

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**FRIDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND**

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION NO: 26787 OF 2011

Between:

1. J. Koteswara Rao, S/o.Kotaiah, R/o.D.No.7-1-86 and 87 Ameerpet, Hyderabad Licensee of M/s.Ganga Wines
2. G.Ramesh Kumar, S/o. Satyanarayana, R/o.Nagarjuna Nagar Yellareddyguda Hyderabad, Licensee of M/s. Krishna Wines
3. V.Bhima Rao, S/o.Dharma Rao, R/o.Sri Krishna Nagara, Hyderabad Licensee of M/s.Uma Shankar Wines
4. L.Srinivasa Rao, S/o.Ramulu, R/o.Banjaranagar, Borabanda Hyderabad Licensee of M/s.Sri Sri Sri Chithari Wines
5. B.Rajasekhar Yadav, S/o.Sathaiah yadav Indira nagar, Jubilee Hills Hyderabad, Licensee of M/s.Jai Maha Wines
6. K.Vijaya Bhaskar, S/o.Pedda Ramanaiah, Ameerpet, Hyderabad Licensee of M/s. Balaji Wines
7. K.Ayyamma Chowdri, S/o.Sarathbabu, R/o.Balkampet, Hyderabad Licensee of M/s. Durga Wines
8. N.Madan Mohan Malavya, S/o.Amaiah, Road No.2, Banjara Hills Hyderabad Licensee of M/s. Sri Lakshmi Narasimha Wines
9. Chaprala Narasimha Rao, S/o.Surya Prakash Rao, R/o.Road No.41, Jubilee Hills Hyderabad Licensee of M/s. Jubilee Wine Spot
10. S.Saiaiah, S/o. Narasimha Rao Sanjeeva Reddy nagar, Hyderabad Licensee of M/s. Sri Padmavathi Wines
11. P.Someswara Rao, S/o.Ramakrishna, R/o.45/3RT, S.R.Nagar Hyderabad Licensee of M/s. Shiva Sagar Wines
12. G.Ramaiah, S/o.Kotaiah Film Nagar, Jubilee Hills Hyderabad, Licensee of M/s. Vijaya Durga Wines
13. Y.Rama Rao, S/o.Y.Subba Rao, Punjagutta Main Road, Hyderabad Licensee of M/s. Shiva Nag Wines

14.A.N.V.Surya Prakas, S/o.Ram Prasad Rajnagar, Borabanda Hyderabad,
Licensee of M/s. No.1 Wines

.....PETITIONERS

AND

1. Government of Andhra Pradesh, rep. by its Secretary, Revenue (Excise) Department, Secretariat, Hyderabad.
2. The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Nampally, Hyderabad.
3. The Prohibition & Excise Superintendent, Hyderabad, Government of Andhra Pradesh, Nampally, Hyderabad.
4. The Commissioner of Police, Hyderabad City, Hyderabad.

.....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, one in the nature of a Writ of Mandamus or any other appropriate writ, direction or order declaring the amendment to sub-section (3) of Section 20 of the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968) vide Amendment Act 1 of 2010, which was published in Andhra Pradesh Gazette on 31st March, 2010 in so far as making it applicable retrospectively i.e. from 24.05.2005, vide section (2) of Amended Act 1 of 2010 of the Act 17 of 1968 as illegal, arbitrary, contrary to law, without jurisdiction, ultra vires and consequently strike down the same by declaring that the said amendment does not apply to the licenses / leases granted for the excise year 2008-2009 and also declaring the order Cr.No.B1/115/2009, dated 20.08.2009 passed by the third respondent as illegal and consequently direct the respondents to refund the proportionate license fee to the petitioners for closure of their respective shops in view of the Bonalu Festival, Ganesh Festival and M.L.C. Elections, on 27.07.2008 and 28.07.2008 13.09.2008 and 14.09.2008 and 05.02.2009 to 06.02.2009 respectively, vide orders of the third respondent in Cr.No.B1/698/2008/ESH, dated 25.07.2008 Cr.No.B1/811/2008/ESH, dated 11.09.2008 and Cr.NO.B1/97/2009/ESH, dated 04.02.2009 respectively.

I.A.NO:1 OF 2011 (WPMP.NO:33070 OF 2011)

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 direct the respondents to refund the proportionate license fee to the petitioners for closure of their respective shops in view of the Bonalu Festival, Ganesh Festival and M.L.C. Elections, on 27.07.2008 and 28.07.2008; 13.09.2008 & 14.09.2008; and 05.02.2009 to 06.02.2009 respectively, vide orders of the third respondent in Cr.No.B1/698/2008/ESH, dated 25.07.2008; Cr.No.B1/811/2008/ESH, dated 11.09.2008; and Cr.NO.B1/97/2009/ESH, dated 04.02.2009 respectively.

**Counsel for the Petitioners : SRI K.RAMA KRISHNA, ADVOCATE FOR
SRI E.MADAN MOHAN RAO**

**Counsel for the Respondents : SRI MOHAMMED IMRAN KHAN, ADDITIONAL
ADVOCATE GENERAL**

The Court made the following ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE —

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO —

Writ Petition No.26787 of 2011 ✓

ORDER: (Per the Hon'ble the Chief Justice Alok Aradhe)

Mr. K.Rama Krishna, learned counsel represents
Mr. E.Madan Mohan Rao, learned Senior Counsel for the
petitioners.

Mr. Mohammed Imran Khan, learned Additional
Advocate General for the State of Telangana appears for
the respondents.

2. In this writ petition, the petitioners have assailed the
validity of Section 20(3) of the Telangana Excise Act, 1968
as amended by the Amendment Act No.1 of 2010 dated
31.10.2010 (for short 'the Act'), insofar as it makes the
amended provision applicable with retrospective effect *i.e.*,
with effect from 24.05.2005.

3. Facts giving rise to filing of the writ petition briefly stated are that the petitioners are excise contractors and were granted the licences/leases to run the liquor shops during the excise year 2008-2009. During the excise year 2008-2009, in view of Bonalu festival, Ganesh festival and elections to the Member of Legislative Council (MLC), shops of the petitioners were closed for a period of six days *i.e.*, on 27.07.2008, 28.07.2008, 13.09.2008, 14.09.2008, 05.02.2009 and 06.02.2009.

4. The petitioners thereupon submitted an application seeking refund of licence fee for the period of six days as per the existing legal provisions of the Andhra Pradesh Excise Act, 1968. However, the representation submitted by the petitioners was not decided. Thereupon, the petitioners filed W.P.No.7246 of 2009, which was disposed of by a Bench of this Court, *vide* order dated 07.04.2009 with a direction to respondents No.2 and 3 to

consider and decide the representation submitted by the petitioners. However, the representation submitted by the petitioners was rejected by an order dated 20.08.2009. The provision of Section 20(3) of the Act has been amended by Amendment Act No.1 of 2010. The aforesaid amendment, which disentitles the petitioners to seek any compensation or refund of licence fee for the period of closure of shops, has been brought into force with effect from 24.05.2005. In the aforesaid factual background, the petitioners have assailed the validity of Section 20(3) of the Act.

5. Learned counsel for the petitioners submits that when the licences/leases were granted to the petitioners, the petitioners were entitled to refund of the licence fee for the period of closure of the shops. Therefore, a right had accrued/vested in the petitioners to seek refund of the licence fee for the period of closure of shops. The

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aforesaid vested right could not have been taken away by enacting the law with retrospective effect. Therefore, it is submitted that the petitioners are entitled to refund of the licence fee for the period of closure of shops.

6. On the other hand, learned Additional Advocate General has invited the attention of this Court to the agreements of lease executed by the petitioners and submitted that the petitioners had agreed to be bound by the Andhra Pradesh Excise (Lease of Right by shop and conditions of licence) Rules, 2005, and other conditions relating to sale of Indian Liquor and Foreign Liquor by shops which were existing and which may be amended from time to time. It is further submitted that it is permissible for a party to contract out of the statutory provision and therefore, the petitioners cannot challenge the validity of the amended provisions of the Act.

7. We have considered the rival submissions made on both sides and have perused the record.

8. Admittedly, the petitioners were granted the licences for the period from 01.07.2008 to 30.06.2009. The relevant provision of Section 20(3) of the Act at the relevant time reads as under:

“The licensee shall not, on account of the closure of the shop under this section, be entitled to any compensation except to the refund of such licence fee paid by him in respect of the shop as is proportionate to the period during which the shop is required to be kept closed under this Section.”

9. Thus, Section 20(3) of the Act, which existed during the period for which the petitioners were granted licences/leases, entitled the petitioners to seek refund of the licence fee during the period of closure of the shops. Thus, the petitioners had an accrued/vested right to seek

refund of licence fee during the period of closure of the shops.

10. However, the aforesaid accrued/vested right of the petitioners was taken away by the State Legislature by amending Section 20(3) of the Act by Amendment Act No.1 of 2010. The aforesaid amendment was incorporated in the Act with retrospective effect *i.e.*, from 24.05.2005.

11. Amended Section 20(3) of the Act reads as under:

“The licensee/lease holder shall not, on account of closure of the shop/bar under this section, be entitled to any compensation or refund of licence fee or lease amount.”

12. Thus, by retrospective amendment of the Act, the right which had vested in the petitioners was sought to be taken away. It is a well settled legal proposition that the Legislature has the power to enact the law with retrospective effect. However, it is equally well settled legal

proposition that rights and benefits which have already earned or acquired under the existing rules cannot be taken away by amending the rules with retrospective effect (see **Union of India v. Tushar Ranjan Mohanty**¹ and **State of Madhya Pradesh v. Yogendra Shrivastava**²).

13. The contention that in view of the stipulation contained in the agreements that the petitioners shall abide by the Rules, which may be amended from time to time, cannot be said to be binding on the petitioners as the law has been enacted after expiry of the lease/licence period of the petitioners with retrospective effect.

14. The legal principle that it is open for the parties to contract out of a statutory provision does not aid in the fact situation of the present case.

¹ (1994) 5 SCC 450

² (2010) 12 SCC 538

15. For the aforementioned reasons, the petitioners are held entitled to refund of licence fee for the period of closure of their shops during the excise year 2008-2009. The respondents are directed to refund the aforesaid amount within a period of two months from today failing which, the same shall carry interest @ 6% per annum from the date of this order till the date of payment.

16. Accordingly, the Writ Petition is disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

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SD/- L. LAKSHMI BABU
ASSISTANT REGISTRAR

SECTION OFFICER

- To
1. The Secretary, Government of Andhra Pradesh, Revenue (Excise) Department, Secretariat, Hyderabad.
 2. The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Nampally, Hyderabad.
 3. The Prohibition & Excise Superintendent, Hyderabad, Government of Andhra Pradesh, Nampally, Hyderabad.
 4. The Commissioner of Police, Hyderabad City, Hyderabad.
 5. Two CCs to ADVOCATE GENERAL, High Court for the State of Telangana.
 6. One CC to SRI MOHAMMED IMRAN KHAN, Advocate (OPUC) [OUT]
 7. One CC to SRI E.MADAN MOHAN RAO, Advocate [OPUC]
 8. Two CD Copies

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GJP

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HIGH COURT

DATED:04/10/2024

ORDER

WP.No.26787 of 2011



**DISPOSING OF THE W.P
WITHOUT COSTS.**

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