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APHC010617922025



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

[3330]

FRIDAY, THE TWELFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

**PRESENT
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO**

WRIT PETITION No.32237 of 2025

Between:

1.CHINNAMADANNA GARI VENKATASUBBAIAH, S/O. CHINNA SUBBANNA, AGED ABOUT 55 YEARS, OCC BUSINESS, LICENSEE OF LAKSHMI VENKATESWARA RESTAURANT AND BAR, R/O.6/320-1, VINAYAKA NAGAR, MYDUKUR TOWN, AND KADAPA DISTRICT.

...PETITIONER

AND

- 1.THE STATE OF ANDHRA PRADESH, REP. BY PRINCIPAL SECRETARY, PROHIBITION AND EXCISE DEPARTMENT, SECRETARIAT BUILDINGS, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.
- 2.THE DIRECTOR/COMMISSIONER, PROHIBITION AND EXCISE DEPARTMENT, MANGALAGIRI, GUNTUR DISTRICT.
- 3.THE DEPUTY COMMISSIONER, PROHIBITION AND EXCISE DEPARTMENT, KADAPA.
- 4.THE DISTRICT PROHIBITION AND EXCISE OFFICER, KADAPA.
- 5.THE MYDUKUR MINICIPALITY, REP.BY ITS COMMISSIONER, MYDUKUR, KADAPA DISTRICT.

...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 an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the

impugned order Rc.No.B2/271/2025 dated 31.10.2025 issued by the 4th respondent, fixing the Retail Excise Tax (RET) at Rs.55,00,000/- per annum by erroneously treating the population of Mydukur Municipality as above 50,000, as illegal, arbitrary, violative of Articles 14 and 19(1)(g) of the Constitution of India, passed in complete violation of the principles of natural justice, inasmuch as no explanation was sought, no personal hearing was afforded, and no reasons were recorded in the impugned order, and contrary to Rule 2(t) and Rule 18 of the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2025, and consequently set aside the same, and further direct the respondents to refix the Retail Excise Tax (RET) payable by the petitioner strictly based on the official population figure of 45,790 as per Census 2011 by classifying Mydukur Municipality in the population slab of below 50,000, and accordingly fix the license fee at Rs 35,00,000/- per annum.

Counsel for the Petitioner:

1. RAVULA NAGARJUNA

Counsel for the Respondent(S):

1. GP FOR PROHIBITION EXCISE

The Court made the following:

ORDER:

The present Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

"....to issue an appropriate Writ, Order or Direction, more particularly, one in the nature of Writ of Mandamus, declaring the impugned order Rc.No.B2/271/2025 dated 31.10.2025 issued by the 4th respondent, fixing the Retail Excise Tax (RET) at Rs.55,00,000/- per annum by erroneously treating the population of Mydukur Municipality as above 50,000, as illegal, arbitrary, violative of Articles 14 and 19(1)(g) of the Constitution of India, passed in complete violation of the principles of natural justice, inasmuch as no explanation was sought, no personal hearing was afforded, and no reasons were recorded in the impugned order, and contrary to Rule 2(t) and Rule 18 of the A.P.Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2025, and consequently, set aside the same, and further direct the respondents to refix the Retail Excise Tax (RET) payable by the petitioner strictly based on the official population figure of 45,790 as per Census 2011 by classifying Mydukur Municipality in the population slab of below 50,000, and accordingly fix the license fee at Rs 35,00,000/- per annum and pass such other orders....."

2. It is stated in the affidavit filed in support of the Writ Petition that the 1st respondent has issued a Notification dated 13.08.2025, notifying the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2025 (for brevity, hereinafter called as 'the Rules') and the petitioner was granted a Form-2B provisional license to run Restaurant and Bar and the petitioner is operating the same in the name and style of Lakshmi Venkateswara Restaurant and Bar, situated within the territorial limits of Mydukur Municipality of Kadapa District.

3. While so, the petitioner has requested to revise the Retail Excise Tax Slab from Rs.55,00,000/- to Rs.35,00,000/- on the ground that the population of Mydukur Municipality is less than 50,000 under Rule 18 of the Rules the Annual Retail Excise Tax for the Bar licence granted under open category and category of bars reserved for Geetha Kulalu shall be levied on the basis of population as detailed below:

Population Slab	Retail Excise Tax (RET) per annum in ₹ Lakhs for Open Category Bars	Retail Excise Tax (RET) per annum in ₹ Lakhs for Bars reserved for Geetha Kulalu
(1)	(2)	(3)
Up to 50,000	35	17.5
50,001 to 5,00,000	55	27.5
Above 5,00,000	75	37.5

4. As per the proceedings of the Commissioner, Mydukur Municipality, vide Roc.No.330/2023/G1, dated 25.10.2025, the population is 45,790 as per the 2011 census. The population means as per the rule 3(t). The figure of population as officially published in the latest census. As per the proceedings of the Commissioner the population is less than 50,000. Hence prayed to direct the respondents to revise the Retail Excise Tax slab from Rs.55,00,000/- to Rs.35,00,000/-.

5. The said request was rejected by the 4th respondent, the District Prohibition & Excise Officer, Kadapa, vide proceedings dated 31.10.2025, taking note that the petitioner being fully aware of the contents of the Gazette Notification and the Retail Excise Tax (RET), applicable, voluntarily submitted application. The request was not found feasible, as the fixation of RET slab at Rs.55,00,000/- per annum is in

accordance with the population of 56,310 and relied on the report of the Commissioner of Mydukur Municipality.

6. The said proceedings dated 31.10.2025 of the 4th respondent is assailed in the instant Writ Petition reiterating the same grounds that the population of the Mydukur Municipality is less than 50,000 and the population as defined under 3(t) of the rules is the figure of population as officially published in the latest census. Admittedly, no latest or fresh census had not been conducted after 2011, hence, prayed to set aside the impugned order and consequently, prayed to direct the respondents to collect Retail Excise Tax at the rate of Rs.35,000,000/- per annum.

7. Though a five-page counter-affidavit has been filed, no new facts or law have been stated, and the counter merely reiterates the content of the impugned order. In the proceedings of the 5th respondent Commissioner Mydukur Municipality it is stated as follows:

“The Government of Andhra Pradesh has decided to include the areas covered under erstwhile Mydukur, Lingaladinne, Settivaripalli and Yellampalli Gram Panchayat in Y.S.R. Kadapa District as Mydukur Municipality on 28.12.2011. After the constitution of Mydukur Municipality, the population of Municipality as per 2011 census dates is 45,790. The population growth rate of Mydukur Municipality is 1.9%. In this connection, the present projected population of Mydukur Municipality with 14,077 number of households for the year 2025 is approximately as 56,310.”

8. It is the case of the petitioner that as per 2011 Census, the total population of Mydukur Municipality is 45,790 less than 50,000 and as per rules 18 of the Excise Rules the slab to collect Retail Excise Tax is Rs. 35,000/- if the population is less than 50,000/-.

9. The expression 'population' in the Explanation to Clause (2) of Article 170 is reads thus:

[Explanation - In this clause, the expression “Population” means the population as ascertained at the last preceding census of which the relevant figures have even published.

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year [2026], be construed as reference to the [2001] census.

10. The expression 'population' in the explanation to Clause (2) of Article 170 has been explained, to mean as population as ascertained at the last preceding census of which relevant figures have been published.

11. The “population” as employed in rule 3(t) of the A.P.Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2025, (as officially published in the latest census) should be construed with the proviso to the Explanation to Clause (2) of Article 170 Constitution of India, which mandates that the population shall be taken from the figures published in the latest census. The census takes place at the completion of every decade; last census was carried out in the year 2011 and thereafter no census has been carried out.

12. According to 2011 Census, the population pegged in the Mydukur Municipality is less than 50,000. The 5th respondent Commissioner Mydukur Municipality has stated that if the increase of the population at

1.9% is applied, the population of the Municipality is more than 56,310 is without any scientific basis and the State Government has not undertaken any exercise to count the number of residents in each village, in my considered opinion, this Court cannot alter the definition of Population as defined in Rule 3(t) of the Excise rules contrary to Proviso to the Explanation to Clause (2) to Article 170 Constitution of India. In the absence of latest census, since last such process remains the same.

13. Though the Apex Court had held that there is no fundamental right in dealing with the business of liquor, in the case of *State of Andhra Pradesh v. McDowell & Co.* (1996) 3 SCC 709. Once the State Government granted the licence in favour of the citizens to carry on the business of liquor trade, the protection available under Articles 14 and 19(1)(g) would be available.

14. Hence, the impugned proceeding of the 4th respondent issued vide Roc.No.330/2023/G1, dated 25.10.2025, is unsustainable, hence, the order impugned is hereby set aside and the 4th respondent is hereby directed to reconsider the case of the petitioner in view of the observation made by this Court and it shall be considered within a period 6 weeks from the date of receipt of this order, failing which, the respondents shall collect the Retail Excise Tax (RET) at the rate of Rs.35,00,000/- per annum taking the population is less than 50,000 in Mydukur Municipality.

15. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

As a sequel thereto, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 12.12.2025

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.32237 of 2025

Date: 12.12.2025

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