

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1068 of 2005

Between:

Balraj Bar & Restaurant, rep. by its proprietor B.Ramesh Kumar,
S/o.Pentaiah, R/o.Chandanwadi, Ghoshamahall, Hyderabad.

..... PETITIONER

AND

1 Government of Andhra Pradesh, rep.by its Secretary, Excise

Department.

2 Commissioner of Excise, Ranga Reddy District.

3 Prohibition of Excise, Superintendent Ranga Reddy District.

Narayanguda, Hyderabad.

4 Deputy Commissioner of Prohibition and Excise.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ order or direction declaring the order of 4th Respondent in his proceedings No.B1/5723/03 dated 26-04-2004 and the order of 3rd respondent in file No.Cr.No.B1/5723/03 dated 29-11-2003, as illegal arbitrary opposed to Article 19, 21 of the Constitution of India and vide GOMS NO.1105 dated 16-12-2002 in the interest of justice and to pass such other order or orders.

Counsel for the Petitioner:MR.SRINIVAS POLAVARAPU

Counsel for the Respondents No.1 to 4: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following ORDER:

Petitioner was granted the licence in form IL 17 for the excise year 2001-02. The petitioner established “Balraj Bar and Restaurant” at Lothkunta. Rs.13,30,000/- is the fee for IL 24 licence for the shops situated within 5 K.Ms. from the periphery area of Municipal Corporation of Hyderabad (MCH) and Rs.9,25,000/- for those outside such periphery. The petitioner was levied licence fee of Rs.9,25,000/- on the presumption that it is outside the periphery of 5 K.Ms. However, while considering the application for renewal for the year 2003-04, the respondents stated that the bar and restaurant of the petitioner is within the periphery of 5 K.Ms. and insisted on payment of the differential amount. On furnishing the bank guarantee for that amount, the licence was renewed.

The petitioner approached this Court by filing W.P. No. 7665 of 2003. It was disposed of, directing the third respondent to pass appropriate orders on the representation submitted by the petitioner. An order dated 24.05.2003 was passed by the third respondent rejecting the representation of the petitioner. Thereupon, the petitioner filed W.P.No.12168 of 2003. Through an elaborate order dated 23.09.2003, this Court disposed of the writ petition permitting the petitioner to raise the objection before the third respondent and the latter, in turn, was directed to call for a report from the Hyderabad Urban Development Authority in the matter of ascertaining the limits of MCH in the context of determining as to whether the bar and restaurant is within the periphery of 5 K.Ms. Through his order dated 29.11.2003, the third respondent rejected the

representation of the petitioner. Aggrieved thereby, the petitioner preferred an appeal before the fourth respondent. The appeal was rejected by the fourth respondent *vide* his order dated 26.04.2004. Hence this writ petition.

Learned counsel for the petitioner submits that there is serious dispute as to the very outer limits of the MCH. He submits that the point from which the respondents measured the distance is in fact part of cantonment and if the outer limits of the MCH are taken into account the bar and restaurant of the petitioner is outside the periphery of 5 K.Ms. He contends that the third respondent did not take the relevant material into account and has decided the matter contrary to the specific directions issued by this Court. He points out that when the petitioner availed the statutory remedy of a regular appeal before the fourth respondent, he rejected the same without undertaking any discussion.

Learned Government Pleader for Prohibition & Excise, on the other hand, submits that the third respondent has undertaken extensive and detailed discussion touching all the contentions of the petitioner and in that view of the matter the fourth respondent did not feel the necessity of repeating the same in his order.

There is a serious dispute on the question whether the bar and restaurant established by the petitioner is within or outside the periphery of 5 K.Ms. from the outer limits of the MCH. The location assumes significance from the point of view of the licence fee. The respondents raised the dispute after the petitioner was granted the licence with a particular slab of fee. Twice, this Court felt that the petitioner ought to have been given an opportunity, before being insisted on to pay a higher slab of licence fee. It is true that pursuant to the direction issued by this Court in W.P.No.12168 of 2003, the third respondent had undertaken extensive discussion and it cannot be said that he did not follow the directions issued by this Court.

However, though there is no procedural lapse on the part of the third respondent, his decision on merits is subject to the appeal provided for under the A.P. Excise Act. The appellate authority, the fourth respondent, is vested with the power to examine the record and to pass appropriate orders based on his satisfaction. For all practical purposes, the appeal is continuation of the

original proceedings. Therefore, the fourth respondent was under obligation to undertake discussion in the matter of satisfying himself as to whether the view taken by the third respondent on the representation made by the petitioner is sustainable or not.

The order passed by the fourth respondent comprises of three sentences, and reads as under:

“The attention of the Proh. & Excise Inspector of SHO., Malkajgiri has stated that as per the measurements made by him the Bar falls within the Municipal Corporation of Hyderabad limits.

The reasons mentioned by the party are not considered. Hence, the plea is rejected.”

The first sentence is grammatically unsound. The second sentence represents poor syntax and is bereft of any reasons. The third sentence connotes lack of clarity in the matter. It is surprising that an important plea raised by the petitioner and an elaborate and detailed order passed by the third respondent was dealt with in such a casual, indifferent and callous manner by the fourth respondent. He was required to be more attentive and careful in disposing of a statutory appeal. Any further discussion is likely to have its effect on the merits of the matter.

Hence, the order dated 26.04.2004 passed by the fourth respondent is set aside and the matter is remanded to him for fresh consideration. It is directed that he shall record specific reasons, in detail, in support of his conclusions.

The writ petition is accordingly allowed. There shall be no order as to costs.

31.01.2005

ksld

To

- 1 Secretary, Excise Department, Secretariat, Hyderabad.
- 2 Commissioner of Excise, Ranga Reddy District.
- 3 Prohibition of Excise, Superintendent Ranga Reddy District.

Narayanguda, Hyderabad.

- 4 Deputy Commissioner of Prohibition and Excise.

5 Two CCs.to the G.P.for Prohibition & Excise, High Court of A.P.,

Hyderabad (OUT)

- 6 Two CD copies.