

Smt. Y. Rajitha Reddy Vs Government of Andhra Pradesh and Others

Court: Andhra Pradesh High Court

Date of Decision: Oct. 30, 2013

Citation: (2014) 3 ALD 145 : (2014) 4 ALT 509

Hon'ble Judges: Ramesh Ranganathan, J

Bench: Single Bench

Advocate: N. Subba Rao, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.

The petitioner has invoked the jurisdiction of this Court to declare the proceedings of the 2nd respondent dated

16.11.2012 as being illegal, arbitrary, contrary to the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005

(hereinafter called the ""Bar Rules""), and as contrary to G.O.R.T. No. 833 dated 11.06.2010. A consequential direction is sought to the

respondents to set aside the said order; take a decision on the application submitted by the petitioner dated 07.09.2008 in terms of G.O.Rt. No.

833 dated 11.06.2010, and with reference to Rule 5 of the Rules; and to grant 2B licence, notwithstanding G.O.Ms. No. 723 dated 02.08.2010,

for establishing a Restaurant & Bar at Tirupati. Facts, to the extent necessary, are that the petitioner submitted an application in Form-1A on

17.09.2008 in terms of G.O.Ms. No. 997 dated 24.05.2005; her application was examined and, in view of the closure of some of the bars and

non-renewal of some of the bar licenses at Tirupati, respondents 3 to 5 favourably recommended her case observing that the petitioner had fulfilled

all the conditions stipulated in Rule 6 of the Rules, and her applications could be considered in the place of the Restaurant & Bars which had been

closed. While recommending that the petitioner be granted a bar license, respondents 3 and 4 observed that only one A4 shop was located at a

distance of 300 metres, and there were no 2B Bar licences existing in the vicinity of the proposed premises at Tuda road in Tirupati. Relying on the

report of the 5th respondent, the 4th respondent submitted a report to the 3rd respondent on 17.09.2009 recommending the petitioner's case for

grant of prior clearance, for establishing a Bar-cum-Restaurant, for the year 2009-2010. Thereafter the 3rd respondent, vide proceedings dated

15.10.2009, submitted a report to the 2nd respondent recommending grant of 2B licence to her in the place of the three bar licences which were

either cancelled or not renewed for the year 2009-2010. The petitioner submitted a representation, thereafter, stating that she would produce the

trade licence, before the second respondent, when prior clearance was granted.

2. The petitioner's application, for grant of a bar licence, was considered along with several others and the 2nd respondent, by proceedings dated

13.09.2010, rejecting the applications holding that Chittoor Municipal Corporation was eligible to have seven bars whereas the existing number of

bars were 18; and, as such, there was no scope for grant of any new bar licence thereat. The petitioner filed W.P. No. 26625 of 2010 which was

allowed by order dated 23.12.2010, the impugned order dated 13.09.2010 was set aside, the matter remitted to the 2nd respondent for his

consideration afresh, and for an appropriate speaking order to be passed in accordance with law. Aggrieved thereby the respondents preferred

W.A. No. 377 of 2011 which was disposed of by the Division bench by its order dated 11.04.2012.

3. In the counter-affidavit, filed on behalf of the 2nd respondent, it is stated that the State has the exclusive privilege of manufacture and sale of

liquor, and no citizen has a fundamental right to carry on trade or business in liquor; the applicant has no right to be granted a licence for the mere

asking; the petitioner had applied for grant of prior clearance for establishing a Bar in Tirupati; her application dated 07.08.2008 was received on

17.09.2008; the Deputy Commissioner of Prohibition & Excise, Chittoor had submitted a report stating that she neither had a trade licence nor

was she running a restaurant; when her application was under consideration, the Government had issued G.O.Ms. No. 723 dated 02.08.2010

prescribing guidelines for grant of prior clearance for establishing bars as per which Tirupathi Municipal Corporation was eligible for seven bars

only; and as there were 18 Bars in Tirupati, during the year 2010-11, the petitioner's application, along with 31 others, was rejected by the 2nd

respondent by proceedings dated 13.08.20,10. After referring to the order passed in W.P. No. 26625 of 2010, and the order of the Division

Bench in W.A. No. 377 of 2011, the respondents would submit that the 2nd respondent had again examined the case of the petitioner in detail;

there was no scope for grant of prior clearance for establishing a new bar in Tirupati Municipal Corporation as there were more bars in existence

than the maximum stipulated in G.O.Ms. No. 723 dated 02.08.2010; G.O.Ms. No. 723 dated 02.08.2010 was issued by the Government to

dispose of an overwhelming number of pending applications for grant of new licences all over the State; G.O.Ms. No. 723 dated 02.08.2010,

issued to supplement G.O.Rt. No. 883 dated 11.06.2010, is applicable to the petitioner's case; her application, received on 17.09.2008, was

therefore considered in terms of G.O.Ms. No. 723 dated 02.08.2010; her contention that, because her application dates back to the year 2008-

09, G.O.Ms. No. 723 dated 02.08.2010 is not applicable is not tenable; applications received, either for grant of prior clearance or for a bar

licence, are required to be considered with reference to the law prevailing on the date of consideration; and it cannot be said that the proceedings

of the 2nd respondent dated 16.11.2012 is illegal, arbitrary, contrary to the Bar Rules and to G.O.Rt. No. 833 dated 11.06.2010.

4. Sri N. Subba Rao, Learned Counsel for the petitioner, would submit that, despite the recommendations of respondents 3 to 5 that the petitioner

was entitled to be granted prior clearance as she had fulfilled all the prescribed conditions, the 2nd respondent had erred in rejecting her

application based on G.O.Ms. No. 723 dated 02.08.2010; as the petitioner was seeking a licence in the place of closed bars, or where bar

licences were not renewed, G.O.Ms. No. 723 dated 02.08.2010 had no application; the petitioner had submitted her application on 07.08.2008

long before G.O.Ms. No. 723 dated 02.08.2010 came into force; her application is, therefore, required to be considered in terms of the earlier

guidelines in G.O.Rt. No. 833 dated 11.06.2010; even otherwise G.O.Ms. No. 723 dated 02.08.2010 was issued to supplement G.O.Rt. No.

833 dated 11.06.2010, and it is the earlier G.O. which necessitates compliance; she is entitled to be granted prior clearance in terms of Rule 5 of

the Bar Rules; and the petitioner is entitled to have her application considered, in terms of G.O.Rt. No. 833 dated 11.06.2010, without reference

to the conditions stipulated in G.O.Ms. No. 723 dated 02.08.2010. Learned Counsel would rely on P.V. Prasad v. Commissioner of Prohibition

& Excise Judgment in W.P. No. 155 of 2013 dated 12.03.2013 as confirmed by the order of the Division bench in W.A. No. 524 of 2013 dated

25.04.2013.

5. On the other hand Learned Government Pleader for Prohibition & Excise would submit that the petitioner had applied for grant of a fresh

licence; nowhere in her application did she cite ""gaps"" as the ground for submitting her application; by his earlier order dated 13.09.2010 the 2nd

respondent had rejected the petitioner's application, along with 32 others, in terms of G.O.Ms. No. 723 dated 02.08.2010; there was a

typographical error in the said order and, instead of referring to Tirupati Municipal Corporation, the 2nd respondent had, by oversight, referred to

Chittoor Municipal Corporation; neither the order of the learned single judge in W.P. No. 26625 of 2010 dated 23.12.2010, nor the order of the

Division bench in W.A. No. 377 of 2011 dated 11.04.2012, precluded the 2nd respondent from considering the petitioner's application in terms

of G.O.Ms. No. 723 dated 02.08.2010; the petitioner's application was received much before G.O.Rt. No. 833 dated 12.06.2010 was issued;

G.O.Rt. No. 833 dated 11.06.2010 also relates to grant of a new bar licence; reliance placed on G.O.Rt. No. 833 dated 11.06.2010 is,

therefore, misplaced; while officers subordinate to him can only recommend, it is the 2nd respondent, as the competent authority, who alone can

grant prior clearance; Rule 5(2) of the bar rules confers a wide discretion on the 2nd respondent either to grant or refuse prior clearance; the policy

guidelines in force, on the date of consideration of the application, are alone applicable; and as the petitioner's application was considered, after

G.O.Ms. No. 723 dated 02.08.2010 was issued, the 2nd respondent was justified in rejecting her application placing reliance thereupon. Learned

Government Pleader would place reliance on State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc.,

6. Grant of prior clearance, and a licence, for establishing a bar and restaurant are governed by the Bar Rules. Rule 2(i) of the said Rules defines

licence"" to mean a licence granted under the Rules. 2(1) defines ""licence period"" to mean a period of twelve months beginning from the 1st July of

the year ending with 30th of June of the succeeding year or part thereof. Rule 4 relates to grant of licence. Rule 5, which relates to an application

for licence, reads as under:

(1). A person intending to establish a Bar may submit an application in Form-1A to the Commissioner enclosing a challan of Rs. 5,000/- to get

prior clearance.

(2). The Commissioner having due regard to requirement and other factors as he deems fit, may grant a prior clearance in Form-2A to such of the

applicants covered under sub-rule (1).

Provided that the grant of prior clearance shall not confer any right on the applicant for grant of license in Form-2B. The holder shall not claim for

any compensation or loss in case license in Form-2B is not granted.

(3). The holder of prior clearance in Form-2A may apply in Form-1B for grant of licence for a bar to the concerned Prohibition and Excise

Superintendent where the applicant's premises is to be licensed.

(4). Application in Form-1B shall be accompanied by challan of Rs. 10,000/- towards non-refundable application fee.

(5). The Prohibition and Excise Superintendent, after making such enquiry as he may think necessary, to ascertain the bonafides of the applicant

and verifying the particulars finished in the application should examine the suitability of the premises for granting Bar and forward the same to the

Deputy Commissioner of Prohibition and Excise of the division along with his report.

(6). The Deputy Commissioner, after causing such enquiry as he may deem fit, may grant the licence.

(7). The applicant before issue of licence shall execute a counterpart agreement in Form-4B, on the stamp paper of requisite value as per the

provisions of the Indian Stamp Act, 1899.

7. The validity of the order of the 2nd respondent dated 16.11.2012, refusing to grant prior clearance to the petitioner, is under challenge in this

Writ Petition. As it is only after prior clearance is granted, by the Commissioner under Rule 5(2), is the applicant entitled to seek grant of a licence

for establishing a bar and restaurant, it is not necessary for this Court to examine whether or not the petitioner should be issued a bar licence.

8. As noted hereinabove the petitioner has invoked the jurisdiction of this Court for the second time. The earlier order of the 2nd respondent dated

13.09.2010, whereby the petitioner's application for grant of prior clearance was rejected, refers both to G.O.Rt. No. 833 dated 11.06.2010 and

G.O.Ms. No. 723 dated 02.08.2010. All the 32 applications received for grant of prior clearance, including that of the petitioner, were rejected

by the said order. On a challenge to the validity of the proceedings of the 2nd respondent dated 13.09.2010 this Court, in its order in W.P. No.

26625 of 2010 dated 23.12.2010, noted that the petitioner had submitted an application in Form-1A dated 17.09.2008 for grant of prior

clearance to establish a bar and a restaurant within the limits of Tirupati Municipal Corporation. After referring to G.O.Ms. No. 723 dated

02.08.2010, and extracting the contents of the order of the 2nd respondent dated 13.09.2010, this Court observed that, from the recitals of the

report of the Prohibition & Excise Superintendent, Tirupathi, it was clear that he had favoured and recommended grant of prior clearance to the

petitioner; and the 2nd respondent, without applying his mind and without considering the report of the Prohibition & Excise Superintendent,

Tirupati which is based on the report of the Prohibition & Excise Inspector, Tirupati, had merely rejected the application for grant of prior

clearance which could not be sustained.

9. In the appeal preferred there against the Division bench, in its order in W.A. No. 377 of 2011 dated 11.04.2012, held that the learned Single

Judge had noted that a speaking order was not passed by the 2nd respondent while rejecting the application of the petitioner; accordingly, the

learned Single Judge had directed them to consider the matter afresh, and to pass an appropriate speaking order in accordance with law; and they

did not see any reason to interfere with the order passed by the learned single judge. The Division Bench, however, made it clear that the

respondents could consider the application of the petitioner afresh in accordance with law, and this did not preclude them from taking G.O.Ms.

No. 723 dated 02.08.2010 into consideration while considering the case of the petitioner.

10. In the impugned order dated 16.11.2012 the 2nd respondent refers, among others, to the petitioner's application received by them on

17.09.2008; the recommendations of the Deputy Commissioner of Prohibition & Excise dated 15.10.2009; G.O.Ms. No. 723 dated 02.08.2010;

the earlier order of rejection dated 13.09.2010; the order of the learned Single Judge in W.P. No. 26625 of 2010 dated 23.12.2010; and the

order of the Division bench in W.A. No. 377 of 2011 dated 11.04.2012. The 2nd respondent thereafter observed that, in the instant case, the

petitioner did not produce a trade licence from a local authority for running a restaurant and, therefore, the recommendations of the Prohibition &

Excise Superintendent (FAC), Tirupati was not in accordance with law; when the matter was under consideration, the Government had issued

guidelines in G.O.Ms. No. 723 dated 02.08.2010 as per which there was no scope for grant of prior clearance for establishing new bar in Tirupati

Municipal Corporation as there were more bars in existence than were permissible there under; and, accordingly, the petitioner's application, for

grant of prior clearance in Tirupati Municipal Corporation, was liable to be rejected.

11. No one has a right to carry on business in liquor as it is considered ""res extra commercium"". Trade in liquor is not a fundamental right. It is a

privilege of the State. The State parts with this privilege for revenue considerations. State of Punjab and Another Vs. Devans Modern Brewaries

Ltd. and Another, Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, . As the business of trading in intoxicating liquor is

res extra commercium, a high degree of control is exercised by law to ensure that the business of trading in liquor is carried on strictly in

accordance with the provisions of the A.P. Excise Act, the rules made thereunder, the policy guidelines and the terms and conditions of the licence

granted in favour of the licensee. The Commissioner of Income Tax Vs. Swarna Bar Restaurant, Managing Partner Jogi Ramesh, . The petitioners

cannot claim to have a fundamental right to carry on business in trading in liquor. Their right, if any, can be regulated by statutory provisions - both

plenary and subordinate - and the policy guidelines issued by the Government in this regard.

12. The State, while parting with its exclusive privilege or a part thereof, may impose conditions but, once such terms and conditions are laid down

by reason of a Statute or a statutory rule, they cannot be deviated from. Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and

Others, ; The Commissioner of Income Tax Vs. Swarna Bar Restaurant, Managing Partner Jogi Ramesh, Potable liquor, as a beverage, is an

intoxicating and depressant drink which is dangerous and injurious to health and is inherently harmful. The State can impose limitations and

restrictions, on the trade or business in potable liquor as a beverage, which are in nature different from those imposed on the trade or business in

legitimate activities and goods and articles which are res commercium. The State can adopt any mode of selling licences, for trade or business in

liquor, with a view to maximise its revenues as long as the method adopted is not discriminatory. When the State permits trade or business to be

carried on in potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any. Khoday

Distilleries Ltd. and Others Vs. State of Karnataka and Others,

13. The petitioner submitted her application, for grant of a bar licence, on 17.09.2008 much before G.O.Rt. No. 833 dated 11.06.2010 was

issued. Both G.O.Rt No. 833 dated 11.06.2010 and G.O.Ms. No. 723 dated 02.08.2010 were issued when her application was pending

consideration before the 2nd respondent. While respondents 3 to 5 are entitled to recommend an application seeking a bar license, Rule 5(2) of

the Bar Rules confers power only on the 2nd respondent to grant prior clearance and it is for him, and not respondents 3 to 5, to decide whether

or not prior clearance should be granted. The power conferred under Rule 5(2) must be exercised by the Commissioner having due regard to the

requirement of bars, and such other factors as he deems fit, which would include the policy guidelines of the Government in G.O.Rt. No. 833

dated 11.06.2010 and G.O.Ms. No. 723 dated 02.08.2010.

14. It is no doubt true that para 3 of G.O.Ms. No. 723 dated 02.08.2010 stipulates that the bar policy under the said G.O. would supplement the

already announced policy regarding replacement of non-renewed/cancelled bars enunciated through G.O.Rt. No. 833 dated 11.06.2010. Would

the mere fact that G.O.Ms. No. 723 dated 02.08.2010 is to supplement G.O.Rt. No. 833 dated 01.06.2010 prohibit the 2nd respondent from

taking into consideration the conditions stipulated in G.O.Ms. No. 723 dated 02.08.2010? The answer can only be in the negative. The new

Oxford dictionary of English (1998 edition) defines the word "supplement" to mean something which completes or enhances something else when

added to it; and an extra element to. When so read the conditions stipulated in G.O.Ms. No. 723 dated 02.08.2010 are in addition to the

requirements of G.O.Rt. No. 833 dated 11.06.2010, and the conditions stipulated in both the G.Os necessitate compliance. In places where the

population of a Municipal Corporation is below three lakhs the eligibility criteria prescribed, in G.O.Ms. No. 723 dated 02.08.2010, is one bar for

every thirty thousand population. As has been noted, in the impugned order of the 2nd respondent, the population of Tirupati Municipal

Corporation is 2,27,673 and, as such, the number of bars which can be established thereat, in terms of G.O.Ms. No. 723 dated 02.08.2010, is

only seven. The impugned order records that the number of bars, presently functioning in Tirupati Municipal Corporation, is eighteen which is far

more than the seven bars which can be established thereat in terms of G.O.Ms. No. 723 dated 02.08.2010. Granting prior clearance to the

petitioner would result in a further increase in the number of existing bars from eighteen to nineteen.

15. The trade or business in potable liquor is a trade or business *res extra commercium*, and can therefore be regulated and restricted even by an

executive order provided it is issued by the Governor of the State. *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, Both

G.O.Rt. No. 833 dated 11.06.2010 and G.O.Ms. No. 723 dated 02.08.2010 are executive orders issued by the Governor of the State of

Andhra Pradesh, and the regulations and restrictions prescribed therein are also factors to be taken into consideration by the Commissioner while

exercising his statutory powers under Rule 5(2) of the Rules to grant or refer prior clearance or a licenses for establishing a bar. Para 2 of G.O.Ms.

No. 723 dated 02.08.2010 records that the Government, after careful consideration of the proposal submitted by the Commissioner of Prohibition

& Excise, was permitting new bars very sparingly at places where the requirement was determined on the basis of the objective criteria stipulated

therein. It is evident from the policy guidelines in G.O.Ms. No. 723 dated 02.08.2010 that the Government's endeavour is to restrict opening of

new bars. In restricting the exercise of power of the Commissioner, to permit new bars to be opened very sparingly, G.O.Ms. No. 723 dated

02.08.2010 is intended to further the directive principles of State policy enunciated under Article 47 of the Constitution of India whereby the State

is required to endeavour to bring about prohibition and consumption of intoxicating drinks like liquor. When a law is made, having regard to the

phraseology used in Part IV of the Constitution of India, it is expected that the law made or action taken would be in furtherance thereof. In terms

of the Directive Principles of State Policy, the State must endeavour to promote public health which is one of its primary duties. One important

component of the said directive is the regulation and control over trade in intoxicating drinks so as to enable the State to curb or minimize, as for as

possible, consumption thereof. The State may or may not prohibit manufacture, sale or consumption of liquor but it is vital that, while parting with

its exclusive privilege to deal with intoxicating liquor, the provisions of the Act, the Rules, and the policy guidelines issued in this regard are strictly

complied with. Ashok Lenka Vs. Rishi Dikshit and Others, Article 47 of the Constitution of India has a unique feature in the sense that the first part

thereof refers to public health, whereas the second part specifically refers to prohibition of liquor. Prohibition of liquor was, thus, inserted as a part

of public health. Strict control is contemplated and this, in turn, requires that, while granting licences, the statutory authorities must resort to a strict

scrutiny of the applications. Ashok Lenka Vs. Rishi Dikshit and Others,

16. While the recommendation of respondents 3 to 5 was for grant of prior clearance to the petitioner to establish a bar, since licences for three

bars had either been cancelled or not renewed in Tirupati Municipal Corporation limits, the guidelines in G.O.Rt. No. 833 dated 11.06.2010 relate

to sanction of new licences for replacement of non-renewed/cancelled bars during 2009-2010 in Municipalities/Municipal Corporations. Under the

said G.O. the gaps, caused due to non-renewal/cancellation of bars in existence during 2009-2010 are required to be assessed as on 31.07.2010;

the Commissioner of Prohibition & Excise is required to notify such gaps, inviting applications for grant of prior clearance giving a minimum of

seven days for the filing of applications as is required under the Bar Rules; on the appointed date, as is notified, the Commissioner is empowered to

grant prior clearance by way of drawal of lots, when there is more than one eligible applicant for establishing the bar in the gap areas, in the

presence of the applicants; all existing valid applications for grant of prior clearance, for establishing bars, pending before the Commissioner are

also required be taken into consideration and given liberty to participate in the drawal of lots, if required for filling up the gaps as notified by the

Commissioner; and filing of fresh applications, in such cases, need not be insisted upon.

17. The date of assessment of the gaps, as is stipulated in G.O.Rt. No. 833 dated 11.06.2010, is 31.07.2010. It is not even the petitioner's case

that an exercise of assessment of the gaps, caused due to non-renewal/cancellation of the bars in existence during the year 2009-2010, was made

by the 2nd respondent as on 31.07.2010 or that he had notified such gaps or had invited applications for grant of prior clearance giving a minimum

of seven days for applications to be submitted in this regard. As the date of assessment, as stipulated in G.O.Rt. No. 833 dated 11.06.2010, is

31.07.2010, the Commissioner was disabled from issuing a notification in terms of the said G.O. prior thereto. Even if he had issued a notification,

inviting applications for grant of prior clearance to fill up the gaps, on the day next to the date of assessment of gaps i.e., on 01.08.2010, the

minimum seven days time, for applications to be filed for grant of prior clearance, would have expired only on 08.08.2010. As G.O.Ms. No. 723.

had been issued by then on 02.08.2010, the Commissioner was obligated to adhere to the conditions stipulated therein even to fill up the gaps,

caused by non-renewal/cancellation of the three existing bars in Tirupati Municipal Corporation. Consequently no prior clearance could have been

granted by him as the eighteen existing bars in Tirupati Municipal Corporation limits is far in excess of its population limits whereby only seven bars

can be established.

18. The policy guidelines in force, as on the date of consideration of the petitioner's application, must be applied and not the policy guidelines

existing prior thereto. Where the Rules require grant of a licence subject to fulfillment of certain eligibility criteria, to safeguard public interest, it

follows that the application for licence would require consideration and examination as to whether the eligibility conditions have been fulfilled or

whether grant of the licence is in public interest. Where the applicant for licence does not have a vested interest for grant of licence, and where

grant of licence depends on various factors or eligibility criteria and public interest, the consideration should be with reference to the law applicable

on the date when the authority considers the applications for grant of licences, and not with reference to the date of the application. Where the

licence sought relates to the business of liquor, and as the State has exclusive privilege and its citizens have no fundamental right to carry on

business in liquor, there is no vested right in any applicant to claim a licence and all applications should be considered with reference to the law

prevailing as on the date of consideration, and not with reference to the date of the application. As the State has the exclusive privilege of

manufacture and sale of liquor, and no citizen has a fundamental right to carry on trade or business in liquor, the applicant does not have a vested

right to get a licence. In such circumstances the consideration of application of licence should be only with reference to the rules/law/policy

guidelines prevailing, or in force, on the date of consideration of the application by the excise authorities, and not as on the date of the application.

State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc., State of Tamil Nadu Vs. Hind Stone and Others, ; Howrah Municipal

Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, ; and Kuldeep Singh Vs. Govt. of NCT of Delhi,

19. Both the earlier order dated 13.09.2010, and the impugned proceedings dated 16.11.2012, were passed by the 2nd respondent after G.O.Rt.

No. 833 dated 11.06.2010 and G.O.Ms. No. 723 dated 02.08.2010 came into force. The 2nd respondent could not, therefore, have ignored

G.O.Ms. No. 723 dated 02.08.2010 while considering the petitioner's application for grant of prior clearance. In any event the Division bench of

this Court, in its order in W.A. No. 377 of 2011 dated 11.04.2012, made it clear that, while considering the petitioner's application afresh in

accordance with law, the respondents were not precluded from taking G.O.Ms. No. 723 dated 02.08.2010 into consideration. The Division

bench judgment, in W.A. No. 377 of 2011 dated 11.04.2012, is binding both on the petitioner and the respondents as it is a judgment inter-

parties.

20. Reliance placed by the petitioner on P.V. Prasad Judgment in W.P. No. 155 of 2013, as confirmed by the Division bench in The

Commissioner, Prohibition and Excise v. P.V. Prasad Judgment in W.A. No. 524 of 2013 dated 25.04.2013, is misplaced. In P.V. Prasad

Judgment in W.P. No. 155 of 2013, the petitioner had submitted his application, for grant of prior clearance, to establish a bar in Rayachoti town;

his case was favourably recommended on 24.06.2011; it was contended before this Court that the policy guidelines in G.O.Rt. No. 833 dated

11.06.2010 required the Commissioner of Prohibition & Excise to notify the gaps, and invite applications for grant of prior clearance; and the said

guidelines were equally applicable to grant of new licences in Municipalities where there were no bar licences. This Court, after referring to Rule 4

of the Bar Rules, held that running of a restaurant was not a pre-condition for grant of prior clearance; the requirement of running a restaurant

would arise when the stage was set for granting a licence under Rule 4; while the applicant can be required to establish the infrastructure for running

a restaurant for grant of prior clearance, prior clearance cannot be refused on the ground that the restaurant is not functional at that stage; in the

absence of any such requirement, at the time of consideration of grant of prior clearance, the question whether the applicant was running a

restaurant or not was not relevant at that stage; and it would be relevant when his application for grant of bar licence, after grant of prior clearance,

is considered. This Court further held that G.O.Rt. No. 833 dated 11.06.2010 refers only to gap areas, and has nothing to do with the grant of

permission for establishing new bars in places unrelated to gap areas; and as there was no bar in Rayachoti town, the question of grant of licence

for gap areas in that place did not arise. The Commissioner of Prohibition & Excise was directed to consider the petitioner's application, for grant

of prior clearance, without insisting that the restaurant be functional. It is this order which was confirmed in appeal and the Division bench held that,

as the application was only for grant of prior clearance and the stage for seeking a licence under Rule 4 had not yet arrived, insistence by the

respondents, of compliance with the conditions precedent for grant of a licence under Rule 4, was rightly held to be unjustified by the learned single

judge.

21. Insistence of a restaurant being functional, before prior clearance could be granted, was in issue in P.V. Prasad Judgment in W.P. No. 155 of

2013, and neither the applicability or otherwise of G.O.Ms. No. 723 dated 02.08.2010 nor whether prior clearance to establish bars, in excess of

the population requirements of the Municipal Corporation, could be granted. The judgment in P.V. Prasad Judgment in W.P. No. 155 of 2013, as

confirmed in appeal, has no application to the facts of the present case.

22. As has been held by the Supreme Court, in State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc., the 2nd respondent

was duty bound to consider the policy guidelines in force on the date of consideration of the application and, as the impugned proceedings dated

16.11.2012 was passed after G.O.Ms. No. 723 dated 02.08.2010 came into force, he was obligated to take into consideration the guidelines

therein to decide whether or not prior clearance should be granted. The impugned order of the 2nd respondent dated 16.11.2012 does not suffer

from any legal infirmity necessitating interference by this Court under Article 226 of the Constitution of India. The Writ Petition fails and is,

accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.