118 is cancelled, as the rules provide for grant of license only by drawal of lots. The appellant may, or may not, be successful on lots being drawn afresh for shop No.118, and if the luck of the draw is not favourable to him, he would not be granted license for the said shop No.118. Even though the possibility of his being granted license for shop No.118 is uncertain, the appellant's endeavour appears only to deprive the unofficial respondent of the license granted in his favour.

We see no reason, therefore, to interfere with the order under appeal. Both the appeals fail and are, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(M.S.K.JAISWAL, J)

29th January 2018
RRB