

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.31790 of 2015

ORDER:

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

“to issue writ of Mandamus to declare the Proceedings No.B4/268/2015 dated 15-09-2015 issued by the 21.14 respondent canceling the licences of Toddy Tappers Cooperative Society, Bellampally consisting of Toddy Depot bearing No.B6/68/2012 and its constituent Toddy Shops Nos.1 to 5 and 7 to 11 bearing Licence Nos. B6/58/2012 to B6/62/2012 and B6/64/2012 to B6/68/2012 dated 18-12-2012 respectively issued in favour of the petitioner Society in the name of Sri K.Nara Goud son of Anka Goud, President of TCS, Bellampalli with immediate effect invoking the powers conferred on him under the provisions of Section 31(1)(b) of the A.P. Excise Act, 1968 without considering the explanation dated 7-8-2015 submitted by the petitioner society in response to the Show cause notice issued by the 2nd Respondent vide Proc. No. B4/268/2015 dated 27-7-2015 and without causing an enquiry, without affording an opportunity to the petitioner society to prove its bonafides by leading evidence and without verifying the fact whether the Respondent and the raid party members have followed the procedure as contemplated under Rule 27 of Andhra Pradesh Excise (Grant of Licence to Sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules, 2007 or not as illegal, arbitrary and contrary to the well settled principles of law laid down while deciding the cases arising under the provisions of the A.P. Excise Act 1968 and set aside the same.”

Heard Sri V. Ravi Kiran Rao, learned counsel for the petitioner and learned Government Pleader for Excise for respondents, apart from perusing the material available before this Court.

The Prohibition and Excise Superintendent, Mancherla, Adilabad District – 2nd respondent herein pressed into service the provisions of A.P. Excise Act, 1968 (for short, ‘the Act’) and by virtue of an order in Proc.No.B4/268/2015, dated 06-06-2015 suspended the licence of the petitioner bearing No.B6/68/2012, dated 18-12-2012 in respect of shop No.11 of Bellampally in exercise of the powers conferred under Section 31 (1)(b) of the Act, pending enquiry.

Subsequently, the 2nd respondent herein issued a show cause notice vide

Proc.No.B4/268/2015, dated 27-07-2015, calling upon the petitioner herein to show cause as to why the licence of the toddy shop No.11, TCS group Bellampally bearing licence No.B6/68/2012, dated 18-12-2012 should not be cancelled for alleged commission of offence of adulteration of toddy with Chloral Hydrate under the provisions of Section 31 (1)(b) of the Act and also the toddy Depot, Bellampally licence bearing No.B6/6/2012, dated 18-12-2012 issued to pool toddy of all shops at one place and distribute it to constituent shop Nos.1 to 5 and 7 to 11 under the provisions of Section 31 (2) of the Act. In response to the said show cause notice, dated 27-07-2015 the petitioner herein submitted an explanation, dated 03-08-2015 to the respondents, denying the allegations made in the said show cause notice.

The 2nd respondent – Prohibition and Excise Superintendent, by virtue of an order vide Proc.No.B4/268/2015, dated 15-09-2015 cancelled the licences of TCS Bellampally consisting Toddy Depot bearing No.B6/68/2012, dated 18-12-2012 and its constituent Toddy shop Nos.1 to 5 and 7 to 11, bearing licence Nos.B6/58/2012 to B6/62/2012 and B6/64/2012 to B6/68/2012, dated 18-12-2012.

Calling in question the validity and legal sustainability of the said order of cancellation of licences passed by the 2nd respondent herein the present writ petition has been filed.

It is contended by the learned counsel for the petitioner herein that the order of cancellation issued by the 2nd respondent – Prohibition and Excise Superintendent is highly illegal, arbitrary, unreasonable and is violative of Articles 14 and 19 (1)(g) of the Constitution of India and the principles of natural justice. It is the further submission of learned counsel for the petitioner herein that the 2nd respondent herein did not assign any valid reasons in the impugned order of cancellation and failed to consider the contents of the explanation offered by the petitioner herein. It is further submitted by the learned counsel for the petitioner that the said action on the part of the 2nd respondent herein

cannot stand for judicial scrutiny. It is also submitted that the impugned action is contrary to the provisions of Section 31 of the Act and it is also submitted by the learned counsel that no samples were drawn from the Toddy Depot and other constituent shops except shop No.11.

On the contrary, it is vehemently contended by the learned Government Pleader for Excise that there is no illegality nor any procedural infirmity in the impugned action, 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 further submitted by the learned Government Pleader that the present writ petition filed under Article 226 of the Constitution of India is not maintainable in view of alternative remedy of appeal available to the petitioner herein under Section 63 of the Act.

The material available on record manifestly discloses that by virtue of an order, dated 06-06-2015 the Prohibition and Excise Superintendent – 2nd respondent herein suspended the licence in respect of shop No.11 of TCS group Bellampally and subsequently a show cause notice was issued by the 2nd respondent on 27-07-2015, calling upon the petitioner herein to show cause as to why the licences should not be cancelled and responding to the same the petitioner herein submitted an elaborate explanation, denying the allegations made in the show cause notice issued by the 2nd respondent.

A perusal of the impugned order of cancellation, dated 15-09-2015 vividly discloses that except indicating the explanation offered by the petitioner herein as reference No.5, the 2nd respondent herein did not refer to any of the contents of the said explanation offered by the petitioner herein. Having called for explanation and having received the same, in the considered opinion of this Court, there is absolutely no justification on the part of the 2nd respondent herein in failing to consider the contents of the said explanation. This action in the definite opinion of this Court cannot stand for the twin tests of reasonableness and rationality. There is absolutely no dispute with regard to the fact that the samples were drawn from the toddy shop No.11 by the 3rd

respondent.

In the considered opinion of this Court this action of non-consideration of the explanation offered by the petitioner herein undoubtedly tantamount to violation of principles of natural justice. At the same time, this Court cannot lose sight of the fact that as against the impugned order there is a statutory remedy available to the petitioner under

Section 63 of the Act. Therefore, in the facts and circumstances of the case, this Court deems it appropriate to relegate the petitioner herein to the alternative remedy by making some interim arrangement in the matter.

For the aforesaid reasons, the writ petition is disposed of, keeping it open for the petitioner herein to avail the alternative remedy of appeal under Section 63 of the Act as against the impugned order, dated 15-09-2015 passed by the 2nd respondent within the statutory period. If any such appeal is filed within the said statutory period the same be considered and appropriate orders be passed, in accordance with law, after giving notice and opportunity of being heard to the petitioner herein. It is also open for the petitioner herein to file a stay application before the concerned. Till any appropriate orders are passed on the stay application the impugned order, dated 15-09-2015 passed by the 2nd respondent shall remain suspended to the extent of shop Nos.1 to 5 and 7 to 10 (except shop No.11).

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. There shall be no order as to costs.

A.V. SESA SAI, J

September 30, 2015

Note: Furnish C.C. in

three (3) days. B/o.Pn

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