

(2014) 09 AP CK 0010

Andhra Pradesh High Court

Case No: Writ Petition No. 26356 of 2014

V. Srinivasa Murthy

APPELLANT

Vs

The State of Telangana

RESPONDENT

Date of Decision: Sept. 15, 2014

Acts Referred:

- Andhra Pradesh Excise Act, 1968 - Section 17, 28, 29, 72, 72(2)
- Andhra Pradesh Reorganisation Act, 2014 - Section 100, 101

Citation: (2015) 2 ALD 133

Hon'ble Judges: Nooty. Ramamohana Rao, J

Bench: Single Bench

Advocate: Venkata Raghu Mannepalli, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Nooty Ramamohana Rao, J.

The petitioner seeks a writ of mandamus for declaring the orders issued by the first respondent-State of Telangana through their G.O.Ms. No. 01 and G.O. Ms. No. 02 Revenue (Excise-II) Department dated 14.06.2014, as illegal, arbitrary, unreasonable and violative of principles of natural justice and consequently to set-aside the same.

2. The petitioner was granted a license for retail sale of Indian Made Foreign Liquor and Foreign Liquor, which is known as A-4 Shop License. The duration of the license period is one year commencing from 01.07.2014 to end on 30.06.2015. Now, he challenges the orders of the first respondent-State through their G.O. Ms. No. 01 and G.O. Ms. No. 02 Revenue (Excise-II) Department dated 14.06.2014. Hence, I, consider it appropriate to extract in-toto the contents of the said orders herein below.

"GOVERNMENT OF TELANGANA

ABSTRACT

RULES - The Andhra Pradesh Excise (Grant of license of selling by shop and conditions of license) Rules, 2012 - Amendment - Orders - Issued.

REVENUE (EXCISE-II) DEPARTMENT

G.O. Ms. No. 01.

Dated 14.06.2014

Read:

G.O. Ms. No. 391, Revenue (Ex".II) Dept;., dated 18.06.2012

ORDER:

The following notification will be published in an Extra-ordinary Issue of the Telangana State Gazette, dated the 14th June 2014.

NOTIFICATION

In exercise of the powers conferred by section 72 read with sections 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968 (Andhra Pradesh Act 17 of 1968) the Governor of Telangana hereby makes the following amendment to the Andhra Pradesh Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012 issued in G.O. Ms. No. 391, Revenue(Ex. II) Department, dated the 18th June, 2012 and published in the Andhra Pradesh Gazette in Rules Supplement to Part II, Extraordinary No. 1, dated the 18th June, 2012.

AMENDMENT

In the said rules, for rule 21, the following shall be substituted, namely, "21. A license granted under these Rules for the period from 1st July of an year to 30th June of the succeeding year or part thereof shall not be considered for renewal for the subsequent year".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

B.R. MEENA

PRINCIPAL SECRETARY TO GOVERNMENT (FAC)

GOVERNMENT OF TELANGANA

ABSTRACT

Prohibition & Excise - Excise Policy 2014-15 (i.e., from 01.07.2014 to 30.06.2015 for disposal of retail liquor outlets - Orders - Issued.

REVENUE (EXCISE-II) DEPARTMENT

G.O. Ms. No. 2

Dated 14.6.2014

Read the following:

- 1) From CPE Cr. No. 3600/2010/CPE/G2, dated 28.5.2014
- 2) From CPE Cr. No. 01/AddlCPE-Peshi/2014, dated 6.6.2014.
- 3) G.O. Ms. No. 01, Rev (Ex-II) Dept., dated 14.6.2014.

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ORDER:

The following notification will be published in an Extra-ordinary issue of the Telangana Gazette dated 14th June 2014.

PROHIBITION & EXCISE POLICY FOR 2014-15 FOR DISPOSAL OF RETAIL

LIQUOR OUTLETS

The Government, after; careful examination of the policy proposals submitted by the Commissioner of Prohibition & Excise and suggestions received from various stakeholders hereby formulate the Excise Policy in relation to retail liquor shops for the Excise Year 2014-15.

1. The privilege of selling liquor through retail shops shall be granted by collecting fixed licence fee based on population, as per 2011 Census, of the places (Corporation/Municipality/Town/Village) for the year 2014-15.
2. The Commissioner of Prohibition & Excise is permitted to relocate the undisposed A4 shops from any locality/area as he thinks fit, but he shall not relocate the A4 shop from higher licence fee slab to lower licence fee slab.
3. The method of selection for grant of shop licences shall be by draw of lots.
4. The period of licence shall be one year i.e., from 01.07.2014 to 30.06.2015. There will be however no right of subsequent renewal beyond 2014-15.
5. The number of retail shops shall be retained at the present level (2216).
6. The Telangana State Beverages Corporation Limited outlets established under rule 18(1) of Andhra Pradesh Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012 at places where shops were undisposed, however, will continue to function unless and until those un-disposed A4 shops are disposed-off by draw of lots and established.
7. The Telangana State Beverages Corporation Limited outlets established under rule 18(2) of Andhra Pradesh (Grant of licence of selling by shop and conditions of licence) Rules, 2012, will continue to function for the year 2014- 15 also.
8. The licence fee for different population slabs shall be as follows:

In addition, the licensee shall pay Privilege Fee @ 8% plus applicable VAT on the invoice value of liquor purchased during the licence year in excess of seven times the annual licence fee. However, no retailer margin will be allowed on such Privilege Fee component.

9. Intensive campaign to educate the public about the ill effects of drinking shall be taken up.

10. The Commissioner of Prohibition & Excise to relocate the undisposed shops of 2013-14 to the extent possible, in accordance with the provision of Rule 4, before publication of notification under rule 5 of the above said rules.

11. Steps shall be taken to initiate the establishment/condition of de-addition centres one each in every district in the State in consultation with Health, Medical & Family Welfare Department.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

B.R. MEENA

PRINCIPAL SECRETARY TO GOVERNMENT"

3. Heard Sri Mannepalli Venkataraghu, learned counsel for the petitioner for considerable length of time. Various efforts and gentle methods adopted by me for drawing the focused attention of the learned counsel to the contents of these two G.Os has not met with adequate success.

4. Learned counsel for the petitioner would contend that the first respondent-State was formed only on 02.06.2014 and it has not settled down completely and it did not have full-fledged administrative set-up under its control, but however, it has proceeded in issuing the two impugned orders dated 14.06.2014, that is in less than two weeks time. This is one reason why the two impugned orders deserve to be set-aside.

5. The new State did not have any experience to deal with complicated matters concerning the excise licenses. For this reason also, the impugned orders deserve to be set-aside.

6. The learned counsel for the petitioner would further urge that the effected parties are not heard at all by the State and it has unilaterally passed orders and for this reason also, the two orders are liable to be set-aside being in violation of the principles of natural justice.

7. The learned counsel would contend that a set of Honourable Members of the Legislative Council have urged the State Government t of the composite State of Andhra Pradesh on 20.09.2012 not to allow liquor mafia to enter into the State and play havoc with the right of the excise licensees to carry on their business. In spite of the same, for extraneous reasons and considerations, the State has granted rights for Holographic Label Project to a company, which had such a bad record in the

State of Uttar Pradesh. It is further contended that the Managing Director of the said company was arrested and detained in prison and the first visitor of the said individual in the jail is a notorious anti-social element, thus, clearly disclosing the unholy alliance. Nonetheless, State Government has proceeded to grant such a company, valuable rights at the cost of the licensees. With a view to help this company, computer hardware is ordered to be installed by all the licensees and all licensees are insisted to generate computerized bills for the sales carried out by them. Learned counsel went on to submit that only 15% of the population are familiarized in operating computers and hence, insisting upon the installation of such hardware incurring huge expenditure at the licensed premises is an irrelevant consideration. The computer operations is a burdensome affair to the licensees and it will also create enough bottlenecks for the licensees to carry on their sales operations, particularly during peak period of sales.

8. The Andhra Pradesh Excise Act, 1968, has been made to regulate all aspects relating to the production, manufacture, possession, transport, purchase and sale of intoxicating liquors and drugs and the levy of duties of excise and countervailing duties on alcoholic liquors for human consumption. By virtue of the provisions contained under Section 100 and 101 of the Andhra Pradesh Reorganization Act, 2014, the provisions of this Act and the rules made thereunder will continue to hold the field in the newly formed State of Telangana. Under Section 72 of this Act, Government has been granted the power to make rules for carrying out all or any of the purposes of the said Act. Sub-section (2) furnished detailed particulars of subject matters relating to which, power under Sub-section (1) of Section 72 can be utilized. Clause (e) thereof brings out that Rules can be made for regulating the periods and localities in which and the persons or classes of persons to whom, licenses for the wholesale or retail sale or buying of any intoxicant, may be granted. While Clause (ee) has set out that rules may be separately for shops, Bars, or In-house consumption and for granting the necessary licenses in that regard. Therefore, rules can be validly made by the State regulating the period for which the necessary license/privilege to indulge in retail sale of intoxicating liquors can be made. Accordingly, the Government framed the Andhra Pradesh Excise (Grant of licence of selling by shops and conditions of licence) Rules, 2012. Rule (3) thereof made it clear that the right to sell Indian Made Foreign Liquor and Foreign Liquor in retail by shops shall ordinarily be granted by way of license issued after publishing the notification and inviting applications. Rule (4) conferred power on the Commissioner of Prohibition & Excise to fix the number of shops to be established in an area/locality before the publication of the notification under Rule 5. Rule 5 required the licensing authority to call for applications for grant of licenses in the area/locality as approved by the Commissioner by issuing a notification in the District Gazette containing the particulars specified therein. Clause (iv) thereof clearly mentions the period of license to be specified in the notification. Hence, at the stage of issuing notification inviting the interested parties to secure a license to respond, the period

for which such a license is going to be accorded is liable to be spelt out. Rule 21 dealt with bar of renewal of licenses once granted. That rule is what has been amended and the said amendment has been notified through the orders of the State Government contained in their G.O. Ms. No. 01 Revenue (Excise-II) Department dated 14.06.2014 making it clear that a license granted under these rules for the period from 1st July of an year to 30th June of the succeeding year or part thereof shall not be considered for renewal for the subsequent year. This amendment has been brought-forth with effect from 14.06.2014. As a consequence of this amendment of Rule 21 of the rules, the period of license for a retail shop in the State of Telangana is confined for one year, at the maximum and further such a license is not capable of being renewed for the subsequent year.

9. Now, an amendment is brought to an existing rule. The power to frame rules encompasses the power to amend them suitably. Section 72 of the Act has conferred power on the State Government to frame rules. Therefore, the rules framed "by the State Government are subordinate legislation, authorized to be so made by the legislature itself. The exercise of making legislation or subordinate legislation for that matter, are the prerogative of the legislature or the agency upon which such power was conferred/delegated. The legislature or the delegated agency before exercising such power is not required to put anyone on notice before hand and provide any opportunity of hearing. I am therefore, at a complete loss to understand the ground urged in this writ petition that an amendment brought to the rule without putting the writ petitioner on notice (for that matter anyone else) would render the same as bad in law. Such a contention is an extravagant one and is completely misconceived one. Therefore, there is no way the notification published through G.O. Ms. No. 01 Revenue (Excise-II) Department dated 14.06.2014 bringing an amendment to a rule can be struck down on that ground.

10. Further, the petitioner knew before he could secure license itself, as per the notification published under Rule 5 that the license period is only one year commencing on 01.07.2014 to end on 30.06.2015. Yet, he participated and then secured the license. Therefore, he has no right of any manner to challenge the right of the State to confine the period of license to one year. As was already noticed supra, Section 72(2), Clause (e) and Clause (ee) legitimately authorize the State to confine the period of license to one year or more. That is a policy choice available to the State. In the absence of demonstrable irrationality behind it, this Court cannot undertake any scrutiny. Similarly, it is not for this Court to say that the license period could be for two years.

11. Merely because the first respondent-State is newly formed, it cannot be denuded from exercising the powers available to it from the very first day. The exercise of power carried out can never be struck down on the ground that the new State does not have any experience to lay down any policy measures. Much less, a subordinate legislation can be struck down on the ground that the administration of the new

State is not yet completely settled down in its office. I am of the opinion that the contentions canvassed in this regard by the petitioner are totally irrelevant and not germane to the issue.

12. What all the State Government has announced through their G.O. Ms. No. 02 Revenue (Excise-II) Department dated 14.06.2014 was laying down its policy for the year 2014-2015. A State which runs its administration aims at securing transparency in its functioning by laying down its policy decision in clear and categorical terms. It not only provides appropriate guidance to its administration, but would completely rule out arbitrary and whimsical decisions from being taken. When a policy decision is announced before hand, fair procedures and practices would fall in place in giving effect to such a policy decision. Further, uniform application can be achieved in that process. Therefore, in principle, I cannot concede to any of the contentions canvassed by the petitioner in this writ petition that the first respondent-State lacks competence to formulate or announce its excise policy for the year 2014-2015, as of 14.06.2014.

13. The various contentions canvassed in the pleadings set up in this writ petition, which were also very vehemently pressed for consideration at the Bar are totally unconnected to the two impugned orders. The pleadings relate to some Holographic Label Project, while the impugned orders have not talked of the same.

14. I, am therefore, at a loss to comprehend what connection the pleadings set up and urged at the Bar have to the validity of the orders challenged in this writ petition. There was a great intellectual disconnect between them and hence, I refrain from expressing any opinion on the tenability or otherwise of such pleas.

15. This writ petition is totally misconceived one in character and content and therefore, it deserves to be dismissed. Accordingly, the writ petition stands dismissed.

16. However, for the utter disregard and lack of concern for the precious judicial time of the Courts, I consider it appropriate to impose costs of Rs. 10,000/- (Rupees Ten Thousand Only) on the petitioner. The Superintendent, Prohibition & Excise, Khammam District is directed to collect the costs of Rs. 10,000/- from the petitioner within thirty days from today and remit the same to the High Court Legal Services Authority.