

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)**

MONDAY, THE SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO



WRIT PETITION NO: 2607 OF 2023

Between:

Cherukuri Jaya Ramaiah, S/o.Subbaramaiah, Aged about 62 years,
Occ.Business, R/o.D.No.15-16-1031, Ramakrishna Nagar, Nellore, SPSR
Nellore District.

...Petitioner

AND

1. State of Andhra Pradesh, Revenue (Excise) Department, Secretariat, Velagapudi, Amaravathi, Guntur District. Rep. by its Principal Secretary.
2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Vijayawada, NTR District.
3. The Deputy Commissioner of Prohibition and Excise, Guntur Zone, Guntur, Guntur District.
4. The District Prohibition and Excise Officer, Nellore, SPSR Nellore District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of mandamus or any other appropriate Writ or direction declaring the proceedings of the 3rd respondent issued in Rc.No.103/2022/B1, dt.20.01.2023 as illegal, arbitrary and in violation of Principles of Natural Justice.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings pursuant to the show cause notice issued in Rc.No.103/2022/B1, dt.20.01.2023, pending disposal of WP 2607 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri O. Manohar Reddy, learned Senior Counsel appearing for M/s. OMR LAW FIRM, Advocate for the Petitioner and of GP for Prohibition Excise for Respondents, the Court made the following

ORDER:

“The petitioner was granted a Form-2B licence to run a Bar and Restaurant. The petitioner was running the said Bar and Restaurant under the name and style of M/s. Lake View Restaurant and Bar in Ramakrishna Nagar, SPSR Nellore District. This bar was inspected by the officials of the Excise Department and sample of liquor was taken for testing.

After the results of the test had come, the 3rd respondent issued a show cause notice dated 20.01.2023 stating that it has been found that the petitioner had violated the licence conditions including Rule 38 of the A.P. Excise (Lease of Right of Selling by Bar, Grant and Conditions of Licence) Rules, 2022, which stipulated that the liquor offered for sale in the premises shall not be substandard, deteriorated, supurious or adulterated.

The petitioner was required to answer the show cause notice, as to why action should not be taken against the Bar licence of the petitioner within a period of 15 days. Aggrieved by the same, the petitioner has approached this Court by way of the present writ petition.

Sri O. Manohar Reddy, learned Senior Counsel appearing for M/s. OMR Law Firm, learned counsel for the petitioner, submits that the show cause notice itself is vitiated as the authority issuing the show cause notice has already made up his mind and has placed his conclusions in writing, in the show cause notice. He would further submit that the Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited vs. Union of India and Ors.¹ had held, in Paragraph 27, that recording of such conclusions in the show cause notice, would vitiate the show cause notice itself.

In the circumstances, there is a prima facie case in favour of the petitioner.

Accordingly, the show cause notice, dated 20.01.2023, is suspended till further orders.

Learned Government Pleader for Excise to file counter in the matter.

Post on 01.03.2023."

Sd/- K. SRINIVASA RAJU
ASSISTANT REGISTRAR

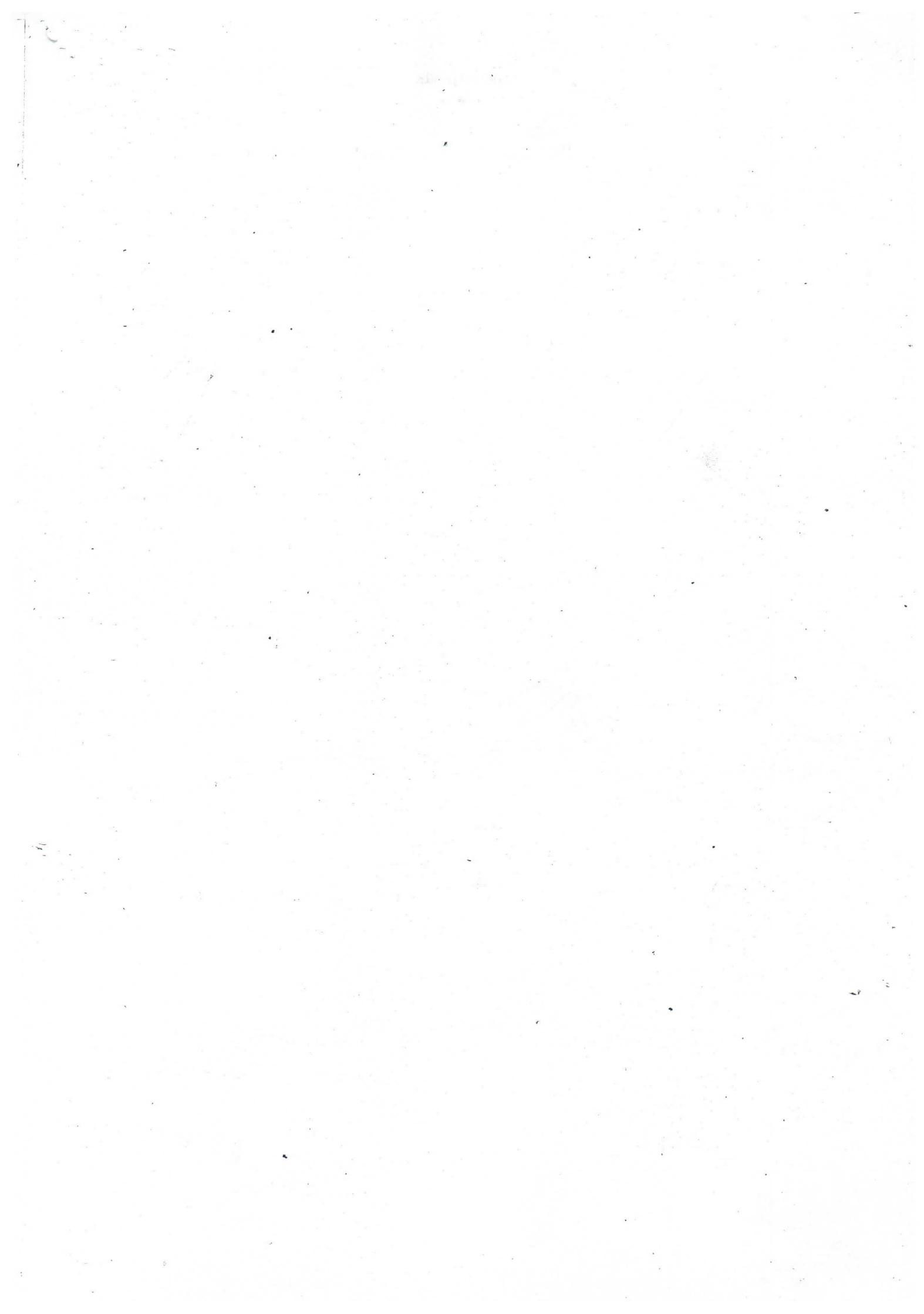
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SECTION OFFICER

To,

1. The Principal Secretary, State of Andhra Pradesh, Revenue (Excise) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Vijayawada, NTR District.
3. The Deputy Commissioner of Prohibition and Excise, Guntur Zone, Guntur, Guntur District.
4. The District Prohibition & Excise Officer, Nellore, SPSR Nellore District. (1 to 4 by RPAD)
5. One CC to M/s. O M R LAW FIRM, Advocate [OPUC]
6. Two CCs to GP for Prohibition Excise, High Court of Andhra Pradesh. [OUT]
7. One spare copy.



HIGH COURT

RRR,J

DATED:06/02/2023

ORDER

POST ON 01.03.2023

WP.No.2607 of 2023

INTERIM DIRECTION

