

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.6302 of 2015

-

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“To issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 2nd respondent passed in Cr.No.7590/2014/CPE/E2, dt.27.2.2015, in confirming the order of the 3rd and 4th respondent passed in proceedings Rc.No.190/2014/A2, dt.29.11.2014 and Proceedings in RC.No.219/2014/A2, dt.21.11.2014 as illegal and arbitrary.”

2. Heard Sri O.Manohar Reddy, learned counsel for the petitioner and the learned Government Pleader for Prohibition for the respondents apart from perusing the material available on record.

3. According to the petitioner pursuant to a notification issued by the Prohibition and Excise Superintendent, inviting bids for grant of lease for sale of Indian and Foreign Liquor by shop, the petitioner herein participated in the bid in respect of the shop notified at General Serial No.128/2014-15 at Medaramitla village, Korisapadu Mandal, Prakasham District and the petitioner herein emerged as the successful bidder and license was granted in his favour for running the shop. On 31.10.2014, the fourth respondent herein issued a show-cause notice, calling upon the petitioner herein to show-cause as to why the license should not be cancelled. In response to the said show-cause notice, petitioner herein submitted his explanation on 05.11.2014. The fourth respondent herein vide Proceedings Rc.No.219/2014/A2 dated 21.11.2014, cancelled the license of the petitioner herein under the powers conferred under Section 31 of the A.P. Excise Act, 1968.

4. Assailing the orders passed by the fourth respondent herein, the petitioner herein preferred a statutory appeal before the Deputy Commissioner of Prohibition and Excise, Ongole, Prakasham District/the third respondent herein and the third respondent vide proceedings Rc.No.190/2014/A2 dated 29.11.2014 rejected the said appeal filed by the petitioner herein. As against the said orders, petitioner herein filed further appeal before the Commissioner of Prohibition and Excise,

Andhra Pradesh, Hyderabad/second respondent herein. The second respondent by virtue of order in Cr.No.7590/2014/CPE/E2 dated 27.02.2015 rejected the said appeal filed by the petitioner herein.

5. Calling in question the validity and the legal sustainability of the said orders passed by the respondents 2 to 4 herein, the present writ petition came to be filed before this Court under Article 226 of the Constitution of India.

6. It is contended by the learned counsel for the petitioner that the order of cancellation passed by the fourth respondent herein as confirmed by the respondents 2 and 3 is highly illegal, arbitrary and unreasonable and in violation of the principles of natural justice. It is further submitted by the learned counsel that the impugned orders are opposed to the very spirit and object of the provisions of the Andhra Pradesh Excise Act, 1968. It is further submitted by the learned counsel that without supplying the copy of the report of the Assistant Prohibition & Excise Superintendent, the fourth respondent herein has passed the impugned order of cancellation and the same is a patent violation of the principles of natural justice.

7. On the contrary, it is vehemently contended by the learned Government Pleader that the orders passed by the respondent authorities are in accordance with the provisions of the A.P. Excise Act, 1968 and there is no illegality nor any procedural infirmity in the questioned orders, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is also the submission of the learned Government Pleader that as against the orders passed by the Commissioner of Prohibition and Excise/second respondent herein, revision lies to the State Government under Section 64 of the Excise Act, 1968. It is also the submission of the learned Government Pleader that only after complying with the mandatory requirements of the statute and only after giving show-cause notice and after affording the reasonable opportunity of hearing to the petitioner, the respondent authorities passed the impugned orders, as such, the orders impugned are not amenable for judicial review of this Court under Article 226 of the Constitution of India.

8. In the affidavit filed in support of the writ petition at paragraph 8 it is categorically and specifically pleaded that after submission of explanation by the petitioner, the fourth respondent called for a report from the Assistant Prohibition & Excise

Superintendent and basing on the said report the fourth respondent passed the impugned order and it is also pleaded that no copy of the said report was furnished to the petitioner. While answering the averments of paragraph 8 of the writ affidavit, it is stated by the fourth respondent in the counter affidavit at paragraph 12 that basing on the *prima facie* evidence the fourth respondent suspended A-4 License of the petitioner and served a show-cause notice on the petitioner, asking to show-cause as to why the license granted should not be cancelled. It is further stated that the licensing authority/the fourth respondent ordered enquiry and as per the enquiry report the licensing authority cancelled A-4 license. It is also stated that in the said process the fourth respondent followed all the legal formalities.

9. The counter affidavit filed by the fourth respondent herein is absolutely silent with regard to failure to furnish the report submitted by the Assistant Prohibition and Excise Superintendent to the petitioner herein. The said statement made by the petitioner herein is not disputed by the respondents herein.

11. A perusal of the impugned order dated 21.11.2014 passed by the fourth respondent herein discloses that after receipt of the explanation in response to the show-cause notice, the fourth respondent instructed the Assistant Prohibition and Excise Superintendent to submit a detailed enquiry report on the explanation submitted by the licensee/petitioner herein. The said impugned order passed by the fourth respondent on 21.11.2014 further discloses that the fourth respondent herein relied upon the said report and arrived at the conclusion and eventually cancelled the license granted in favour of the petitioner herein.

12. It is a settled and well established proposition of law that the authorities, while resorting to penal action, are required to adhere to the doctrine of *audi alteram partem*. In the instant case, there is absolutely no plausible explanation as to why the report on which the fourth respondent herein arrived at the conclusion for canceling the license was not served on the petitioner herein. Since the said requirement of adherence to the principles of natural justice is given a go-by by the respondent authorities, this Court is inclined to set aside the impugned orders passed by the fourth respondent as confirmed by the respondents 2 and 3.

13. For the aforesaid reasons, the writ petition is allowed, setting aside the orders in Proceedings Rc.No.219/2014/A2 dated 21.11.2014 of the fourth respondent as confirmed by the second and the third respondents in Cr.No.7590/2014/CPE/E2

dated 27.2.2015 and in Rc.No.190/2014/A2 dated 29.11.2014. However, it is open for the respondent authorities to take action in accordance with law, after giving notice and opportunity of being heard to the petitioner herein and by taking into consideration the observations made *supra*. It is also made clear that if any such action is proposed to be taken, the respondents herein shall serve a copy of the report of the Assistant Prohibition and Excise Superintendent and afford opportunity to the petitioner herein to submit explanation for the same.

As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No costs.

A.V.SESHA SAI, J

Date:15.06.2015

grk

-

-

grk

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.6302 of 2015

Date : 15.06.2015

-

-

Between:

Annem Venkata Rami Reddy S/o Subba Reddy,
Aged about 35 years, Occ: Business,
Licensee of M/s. Gayatri Wines, Medaramitla Village,
Korisapadu Mandal, Prakasham District.

... Petitioner

and

State of Andhra Pradesh,
Excise Department, Secretariat, Hyderabad
Represented by its Secretary and three others.

... Respondents

-

-

-

-

-

-

-

-

-

-

-