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APHC010106262019



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3330]

FRIDAY, THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No. 4776/2019

BETWEEN:

1.POTNURU NAGESWARA RAO, S/o. SUNDARA RAO, AGED ABOUT 54 YEARS, LICENSEE OF M/s. RAVITEJA RESTAURANT AND BAR MAIN ROAD, AMADALAVALASA, SRIKAKULAM DISTRICT, A.P.

...PETITIONER

AND

1.THE STATE OF AP, REP.BY ITS PRINCIPAL SECRETARY, REVENUE (EXCISE-II) DEPARTMENT, A.P. SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.

2.THE COMMISSIONER OF PROHIBITION AND EXCISE, VIJAYAWADA, KRISHNA DISTRICT, A.P.

3.THE DEPUTY COMMISSIONER OF PROHIBITION AND EXCISE FAC, SRIKAKULAM, SRIKAKULAM DISTRICT, A.P.

4.THE ASSISTANT COMMISSIONER OF PROHIBITION AND EXCISE, ENFORCEMENT, SRIKAKULAM, SRIKAKULAM DISTRICT, A.P.

5.THE PROHIBITION AND EXCISE SUPERINTENDENT, SRIKAKULAM, SRIKAKULAM DISTRICT, A.P.

...RESPONDENT(S):

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, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 4th respondent in seizing 215 cases of IMFL of various brands and 137 cases of Beer of various brands from the Restaurant room (licensed premises) of the petitioner on 15.03.2019 and further declare the order in Rc.No.195/2017/A2, dt.27.03.2019 issued by the 3rd respondent, whereunder, the Bar license (Form-2B) of the petitioner is suspended for (2) months pending enquiry as illegal, arbitrary, without any authority of law or jurisdiction and contrary to the provisions of A.P. Excise Act, 1968 and the Rules made thereunder and set-aside the same and consequently direct the respondents to release the seized stock to the petitioner and pass such other order or orders.

Counsel for the Petitioner:

1.V SUDHAKAR REDDY

Counsel for the Respondent(S):

1.GP FOR PROHIBITION EXCISE (AP)

The Court made the following:

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India to issue a mandamus or any direction to declare the action of the 4th respondent in seizing 215 cases of IMFL of various brands and 137 cases of Beer of various brands from the restaurant room licensed premises of the petitioner on 15.03.2019 and further to declare the order in Rc.No.195/2017/A2 dt. 27.03.2019 issued by the 3rd respondent whereunder the bar license Form-2B of the petitioner is suspended for 2 months pending enquiry as illegal, arbitrary without any authority of law or jurisdiction and contrary to the provisions of A.P. Excise Act 1968 and the Rules made thereunder and set aside the same and consequently direct the respondents to release the seized stock to the petitioner.

2. The 5th respondent-Prohibition and Excise Superintendent issued Form-2B license vide license No.01/2017-22 dated 02.07.2017 to run Bar and Restaurant for a period of five (5) years from 01.07.2017 to 30.06.2022 under the name and style of M/s. Raviteja Restaurant and Bar. A surprise check was conducted on 15.03.2019 by the 4th respondent i.e., Assistant Commissioner of Prohibition and Excise Department and found that no variation in the stock as per the stock register, however, registered a Crime No.30/2019 under Section 36(1)

(b) & C(c) of A.P. Excise Act, on the ground that the 4th respondent found the stock in the 'restaurant room' in consequence of registration has suspended the license vide proceedings Rc.No.195/2017 dated 27.03.2019 for a period of two months and issued a show cause notice to submit the explanation to the petitioner why the petitioner's license should not be suspended U/S 31 (1) (b) of A.P. Excise Act for storing the stocks in the premises of restaurant room.

3. The seizing of the stock of IML and beer bottles on the ground that the stock found in the restaurant premises and the suspension proceedings dated 27.03.2019 for two months vide proceedings Rc.No. 195/2017 dated 27.03.2019 were assailed in the present writ petition on the ground that licensed premises is located in the ground floor of the building and the entire plinth area, as shown in the plan of the Bar which was submitted at the time of obtaining the license and the stock was kept in the licensed premises and the stocks was kept is in the restaurant room due to space constraints where the bar and restaurant is being run and no rules that stipulates that there should be a stock room and there is no violation or contravention of Rule 25 of A.P. Excise (Grant of License of selling by Bar and conditions of license) Rules 2017 (for short hereafter refer as excise rules) and the impugned suspension order is passed without considering the explanation offered by the petitioner, hence prayed to set aside the impugned suspension

notice as it prima facie illegal and arbitrary and in violation of principles of natural justice.

4. On the request made by the counsel for the petitioner to pass an appropriate order for release of the stock on suitable terms, acceding the request, this Court vide order dated 09.07.2019, directed the respondents to release the stock subject to depositing 50% of the value of the seized stock subject to outcome of the order in the writ petition.

5. The 3rd respondent-Deputy Commissioner of Prohibition and Excise Department has filed the counter and it is asserted that under Rule 18 of the Excise Rules which is extracted for effective disposal of the writ petition:

Rule 18 License and plan of the licensed premises to be exhibited:-

The pro-forma license shall be exhibited in a conspicuous place in the licensed premises. The Licensee shall also exhibit the approved drawing / plan of the licensed premises for verification by the Inspecting authorities.

6. In counter, it is asserted that in the approved plan by the respondent the stockroom was clearly mentioned with the length and width of (13.40*0.80) and thus the petitioner has to lift the stock as per the capacity of the stockroom and if any necessary the petitioner should bring the same to the counter and sell it., but the licensee was not given

any authorisation to store stock in anywhere in the Bar & Restaurant, if permission to given to store in anywhere in the Bar premises there is no need to approval of Bar Blue Print including stockroom and the licensee purchased large scale of IML stock to public during the election time and in addition it is stated that the petitioner has stored spurious liquor.

7. Heard V. Sudhakar Reddy for the petitioner and learned Government Pleader for the respondents.

8. POINT FOR CONSIDERATION:

'Premises' means in general parlance precincts of the premises of the building when no part of the premises was not specified or when no specific part is excluded.

9. In the counter it was stated that there is an approved plan; as per the approved plan, the stockroom with the length and width of (13.40*0.80) was shown in bar blueprint, and thus the petitioner has to lift the stock as per the capacity of the stockroom, and if necessary, the petitioner should bring the same to the counter and sell it, but the licensee was not given any authorisation to store stock anywhere in the Bar & Restaurant. If permission was given to store anywhere in the Bar premises, there is no need to approval of Bar Blue Print, including stockroom, and the licensee purchased a large scale of IML stock for

the public during the election time, and in addition it is stated the petitioner has stored spurious liquor.

10. The writ petitioner has not filed any reply affidavit denouncing or opposing the counter affidavit filed by the respondents. In the counter it specifically stated that under rule 18 of excise rules the petitioner herein filed the blue print wherein it was clearly mentioned the stock with the length and width of (13.40*0.80) and thus the petitioner has to lift the stock as per the capacity of the stock room. It is settled principle of law when specific averments are made in the counter and the same were not controverted or denied or specifically traversed by the petitioner in reply to the counter affidavit, such non-denial amounts deemed to have been admitted by the writ petitioner.

11. It is important to note that the entire building of the Bar and Restaurant was not recognized as the licensed premises. A part of the premises was indicated in the blueprints for storage, measuring (13.40*0.80). Therefore, the petitioner is required to manage the stock according to the capacity of the stock room and is not permitted to store liquor in the restaurant. The argument made by the petitioner's counsel, stating that the term "premises" refers to the entire restaurant, is not valid. Additionally, according to rule 25 of the excise rules, the licensee is prohibited from stocking IMFL in unauthorized locations. Since the

rule does not provide a specific definition for "premises," it will be defined according to the blueprint.

12. Hence for the above reason, the writ petition stands dismissed, however the respondents are directed not to recover the balance amount beyond deposited by the writ petitioner as directed by this Court vide order dated 09.07.2019, No order as to costs.

As a sequel, interlocutory applications, if any, pending in this writ petition shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 17.04.2026

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

W.P.No. 4776 OF 2019

Date 17-04-2026

Harin