THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.803, 7384 and 25515 of 2018

COMMON ORDER:

W.P.No.803 of 2018:

The petitioner-M/s New Venkat Restaurant and Bar (for short, 'the Bar & Restaurant'), Avanthi Complex, Mahabubnagar Municipality and District, represented by its proprietor A. Pratap Reddy (hereinafter referred to as 'the deponent') filed this writ petition under Article 226 of the Constitution of India, challenging the order dated 16.09.2017 passed by the 2nd respondent-Commissioner of Prohibition & Excise, Telangana, Hyderabad. By the impugned order, the 2nd respondent had accorded permission to include the 7th respondent-P. Yeshwanth in the 2B Licence bearing No.62/2006 that was originally granted to the deponent to run the Bar & Restaurant.

The assertions in the writ affidavit, briefly, are that the 2B Licence bearing No.62/2006 was granted to the deponent to run the Bar & Restaurant. The said licence was initially granted in favour of the deponent in 2006 and was being renewed from time to time and the validity of the same was extended upto 2018. While things stood thus, on the application said to have been made by the deponent on 29.03.2017, the 2nd respondent has included the name of the 7th respondent in the 2B Licence that was originally granted in the name of the deponent. It is the case of the deponent that the inclusion of 7th respondent in the 2B Licence is contrary to Rule 18 of The Telangana Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Excise Rules'). It is his further case that Rule 18 of the Excise Rules has no application to the case on hand, as Rule 18 specifically deals with cases where licence was initially granted and held by a partnership firm, and not with respect to cases where the licence was granted to a person in his individual name. Inasmuch as there is no dispute that since 2006 onwards the licence was standing solely in the name of the deponent, and at no point of time earlier there was any partnership, the question of including the name of 7th respondent as a co-licensee, in purported exercise of authority under Rule 18 of the Excise Rules, is totally illegal and unauthorised. The deponent further asserts that respondents 2 to 4 have colluded with the 7th respondent and, without the knowledge and consent of the deponent, have fraudulently created the documents and included the name of 7th respondent in the 2B Licence. The deponent, on coming to know of the same, approached the 4th respondent-District Prohibition & Excise Officer, Mahabubnagar, requesting to delete the name of 7th respondent from the 2B Licence, but the respondent authorities did not consider his request. The deponent made a representation dated 16.12.2017 to the respondent authorities requesting not to release any liquor stocks to the Licenced premises (i.e., to the Bar & Restaurant), but the respondent authorities did not choose to reply to his representation, instead they changed the PIN number and allotted a new number to enable the 7th respondent to lift the stocks from the depot. It is the grievance and allegation of the deponent that the respondent authorities are hand in glove with the 7th respondent and therefore included the name of 7th respondent in the 2B Licence of the deponent.

The 4th respondent filed counter affidavit on his behalf and also on behalf of respondents 2 and 3. Respondent No.7 has also filed his counter affidavit.

In his counter affidavit, the 4th respondent asserts that the deponent submitted a representation on 29.03.2017 before the 2nd respondent-Commissioner of Prohibition & Excise, stating that he is unable to run the Bar & Restaurant business due to financial problems and therefore requested to include the 7th respondent as his partner in the Bar & Restaurant. Acceding to the request of the deponent, the 2nd respondent directed the 3rd respondent-Deputy Commissioner, to enquire into the matter and submit a report. The 3rd respondent in turn called for a report from the 4th respondent. Simultaneously, the 7th respondent has also submitted a representation dated 30.03.2017 stating that he is intending to get included in the Bar & Restaurant as partner as he is financially sound and ready to pay all the dues and liabilities payable to the Government. The two representations i.e., 29.03.2017 made by the deponent, and 30.03.2017 made by the 7th respondent, were forwarded to the Station House Officer (SHO), Mahabubnagar, for enquiry. The SHO visited the premises and on conducting enquiry, he found that the deponent was unable to run the Bar & Restaurant and therefore the deponent decided to include the 7th respondent as his partner in the Bar & Restaurant. The SHO has recorded the statements of both the parties.

After considering the statements and considering the material placed on record, a final report came to be submitted to the 2nd respondent, and the 2nd respondent in turn has passed the impugned order dated 16.09.2017 by including the 7th respondent as a co-licencee in the 2B Licence along with the deponent. The allegation of the deponent that there was collusion between the respondent authorities and 7th respondent was denied. It is also stated in the counter affidavit that the SHO recorded the statements given by the deponent and the 7th respondent in their own handwriting. The deponent has also submitted the partnership deed before the authorities. The 7th respondent was included as a partner subject to payment of 10% of licence fee in terms of Rule 18 of the Excise Rules, and the 7th respondent has, as directed, paid the said amount. The allegations with respect to issuance/release of liquor stock to the licence premises i.e., Bar & Restaurant, without the knowledge of the deponent is also denied.

In the counter affidavit filed by the 7th respondent, it is asserted that the deponent had submitted a representation dated 29.03.2017 to the 2nd respondent stating that he is unable to run the Bar & Restaurant due to his financial problems, and hence requested to include the 7th respondent as his partner. The application made by the deponent, along with the application made by the 7th respondent on 30.03.2017, was processed by the authorities and the 2nd respondent passed the order dated 16.09.2017, thereby including the 7th respondent in the 2B Licence and, therefore, there is no illegality in the order passed by the 2nd respondent. The 7th respondent further asserts that he paid a sum of Rs.4,20,000/- on 27.09.2017 towards fee for including him as a partner in the 2B Licence and thereafter on 30.10.2017, permission was accorded for his inclusion as a partner in the 2B Licence and ever since that day, he is running the Bar & Restaurant and after a period of two months, the present writ petition is filed. It is also asserted that he invested a sum of Rs.25,00,000/- in the business and the deponent has failed to disclose the said facts and the statement recorded before the SHO, Mahabubnagar, was in the deponent's own handwriting. It is also asserted that the procedure prescribed under law was strictly adhered to while including him as a partner, and the deponent has not come to the Court with clean hands and therefore the relief claimed by the deponent is untenable and unsustainable and therefore prayed for dismissal of the writ petition.

At the outset, it may be recorded that the deponent had not chosen to file any reply affidavit adverting to the contents of the counter affidavits filed by the 4th respondent and 7th respondent.

Sri Mummaneni Srinivasa Rao, learned counsel for the deponent, by drawing the attention of the Court to the legal notice dated 09.10.2018 issued to the authorities as well as to the 7th respondent, asserts that the deponent has been complaining to various authorities about the irregularity committed by the authorities in including the name of 7th respondent in the 2B Licence, and that such inclusion is contrary to Rule 18 of the Excise Rules. Learned counsel particularly draws the attention to the letter dated 16.12.2007 addressed to the Depot Manager, bringing it to his notice the earlier complaint that he made on 06.11.2017 requesting not to issue liquor stocks to the Bar & Restaurant. By drawing attention to the statement recorded by SHO, Mahabubnagar, learned counsel asserts that the deponent was forced to give the statement and the SHO had recorded the statement under coercion. When queried by this Court as to whether any complaint was made regard to the alleged coercion, the deponent draws the attention of this Court to the legal notice dated 19.02.2018 and submits that the deponent had been protesting about the same with the officials.

Learned counsel has also drawn the attention to Form 1B application to buttress his argument that there is no scope for a partner being added in Form 1B, and respondent No.2 passed the impugned order without application of mind and without power.

Learned counsel for the deponent finally submits that, in law, there is a difference between transfer of licence in favour of a third party, and the inclusion of a third party to the existing licence as a partner. Learned counsel, by drawing attention to Rule 18 of the Excise Rules, would submit that a plain reading of Rule 18 would make it clear that the said rule is applicable only for inclusion of the partner to a business and not to the licence already granted in favour of an individual. It is further argued that

Rule 18 is only in cases of existing partnerships and not to create new partnerships by inclusion.

On the other hand, learned Government Pleader, while specifically drawing the attention of the Court to the application made by the deponent himself and the statements recorded by the SHO in terms of the procedure that is being followed by the Department, would submit that the 2nd respondent-Commissioner, having considered the rule position had accorded permission for inclusion of 7th respondent's name in the 2B licence.

Learned Government Pleader, by specifically drawing attention to Paragraph 3(iii) of the counter affidavit, asserts that there is no rebuttal by the deponent with respect to the recording of statements by SHO which is the procedure that is being followed by the Department whenever applications under Rule 17 or Rule 18 are being enquired into.

Sri O. Manohar Reddy, learned counsel for the 7th respondent, would submit that there is no denial on the part of the deponent with respect to the existence of partnership, execution of the partnership deed dated 29.03.2017, the application that is made by the deponent on 29.03.2017, the statement recorded by the SHO, Mahabubnagar, in the deponent's own handwriting, and the payment of licence fee by the 7th respondent. In those circumstances, learned counsel for the 7th respondent submits that the argument of the learned counsel for the deponent that the deponent gave statement before the SHO under coercion is only an invented argument developed for the purpose of the writ petition. Learned counsel would also further assert that no complaint was lodged by the deponent with respect to his allegation of coercion at any point of time, and no such assertion with respect to the so-called coercion is made at any point of time earlier, except making such assertion for the first time in the arguments before this Court by the learned counsel for the deponent.

It is the further contention of Sri Manohar Reddy, learned counsel for the 7th respondent, that Rule 18 contemplates a situation where a business partner being added or being deleted with respect to an already existing licence and the said Rule does not exclude adding of an individual as a partner to an already existing licence.

Having perused the record and having heard the respective counsel, at the outset, it may be recorded that in the absence of a reply affidavit denying the specific assertions in the counter affidavits that the deponent of the writ affidavit had himself made an application and they have given statements before the SHO, Mahabubnagar, the assertions of the learned counsel for the deponent, insofar as the allegation of coercion, need not be taken seriously and, at any rate, they may not be necessary for disposal of the present writ petition.

The fact with respect to the deponent having made an application and the fact that the deponent having given the statement wherein it is stated that the deponent is having financial difficulties and therefore desires to include the 7th respondent as a partner in the Bar & Restaurant business, is not denied and is admitted. Further, a perusal of the lease deed which is required to be submitted with respect to the premises discloses that the deponent had signed the same on 18.10.2017. It is significant to note that in the said lease deed, the names of the deponent as well as the 7th respondent were mentioned as lessees with respect to the subject property bearing Door No.1-4-130/17, Avanthi Complex, Kamala Nehru Colony, Mahabubnagar, and the same is being leased out for the purpose of running Bar & Restaurant i.e., from 01.10.2017 to 30.09.2018. In other words, even as on 18.10.2017, the deponent had no objection to granting licence for running the Bar & Restaurant in the name of M/s New Venkat Restaurant and Bar in the subject premises in terms of the Excise Rules. A Bar and Restaurant can be run only under a licence granted. The licence could be in the name of individuals or a legal entity or partnership, private limited company or a limited company.

In the present case, initially the 2B licence came to be granted in favour of the deponent, and thereafter taking into consideration the applications made by both the deponent as well as the 7th respondent on 29.03.2017 and 30.03.2017, respectively, along with the partnership deed dated 29.03.2017, the applications were processed by the 2nd respondent and permission was accorded by including the name of the 7th respondent in the 2B Licence for running the Bar and Restaurant at the premises bearing H.No.1-4-130/17, Kamala Nehru Colony, Mahabubnagar, under the name and style of M/s New Venkat Restaurant and Bar.

In the light of the above undisputed and admitted facts, the only question that requires to be considered is the interpretation that is to be accorded to Rule 18 of the Excise Rules and to specifically examine whether Rule 18 permits inclusion of a third party to an already existing licence in favour of an individual.

Rule 18 of the Excise Rules read as under:

> **Licensee not to declare any person to be or not to be his partner:- No licensee shall, except with the prior permission of the Prohibition and Excise Superintendent get any other person included as partner to his business, or get an existing partner excluded so long as the partnership nature of the business does not change.**
>
> **Provided that where there was dissolution of partnership it shall be notified to the Commissioner of Prohibition and Excise."**

Rule 18 of the Excise Rules envisages adding/deleting/creating a new entity and issuance of licence in favour of such new entity without eliminating the original licensee unlike Rule 17 which permits a licence being transferred in favour of new licencee, thereby the original licence holder ceasing to have any right whatsoever in the licence. A close reading of Rule 18 of the Excise Rules would disclose that it does not rule out a new partner being added to a proprietary concern and the same is clear from the language employed in Rule 18 which gives power to the Prohibition and Excise Superintendent to grant prior permission to include a person as a partner to a licensee's business. Likewise, in case a licence is granted in favour of an individual by adding another person to the licence, the licence would be in their joint name. A licensee by seeking permission with the Excise department can also seek 2B licence in favour of a partnership firm by throwing licence in favour of the partnership firm thereby seeking licence in the name of partnership firm.

In case of an existing partnership firm, if another partner is added, the constitution of partnership firm would get changed into a new partnership firm consisting of more number of partners; and conversely, by deletion, the partnership firm would constitute less number of partners, so long as the partnership nature of the business does not change. Yet another constitution which can be envisaged under Rule 18, without creating a new legal entity like a partnership firm, licence can also be granted in the names of two individuals jointly, as an Association of Persons (AOP). AOP is a legal entity even recognized for Income Tax purposes.

In the present case, the fact remains that the deponent as well as the 7th respondent had placed before the authorities a partnership deed specifically expressing their intention of running their business in the premises mentioned in the partnership deed, with a further request to add 7th

respondent as a partner to the Bar & Restaurant business being run by the deponent on the strength of the 2B Licence granted to him. For clarity, the exact wordings used by the deponent in his application dated 29.03.2017, are extracted hereunder:

> **To**
> **The Commissioner,**
> **Prohibition & Excise,**
> **Govt. of Telangana State,**
> **Hyderabad.**
>
> **Respected Sir,**
>
> **Sir,**
>
> **Sub:- Accord permission for joining one (01) new member in M/s. New Venkat Restaurant & Bar, situated at Mhabubnagar – Req. – Regarding.**
>
> **I, the undersigned would like to submit that we have running the business in the name and style M/s. New Venkat Restaurant & Bar, bearing license No.62/2006, situated adjacent at Kamalanehru Colony, Mahabubnagar Town, but due to my financial problems at I am unable to run the business I have decided to include the following partner.**
>
> **1. P. Yeshwanth S/o P. Umameshwar Reddy, R/o. Mahabubnagar.**
>
> **I, the above person have given their consent and willingness for the said partnership business and they are <u>willing to pay the inclusion amount and if any Government dues</u>.**
>
> **Hence, I <u>request the Hon'ble Authority to issue the license by including the name of new partner in respect of M/s. New Venkat Restaurant & Bar</u>, situated at Kamalanehru Colony, Mahabubnagar. I am enclosing herewith the Xerox copies of partnership.**
>
> **Yours faithfully,**
>
> **(SRI. A. PRATHAP REDDY)**
> **M/s. New Venkat Restaurant & Bar,**
> **Avathi Complex,**
> **Mahabubnagar.**

The underlined portion above makes clear the intention of the deponent. As expressed in his application dated 29.03.2017, the deponent himself requested the respondent authorities to issue 2B licence by including the name of the 7th respondent as his partner in the Bar & Restaurant.

The hair-splitting arguments which the learned counsel for the deponent seeks to make before this Court is to the effect that by the impugned order dated 16.09.2017, the 2nd respondent had accorded permission to include the name of the 7th respondent ONLY to the “business” of the Bar & Restaurant, and NOT to the 2B Licence, does not command acceptance. Even if one looks at Rule 18 of the Excise Rules, the same provides that a licensee, with prior permission of the competent authority, can add a third party to or delete an existing party from, the business, so long as the nature of business does not change. Furthermore, the words **”included as partner to his business”** that are used in Rule 18 of the Excise Rules would make it clear that the inclusion of a person as a partner could be by way of inclusion in the business or in the licence.

In the instant case, the deponent himself has made an application to the 2nd respondent on 29.10.2017 stating that he is unable to run the business owing to his financial problems and sought permission to include the 7th respondent, for the reason that the 7th respondent is financially sound and they both would be in a position to run the business. Admittedly, the business of Bar & Restaurant cannot be run without a valid licence, and as originally the 2B licence was granted in the name of the deponent, and as the deponent specifically requested the 2nd respondent by way of his application dated 29.03.2017 to include the name of the 7th respondent, the 2nd respondent by exercising his authority under Rule 18 of the Excise Rules, accorded permission to include the name of the 7th respondent in the 2B Licence of the deponent.

In that view of the matter, the order dated 16.09.2017 passed by the 2nd respondent is within his powers under Rule 18 of the Excise Rules, and the same does not suffer from any irregularity or legal infirmity warranting interference of this Court under Article 226 of the Constitution of India. Consequently, the proceedings of the 5th respondent dated 30.10.2017 also does not require any interference as what has been done by the 5th respondent in the proceedings dated 30.10.2017 is including the name of the 7th respondent in the 2B licence thereby including him as partner in the Bar & Restaurant, which is nothing but implementation of the orders passed by the 2nd respondent.

In view of the above, I find no merit in this writ petition and the same is accordingly dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

W.P.Nos.7384 and 25515 of 2018:

As per the request made by the deponent in his application dated 29.03.2017, the 7th respondent came to be added in the 2B License by order dated 16.09.2017 thereby permitting him to be a partner in the Bar & Restaurant business, and therefore, all other actions taken by the respondent authorities are only consequential in nature, and hence no independent orders are required in these writ petitions, and accordingly, the writ petitions are closed. No costs. Miscellaneous petitions, if any pending, shall also stand closed.

JUSTICE CHALLA KODANDA RAM

04th February, 2019

KSM

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.803, 7384 and 25515 of 2018

04th February, 2019

KSM