

# Devarapu Malyadri vs State Of Andhra Pradesh on 30 September, 2021

**Author: Battu Devanand**

**Bench: Battu Devanand**

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THE HONOURABLE SRI JUSTICE BATTU DEVANAND

WRIT PETITION No.16433 of 2021

O R D E R:

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Heard Sri O. Manohar Reddy, learned counsel for the petitioner and Sri Kiran Tirumalasetti, learned Government Pleader for Prohibition and Excise appearing for the respondents. Perused the material available on record.

2) Learned counsel for the petitioner submits that the petitioner was granted Form-B license to run a Bar in the premises bearing D.No.26-35-58, Hanuman Nagar, Nallapadu Main Road, Guntur, Guntur District. The said Bar is running in the name and style of "M/s. Neelima Restaurant and Bar". As the premises where the Bar was running is in a dilapidated condition and as the present owner of the premises was expressing his unwillingness to permit the petitioner to continue the business, the petitioner made an application to the 3rd respondent seeking shifting of the licensed premises from the present place of business premises to the premises bearing D.No.135-41 and 135-42, JKC College Road, Bapaiah Nagar, Guntur, Guntur District. The petitioner also applied for change of trade in the name and style of "Apple Restaurant and Bar" and also submitted the trade license and license issued in Form-B by the Government of Andhra Pradesh Food Safety and Standards Act.

3) Learned counsel further submits that after receipt of the application seeking shifting, a report was called for by the Deputy Commissioner (i.e.) 3rd respondent herein from the Superintendent of Prohibition and Excise, Guntur, Guntur District (i.e.) 4th respondent herein and he has submitted a report stating that there are two Restaurants and Bars and a Government retail outlet are functioning on the road from Swarnabharathi Nagar to JKC College and causing accidents due to the liquor consumers and further stated that the existence of the present Bars and Government retail outlet, people of Swarnabharathi Nagar are facing problems. The 4th respondent has submitted that the proposed premises is a commercial area and does not attract Rule 11 and one of the Bars is at a distance of 39 meters and another Bar is at a distance of 170 meters. The 4th

respondent also stated in his report that the local people are objecting. The 3rd respondent on the basis of the report of the 4th respondent submitted a report to the 2nd respondent requesting not to consider the application for shifting of the license. As there was an inordinate delay in considering the application for shifting of the licensed premises, the petitioner filed Writ Petition No.4411 of 2021 before the Court. This Court by an order, dated 02.03.2021 directed the 2nd respondent to consider the application submitted by the petitioner.

4) Learned counsel further submits that the 2nd respondent has passed the impugned order rejecting the request of the petitioner for shifting of the licensed premises. He submits that the order of the 2nd respondent in rejecting the application in shifting of the licensed premises is not legal and the same is arbitrary and contrary to the provisions of Rule 17(3) of the AP Excise (Grant of License of Selling by Bar and Conditions of Licenses) Rules, 2017.

5) Learned counsel further submits that the premises to which the shifting was sought is located in a commercial area and also satisfies conditions mentioned in Rule 11 of the Rules. The reasoning of the 2nd respondent in rejecting the application on the ground that the Law and Order problem would arise, if the shifting is allowed, is imaginary ground. Admittedly, on the road there are two retail outlets established by the Government and two Bars and Restaurants. When the same are in existence, they are not causing any Law and Order problem and as such, the reasoning of the 2nd respondent in holding that by shifting of the licensed premises of the petitioner would cause Law and Order problem is based on no material and the ground taken by the 2nd respondent to reject the application is unsustainable.

6) A counter-affidavit has been filed by the 2nd respondent.

7) Learned Government Pleader appearing for the respondents submits that it is true that the petitioner was granted 2B license on 03.11.2017 and he has applied for shifting of licensed premises. The Prohibition and Excise Inspector, APSBCL IML Depot, Nallapadu, Guntur, submitted a report stating that there are no objections from the nearer Bar licenses to establish a new Bar of the petitioner by granting shifting orders. Hence, recommended for shifting. But, the residents of Swarnabharathi Nagar has submitted representation before the Commissioner of Prohibition and Excise, A.P., Vijayawada not to grant permission to shift the Bar to the proposed premises as they are facing lot of problems due to the liquor consumers. The 2nd respondent has forwarded the representation of the residents to the 3rd respondent and directed the 4th respondent to examine the contents of the representation and submit a detailed report for taking necessary further action.

8) Learned Government Pleader would submit that the residents of Swarnabharathi Nagar also submitted representations to the local Public Representatives regarding shifting of the said Bar and Restaurant. Basing on the representations, instructions were issued to Prohibition and Excise Inspector to conduct enquiry and to submit a report. Basing on the reports, the 7th respondent vide Cr.No.5881/2019/E3, dated 23.04.2021 has rejected the proposal for shifting of the Bar premises and Rule 17(3) of the AP Excise (Grant of License of Selling by Bar and Conditions of Licenses) Rules, 2017.

9) Learned Government Pleader submits that Rule 17(3) of the AP Excise (Grant of License of Selling by Bar and Conditions of Licenses) Rules, 2017 empowers the 2nd respondent to use his discretion basing on the facts and circumstances of the case.

10) Learned Government Pleader submits that the writ petition is not maintainable against the order of the 2nd respondent rejecting the application of the petitioner for shifting of the Bar, as the petitioner has an alternative remedy of filing of a Revision Petition before the Government under Section 64 of the Act. Without availing the remedy of the Revision, the petitioner cannot file a writ petition before the Court and sought to dismiss the present writ petition.

11) Learned Government Pleader relied on a decision in Hindustan Petroleum Corporation Ltd., Secunderabad and another vs. Margadarsi Service Centre, Secunderabad 1 and Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited<sup>2</sup>.

12) This Court perused the above decisions relied by the learned Government Pleader. But, in our view, the ratio laid down in those decisions is not applicable to the facts and circumstances of the present case.

13) Having heard the submissions of the respective counsel and upon perusal of the material available on record, in the considered opinion of the Court, it is appropriate to extract Rule 17(3) of the AP Excise (Grant of License of Selling by Bar and Conditions of Licenses) Rules, 2017, for proper adjudication of the issue involved in the writ petition.

17. Sale permitted at the licensed premises only. - (1) The licensee shall sell the liquor only at the premises specified in the licence.

(2) No change or alteration of the licensed premises shall be made during the licence period without the prior approval of the Deputy Commissioner of Prohibition and Excise. (2010) 6 ALD 517 (DB) 2020 SCC OnLine SC 440 "Provided that such change or alteration may be permitted for valid reasons by the Deputy Commissioner subject to payment of an alteration fee of Rs. 1,00,000/-"

(3) No shifting of the licensed premises shall ordinarily be permitted during the licence period from one location to another. However, shifting of the licenced premises may be considered by the Commissioner of Prohibition. & Excise for valid reasons within the same Nagar Panchayat, Municipality including its 2KM belt area from the periphery or Municipal Corporation including its 5KM belt area from the periphery, as the case may be, subject to payment of 1% of the nonrefundable registration charge and license fee or Rs.25,000/-, whichever is higher, as shifting fee and on production of trade license granted by the local authority concerned.

14) On careful perusal of the Rule 17(3) of the AP Excise (Grant of License of Selling by Bar and Conditions of Licenses) Rules, 2017, no shifting of the licensed premises shall ordinarily be permitted during the license period from one location to another.

However, the Commissioner of Prohibition and Excise may be considered for shifting of the licensed premises for valid reasons within the same Nagar Panchayat, Municipality including its 2KM belt area from the periphery or Municipal Corporation including its 5KM belt area from the periphery, as the case may be. The Commissioner of Prohibition and Excise is empowered to consider the shifting of the licensed premises for valid reasons.

15) In the present case, the Commissioner of Prohibition and Excise issued proceedings in C.R.No.5881/2019/CPE/E3, dated 23.04.2021 rejecting the application submitted by the petitioner seeking for shifting of his Bar premises.

16) On careful examination of the rejection order, it is clear that basing on the report of the Deputy Commissioner of Prohibition and Excise, Guntur, in which it is stated that the Law and Order problem would arise, if the shifting is allowed and the report of the Prohibition and Excise Inspector, Guntur, in which the shifting proposal of the petitioner was not recommended due to the objections of the residents and Public Representatives. Except stating that after due enquiry and examining all the relevant reasons and recommendations of the Deputy Commissioner of Prohibition and Excise, the request of the petitioner is rejected, there are no any independent findings recorded by the 2nd respondent while rejecting the representation of the petitioner.

17) As per Rule 17(3) of the AP Excise (Grant of License of Selling by Bar and Conditions of Licenses) Rules, 2017, the 2nd respondent has to consider the application or reject the application of the petitioner for valid reasons. In our view, no valid reasons are assigned by the 2nd respondent while rejecting the request of the petitioner. For these reasons, in our view, the order, dated 23.04.2021 passed by the 2nd respondent rejecting the representation of the petitioner for shifting his Bar licensed premises is liable to be set aside.

18) Accordingly, the writ petition is disposed of with the following directions:

i) The order in C.R.No.5881/2019/CPE/E3, dated 23.04.2021 issued by the 2nd respondent is hereby set aside.

ii) The 2nd respondent is directed to reconsider the application of the petitioner for shifting of the licensed premises in accordance with law within three (3) weeks from the date of receipt of copy of this order.

19) There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this case shall stand closed.

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JUSTICE BATTU DEVANAND Date : 30.09.2021 Note:  
Issue CC by tomorrow.

B/o PGR THE HONOURABLE SRI JUSTICE BATTU DEVANAND Date : 30.09.2021 PGR