

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16386/2010

(From the judgement and order dated 22/04/2010 in WA No. 380/2009
of The HIGH COURT OF A.P AT HYDERABAD)

M/S.VIJAYALAKSHMI WINES & ANR. Petitioner(s)

VERSUS

COMMISSIONER OF PROHIBITION &EX&ORS. Respondent(s)

(With prayer for interim relief and office report)

Date: 28/05/2010 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C.K. PRASAD
(VACATION BENCH)

For Petitioner(s) Mr.A.T.M.Rangaramanujam, Sr.Adv.
Mr.Gouri Karuna Das, Adv.
Mr.Shanti Kumar Jaisani, Adv.
Ms.Anu Gupta, Adv.
Ms. Rani Jethmalani,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against the judgment of the Division
Bench of Andhra Pradesh High Court which dismissed the writ appeal
preferred by the petitioners against the order of the learned
Single Judge, who declined to entertain the petitioners' prayer for
quashing the grant of bar licence to respondent No.4.

The petitioners were granted A-4 licences under the Andhra
Pradesh Excise (Lease of Right of Selling by Shop and Conditions of
Licence) Rules, 2005 (for short, 'the Shop Rules') in Venkatagiri

town and they have been selling Indian Made Foreign Liq
uor.

Respondent No.4 applied for grant of licence under the An
dhra

Pradesh Excise (Grant of License of Selling by Bar and Conditions
of Licence) Rules, 2005 (for short, 'the Bar Rules').
His

application was processed by different departments of the State

Government and finally, the licence was granted to him by

Commissioner of Prohibition and Excise, Andhra Pradesh (respondent

No.2) vide his order dated 16.2.2009 in the name and style of "M/s

Ganesh Restaurant and Bar" within the area of Venkatagiri

municipality.

The petitioners questioned the grant of licence to respondent

No.4 mainly on the ground that the restaurant established by him

was in the vicinity of the shops being operated by them in

Venkatagiri town and the objections raised by them were not

considered by respondent No.2.

The learned Single Judge noted that

licences were granted to the petitioners and respondent No.4 under

the different sets of rules, referred to an order dated 30.7.2008

passed in Writ Petition No.14561 of 2008 and rejected the

petitioners' challenge to the grant of 2-B licence to respondent

No.4 by making the following observations:

"A4 licences and 2-B licences are entirely different, and they are granted under two different Rules. The question as to whether grant of 2-B Licence for establishment of Bar and Restaurant, despite existence of three A4 licences, in Venkatagiri area, was in violation of the Rules, was considered by as learned Judge of this Court in W.P. No.14561 of 2008, and vide his judgment dated 30.7.2008, while dismissing the said writ petition, observed as follows:

While the petitioners have been granted Form A4 licenses under Shop Rules, the 4th respondent has

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been granted license under Form IIB under the Bar Rules. There is nothing either in either of the two sets of Rules which references the number of licences that may be granted under one set of Rules with the number of licenses granted under the other set of Rules. The licenses under the Bar and Shop Rules presumptively operate in different orbits. The licenses granted under the Shop Rules is to cater to customers who do not consume liquor in the licensed premises, but carry away the liquor in the permitted containers for consumption elsewhere. The customers of the Form IIB licencees however consume the liquor within the licensed premises. The rule making authority therefore presumptively did not consider it appropriate to dovetail the two sets of licenses, between the two sets of licensees. It is not within the province of this court to incorporate a regulatory mechanism in a context the appropriate authority has considered none to be warranted.

Thus from the above, it is clear that grant of A4 licences and 2-B licences are under two different Rules. The petitioners, as stated above, are A4 licences. Therefore, they as a matter of right, cannot object to the grant of 2-B licence to the 4th respondent. The petitioners accept contending that no notice whatsoever was issued to them by the 1st respondent before proposing to grant permission to the 4th respondent for establishment of Bar and Restaurant in the area in which they are doing business, have not shown any provision of law, which obligates the 1st respondent to issue notice to the petitioners before he proposes to grant permission to an individual or applicant to establish Bar and Restaurant, which permission he is empowered to grant under the Bar Rules. In the absence of any provision shown, which obligates the 1st respondent to issue notice to the petitioners, and they being rivals in the business of liquor, and the permission proposed to be granted by the 1st respondent to the 4th respondent being under the Bar Rules, the petitioners, who hold A4 licences under different set of Rules, cannot claim that they are entitled to issuance of notice, and much less contend that in the proposed grant of such permission, the principles of natural justice are violated."

The Division Bench expressed its agreement with the learned Single Judge and dismissed Writ Appeal No.380 of 2009 filed by the

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petitioners along with Writ Petition No.3670 of 2009 preferred by

M/s. Saptagiri Bar and Restaurant and M/s. Saptagiri Wines, Venkateswarapuram, Nellore.

Mr. A.T.M. Rangaramanujam, learned senior counsel appearing on behalf of the petitioners made serious efforts to convince us that the view taken by the High Court on the legality of bar licence granted to respondent No.4 is erroneous and requires consideration of this Court but we have not felt impressed.

Undisputedly, A-4 licenses were granted to the petitioners after following the procedure prescribed under the Shop Rules whereas 2-B licence was granted to respondent No.4 in accordance with the provisions contained in the Bar Rules. The scheme of the

Shop Rules envisages fixing of the number of shops by respondent No.2 which could be established in an area/locality. After such

fixation, auction notice is required to be published in terms of

Rule 5. Rules 6 to 17 lay down the qualifications/eligibility

conditions and the procedure of auction. Rule 17 makes it

obligatory for the successful auction purchaser to obtain licence

in Form A-4 after completing the required formalities and subject to rules in respect of the premises where the shop is to be located. Rule 27 lays down certain restrictions on the location of premises for operating A-4 licences.

Rule 2(b) of the Bar Rules defines the term "Bar" to mean the privilege granted under the Andhra Pradesh Excise Act, 1968 to an establishment where food is served, for sale of Indian Made Foreign Liquor and foreign liquor, in loose for consumption on the licensed

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premises. Rule 4 which provides for grant of bar licence reads as under:

"4.Licence: - A licence in Form-2B, may be granted to an establishment licensed by the local authority to serve food such as a Hotel or a Restaurant, for the sale of Indian Liquor and foreign liquor in glasses or pegs for consumption within the licensed premises but not for sale of Indian Liquor and foreign liquor for removing it out of the licensed premises. Such licence may be granted in the establishment functioning in municipalities and with a belt area of 2 kms of the periphery of such municipalities, municipal corporations and within a belt area of 5 kms of the periphery of such Municipal Corporations and in Tourism Centers (except places of religious tourism) as notified by the Department of Tourism of the State Government or Central Government.

Provided that the licence holder shall not purchase or stock Indian Liquor and Foreign Liquor in bottles of sizes less than 750 ml except beer, wine and ready to drink varieties.

Provided further that in case of Star Hotels (5 Star and above) certified by the Department of Tourism of the State Government or Central Government, the licence holder may purchase stocks of Indian Made Foreign Liquor in bottles of sizes less than 750 ml."

Rule 6 envisages the restrictions on the grant of licence in Form-2B. Rule 13 makes it mandatory for the licensee to sell the liquor only at the premises specified in the licence.

An analysis of the scheme of the two sets of rules shows that the only thing common in them is that a restriction has been imposed on the grant of licence for operating a shop or a bar within a particular distance from the educational institutions recognized by the Government, places of public worship such as temple registered with the Endowment Department, Mosques registered with Wakf Board, Churches, hospitals and highway. An additional restriction imposed on 2-B licences is that the premises must not be within 500 meters of predominantly residential area. All other

provisions of the two sets of rules for grant of A-4 and 2-B licenses are entirely different. The fundamental difference in the two sets of rules is that while A-4 licence can be granted after fixation of the number of shops and conducting auction, the bar licence can be given only to a person, who is serving food at the premises such as hotel or restaurant. Therefore, the mere fact that the 2-B licence has been granted to respondent No.4 in the same area where the shops of the petitioners are located does not entitle them to complain against the grant of licence under the Bar Rules.

In the result, the special leave petition is dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master