

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

WRIT PETITION No.23285 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 action of the 4th respondent in issuing the proceedings in Rc.No.B1/402/ 2015, dated 21-07-2015 by rejecting the proposal of G.SI.No.18/2015-17 and deciding not to grant regular A4 shop in D.No.7-8-5, Velamurivari Street, Ramaraopeta, Kakinada and confirming the same by 3rd respondent in proceedings Rc.No.B1/875/2015, dated 24-07-2015 as illegal, deliberate, intentional, motivated, arbitrary, unconstitutional, ulterior, without application of mind, against the principles of natural justice and against Rule 25 of A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 and consequently direct the respondent authorities to grant permission to the petitioner in pursuance of the provisional licence No.18/2015-17, dated 08-07-2015 to run A4 shop in D.No.7-8-5, Velamurivari Street, Ramaraopeta, Kakinada.”

Heard Sri K.B. Ramanna Dora, learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise, apart from perusing the material available before this Court.

The Prohibition and Excise Superintendent, Kakinada – 4th respondent herein granted provisional licence in favour of the petitioner herein vide license No.18/2015-17, dated 08-07-2015 in respect of the privilege of sale of Indian made foreign liquor and foreign liquor by shop at Kakinada.

Subsequently, the Prohibition and Excise Superintendent,

Kakinada – 4th respondent herein, by virtue of proceedings in Rc.No.B1/402/2015, dated 21-07-2015, refused to accord license in favour of the petitioner herein taking into consideration certain objections raised by the residents.

Aggrieved by the said order passed by the 4th respondent, the petitioner herein filed appeal before the Deputy Commissioner of Prohibition and Excise, Kakinada – 3rd respondent herein. The 3rd respondent herein by way of an order vide proceedings Rc.No.B1/875/2015, dated 24-07-2015 dismissed the appeal filed by the petitioner thereby confirming the orders of the 4th respondent, dated 21-07-2015.

When the matter is taken up today, a preliminary objection with regard to maintainability of the writ petition is taken by the learned Government Pleader, contending that in view of the availability of alternative remedy of appeal to the Commissioner of Prohibition and Excise under the provisions of Section 63 of the A.P. Excise Act, 1968, the present writ petition is not maintainable.

Section 63 of the A.P. Excise Act, 1968 reads as under:

“63. Appeals: (1) Any person aggrieved by an order by any officer, other than the Commissioner or Collector, under this Act, may, within forty five days from the date of communication of such order, appeal to the Deputy Commissioner. (2) Any person aggrieved by an order passed by the Deputy Commissioner or Collector under this Act, may within sixty days from the date of communication of such order, appeal to the Commissioner.”

It is evident from the above provision of law that any person aggrieved by an order passed by the Deputy Commissioner of

Prohibition and Excise is entitled to file a statutory appeal before the Commissioner of Prohibition and Excise. In view of the availability of the said effective alternative remedy of appeal under Section 63 of A.P. Excise Act, 1968 this Court is not inclined to entertain the present writ petition. Since this Court is not inclined to entertain the present writ petition this Court does not enter into the other merits and demerits of the matter. However, it is open for the petitioner herein to avail alternative remedy of appeal before the Commissioner of Prohibition and Excise – 2nd respondent herein.

For the aforesaid reasons, the writ petition is disposed of, permitting the petitioner herein to file statutory appeal under the provisions of Section 63 of the A.P. Excise Act, 1968 before the Commissioner of Prohibition and Excise – 2nd respondent herein against the orders passed by the 3rd respondent vide proceedings Rc.No.B1/875/2015, dated 24-07-2015 and the orders of the 4th respondent herein within statutory period. If any such appeal is filed, the same shall be considered, in accordance with law, and appropriate orders be passed after giving notice and opportunity of bearing heard the petitioner herein within a period of one months from the date of filing of the said appeal, in accordance with law. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SETHA SAI, J

July 28, 2015

Note: Furnish C.C. in

two (2) days. B/o.Pn

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