

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.8246 OF 2015

BETWEEN

Yadaiah Goud and another

... PETITIONERS

AND

The State of Telangana, Rep. by its Principal Secretary (Department of Excise), A.P.
Secretariat Building, Hyderabad and others.

...RESPONDENTS

The Court made the following:

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ORDER:

Heard.

2. Petitioners, who hold TFT licences upto 30.09.2017, had earlier approached this Court against an order of suspension of licence passed by the Prohibition and Excise Superintendent, Mahabubnagar-respondent No.2, dated 16.01.2015 by filing WP.No.3925 of 2014.

The order of suspension was passed on the ground that the shops were inspected by the Station House Officer, Prohibition and Excise, Mahabubnagar-respondent No.3 on 29.09.2014 and on conducting the spot test, he has found the toddy to be adulterated with Diazepam and thereby, petitioners have violated the conditions of licence.

It was the contention of the petitioners in the said writ petition that no inspection was carried out on 29.09.2014 and further contended that respondent No.3 has submitted the report to respondent No.2 on 07.01.2015 i.e. after lapse of more than 100 days of the alleged inspection. The said writ petition was disposed of on 23.02.2015 granting liberty to the petitioners to make a detailed representation before the Prohibition and Excise Superintendent enabling him to examine whether the suspension was warranted or not. Thereafter, petitioners had filed a detailed representation, on 03.03.2015. However, the Prohibition and Excise Superintendent passed the orders of cancellation of licence under impugned order dated 07.03.2015. Aggrieved thereby, the present writ petition is filed.

3. It is also seen that after passing the order of cancellation, the Prohibition and Excise Superintendent passed a further order, dated 12.03.2015 rejecting the representation of the petitioners to show compliance of the order of this Court in the writ petition, referred to above.

4. Learned counsel for the petitioners states that though the order of cancellation is appealable, it is questioned specifically on the ground that it violates the Andhra Pradesh Excise (Grant of licence selling of toddy, conditions of licence and tapping of Excise Trees) Act and the Rules made thereunder, and disputes the very inspection alleged to have been carried out on 29.09.2014 and submits that on a non-existent and stale ground, the orders of suspension and thereafter cancellation, were passed without taking into consideration the representation of the petitioners as directed by this Court.

5. During the hearing of the writ petition, learned counsel has produced a copy of the list of seized property and the Laboratory analysis report. The list of seized property i.e., three sample bottles placed by the Prohibition and Excise Superintendent before the learned Special Judicial Magistrate of First Class, Prohibition and Excise, Mahabubnagar shows that the Prohibition and Excise Inspector deposited three sample bottles taken from petitioners' premises allegedly on 29.09.2014 only on 09.01.2015 and on the same day, learned Magistrate forwarded it to the Government Chemical Examination Lab. The copy of the lab report, which was given on 13.01.2015, also shows that sample was received in the court on 09.01.2015 and report that it was fermented toddy adulterated with Diazepam.

6. Learned counsel for the petitioner points out that the very deposit of sample and sending it to the lab after long length of time is in violation of Rule 27(3) of the Rules, referred to above, which requires that the sample shall be forwarded to the Court not later than the succeeding day. Based on the gross delay, learned counsel seeks to justify the invocation of jurisdiction of this Court under Article 226 of the Constitution of India rather than availing appellate remedy.

7. *Prima facie*, it appears that the said Rule is violated and the analysis report of the samples collected is bound to differ on account of the gross delay. However, the appellate authority, being a superior authority, is expected to re-examine the matter in terms of the Rules and satisfy itself as to whether the orders of suspension and cancellation are passed in accordance with the Rules. Since the effective alternative remedy is available to the petitioners and since the appellate authority can as well go into the contentions of the petitioners, both on facts as well as on law, I deem it appropriate to relegate the petitioners to the said appellate remedy. It is stated that an appeal lies under Section 63 to the Deputy Commissioner of Prohibition and Excise. Petitioners are, therefore, at liberty to file an appeal by raising all available grounds and the Deputy Commissioner is expected to examine the matter carefully and expeditiously and pass appropriate orders thereon as the petitioners' licence remained under suspension from 16.01.2015 in accordance with law. .

Writ petition is, accordingly, disposed of. As a sequel,
the miscellaneous applications, if any, shall stand closed. There shall be no order as to

costs.

VILAS V. AFZULPURKAR, J

April 1, 2015

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