

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

**WRIT PETITION Nos.6776, 6784, 6788, 6812,
6847, 9215, 9127 and 11788 of 2015**

COMMON ORDER:

In this batch of writ petitions, there are two sets of writ petitions (i) concerning the compounding of offences under Section 47 of the Andhra Pradesh Excise Act, 1968 (hereinafter called 'the Act') and (ii) writ petitions pertaining to cancellation of licenses.

2. In W.P.Nos.6776, 6784, 6788 and 6812 of 2015, the non-consideration of the petitioners' representations dated 04.03.2015 by the Commissioner of Prohibition and Excise/second respondent herein, submitted under Section 47 of the Act is under challenge.

3. In W.P.No.6847 of 2015, the order of refusal dated 04.03.2015 passed by the Commissioner of Prohibition and Excise/second respondent herein, refusing to compound the offences under Sections 34 (a) and 36 (1) (b) and (c) of the Act, is under challenge.

4. In W.P.Nos.9127, 9215 and 11788 of 2015, the orders passed by the Superintendent of Prohibition and Excise, Nalgonda District, Nalgonda dated 02.03.2015 canceling the licenses of the petitioners herein as confirmed by the Deputy Commissioner of Prohibition and Excise/the third respondent herein vide orders dated 18.03.2015 and further confirmed by the Commissioner of Prohibition and Excise vide Orders dated 27.03.2015 are under challenge

5. Since the factual situation and the questions of law are common in these writ petitions, these writ petitions are being disposed of by this common order.

6. The respondent authorities granted wine shop licenses in favour of the petitioners herein under the Provisions of the Act.

7. In W.P.No.6847/2015, the petitioner (M/s.Bhavani Wines) by way

of a representation dated 12.02.2015 sought compounding of Cr.No.463/2014-2015 dated 23.01.2015, on the file of Inspector of Prohibition and Excise, S.H.O, Alair Circle, Nalgonda District, under Section 47 of the Act. Pursuant to an inspection made by the Assistant Commissioner (AC) Enforcement, Nalgonda Town, the Station House Officer, Alair registered Cr.No.463/2014-15, dated 23.01.2015, for the alleged offences under Sections 36 1 (b) and (c) of the Act and Rules 34, 41 of the Andhra Pradesh (Grant of License of Selling by Shop and Conditions of Licenses) Rules, 2012. In the said representation dated 12.02.2015, the petitioner requested to compound Cr.No.463/2014-15 without admitting the allegations against him to avoid further litigation from the department. By way of the impugned proceedings bearing No.Cr.687/15/CPE/TS/FS dated 04.03.2015, the Commissioner of Prohibition and Excise/Second respondent herein, rejected the request of the petitioner herein to compound the offence under Section 47 of the Act and the A.P. Excise (Compounding of Offences) Rules, 1973.

8. The only question that falls for consideration of this Court, is whether the offence alleged to have been stated by the petitioner as registered vide Cr.No.463/2014/2015 dated 23.01.2015, is compoundable under Section 47 of the Act. In order to examine the same, the provisions of Sections 34, 36 and 47 of the A.P. Excise Act, 1968, are required to be referred, which read as under:

“Section 34 - Penalties for illegal import, export etc.--

Whoever, in contravention of this Act or of any rule, notification or order made, issued or passed there under or of any licence or permit granted or issued under this Act, -

(a) imports, exports, transports, manufactures, collects or possesses or sells any intoxicant: or

(b) taps any excise tree: or

(c) draws toddy from any excise tree: or

(d) constructs or works any distillery or brewery: or

(e) uses, keeps or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy: or

(f) bottles any liquor for purposes of sale: or

(g) buys any intoxicant: or

(h) possesses any material or film either with or without Government logo of any district in the State of Andhra Pradesh or any other State or wrapper or any other thing in which intoxicants can be packed or any apparatus, or implement or machine for the purpose of packing any intoxicant:

(i) removes any intoxicant from any distillery, brewery or warehouse licensed, established or continued under this Act:

Shall on conviction be punished, -

(1) in case of an offence falling under clause (a).-

(i) where the intoxicant involved in the offence is less than such quantity as may be notified in this behalf with imprisonment for a term which shall not be less than six months but which may extend upto three years and with fine which shall not be less than rupees five thousand but which may extend upto rupees twenty thousand.

(ii) where the intoxicant involved in the offence is not less than the quantity notified as aforesaid with imprisonment for a term which shall not be less than ²[three years] and which may extend upto five years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees one lakh: and

(2) in the case of an offence other than an offence falling under clause (a) with imprisonment which shall not be less than six months but which may extend to one year and with fine which may extend upto rupees ten thousand.]

Section 36 - Penalty for misconduct of licensees etc

(1) Whoever being a holder of a licence or permit granted or issued under this Act or being in the employ of such holder and acting on his behalf;-

(a) fails to produce such licence or permit on demand by any Prohibition and Excise officer or any other officer duly empowered to make such demand: or

(b) willfully does or omits to do any thing in breach of any of the conditions of his licence or permit not otherwise provided in this Act; or

(c) Willfully contravenes any rule made under this Act; or

(d) permits drunkenness, disorderly conduct, riot or gaming in any place wherein any intoxicant is sold or manufactured; or

(e) permits or suffers persons whom he knows or has reason to

believe to have been convicted of any non-bailable offence, or who are reputed prostitutes or habitual offenders, to resort to, or assemble or remain in or on the premises where any excisable article is sold or manufactured; or

(f) sells any intoxicant to a person who is drunk; or

(g) sells or gives any intoxicant to any ¹[person apparently under twenty one years of age or permits or suffers such person] to remain in or on the premises where any excisable article is sold or manufactured; or

(h) in contravention of Section 19 employs or permits to be employed on any part of his licensed premises referred to in that section any child or person suffering from leprosy or other contagious disease, shall, on conviction, be punished-

(i) in the case of an offence falling under clause (a), clause (b). or clause (c). with imprisonment for a term which shall not be less than six months but which shall not exceed two years and with fine which may extend to one thousand rupees;

(ii) in any other case, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

(2) Where any holder of a licence or permit under this Act or any person in his employ or acting on his behalf is charged with permitting drunkenness on the premises of such holder, and it is proved that any person was drunk on such premises, it shall lie on the person charged to prove that the holder of the licence and the persons employed by him took all reasonable steps for preventing drunkenness on such premises.

Section 47 - Compounding of Offences

(1) The Collector or any Prohibition and Excise Officer specially empowered in that behalf may accept from any person whose licence or permit is liable to be cancelled or suspended under clause (a) or clause (b) of sub-section (1) of Section 31 or who is reasonably suspected of having committed an offence falling under ¹[clause (b), clause (c), or clause (g) of Section 34;] clause (a), clause (e), clause (f), clause (g) or clause (h) of Section 36; clause (b), clause (c) or clause (d) of Section 37; or Section 41, a sum of money not exceeding ²[one lakh rupees] and subject to such minima, as may be prescribed, in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed as the case may be, and in all cases in which any property has been seized is liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer;

Provided that where the property so seized is a liquor manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner as may be prescribed.

(2) On payment by the person, the sum of money or the value or both, as the case may be in accordance with the provisions of subsection (1) or Section 47-A, such person, if in custody shall be set at liberty, and all the property seized may be released and no proceedings shall be instituted ³[or continued] against such person in any Criminal Court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case any further proceedings be taken against such person or property with reference to same Act.

9. A conjoint reading of the above provisions of law abundantly makes it quite limpid that the authorities are competent and authorized and empowered to compound the offences only under two contingencies.

1) The offence under Clauses (a) or (b) of Section 31 (1) of the Act when the license is liable to be cancelled or suspended and 2) The offences under Clauses (b), (c) or (d) of Section 37 and Clauses (a), (e), (f), (g) or (h) of Section 36 and Clauses (b), (c) or (d) of Section 37 or Section 41 of the Act.

10. A reading of the representations submitted by the petitioners in W.P.No.6847 of 2015 show that the petitioners only sought compounding of offences under Section 34 (a) and 36 (b) and (c), but not under Section 31 of the Act. The Commissioner of Prohibition and Excise/second respondent herein, passed the impugned order in W.P.No.6847 of 2015 on 04.03.2015 vide proceedings C.R.No.687/2015/CPE/TS/F3 rejecting the request of the petitioner on the ground that offences under Section 34 (a) and 36 (1) and (c) of the Act, are not compoundable under Section 47 of the Act. The said rejection in the considered opinion of this Court is in accordance with the provisions of the Act. Therefore, the writ petition is liable to be dismissed.

11. In the rest of the writ petitions i.e., W.P.Nos.6776, 6784, 6788 and 6812 of 2015, the petitioners by way of representations dated

04.03.2015, sought compounding of the offences in the same lines as sought in W.P.No.6847 of 2015. In view of the opinion already expressed above, the said applications also for compounding of offences mentioned therein cannot be considered. In view of these reasons, this Court does not find any merit in W.P.Nos.6776, 6784, 6788 and 6812 of 2015 and the writ petitions are liable to be dismissed.

12. Coming to W.P.Nos.9127, 9215 and 11788 of 2015, in these three writ petitions orders passed by the Superintendent of Prohibition and Excise, Nalgonda District, Nalgonda dated 02.03.2015 canceling the licenses of the petitioners herein as confirmed by the Deputy Commissioner of Prohibition and Excise/the third respondent herein vide orders dated 18.03.2015 and further confirmed by the Commissioner of Prohibition and Excise vide Orders dated 27.03.2015 are under challenge.

13. In these cases, it is contended by the learned counsel for the petitioners that the impugned orders of cancellation passed by the Prohibition and Excise Superintendent as confirmed by the hierarchy of authorities are highly illegal, arbitrary, unreasonable and in violation of the principles of natural justice and violative of Articles 14 and 19 (1) (g) of the Constitution of India.

14. On the contrary, it is the vehement and emphatic submission of the learned Government Pleader that duly taking into consideration the entire material available on record and only after giving reasonable opportunity to the petitioners, the orders of cancellation of licenses were passed and the same were correctly confirmed by the higher authorities and there is no illegality nor any infirmity in the impugned orders, as such, the present writ petitions are not maintainable.

15. The information before this Court categorically and candidly discloses that by way of orders dated 02.03.2015 the Prohibition and Excise Superintendent cancelled the licenses of the petitioners under Section 31 (1) (b) of the Act. As against the said orders of the

Prohibition and Excise Superintendent, the petitioners herein preferred statutory appeals before the Deputy Commissioner of Prohibition and Excise, Nalgonda and the Deputy Commissioner of Prohibition and Excise, by way of proceedings dated 18.03.2015, dismissed the appeals confirming the orders passed by the Prohibition and Excise Superintendent.

16. The material available before this Court further discloses that the petitioners herein filed further appeals to the Commissioner of Prohibition and Excise/second respondent herein under Section 63 of the Act. The copies of memorandum of the said appeal and the said applications and the written arguments filed by the petitioners herein before the Commissioner are placed on record before this Court. It is also evident from the said material that the petitioners herein also placed on record as many as eight judgments rendered by this Court on various issues.

17. The Commissioner of Prohibition and Excise/second respondent herein, by way of orders dated 27.03.2015, dismissed the said appeals filed by the petitioners herein. A perusal of the said orders dated 27.03.2015, passed by the Commissioner of Prohibition and Excise on the appeals filed by the petitioners herein, manifestly discloses that the Commissioner of Prohibition and Excise grossly failed in considering the material available. Except extracting the chronology of the events and various provisions of law and the conditions of licenses, the Commissioner did not undertake the process of objective consideration. The fact remains that the counsel for the petitioners herein also filed written arguments running into number of pages and also made available as many as eight judgments. Unfortunately, the Commissioner of Prohibition and Excise did not touch either the grounds of appeal or the written arguments or the judgments made available by the learned counsel for the petitioners.

18. It is a settled and well established proposition of law that the orders of the quasi judicial authorities are required to be supported by

valid and cogent reasons. In the instant case, the said settled proposition of law is conspicuously absent. Therefore, without going into other merits and demerits of the case, this Court deems it appropriate to set aside the orders of the Commissioner of Prohibition and Excise dated 27.03.2015 and remand the matters for fresh consideration and for passing appropriate orders, to the Commissioner of Prohibition and Excise/second respondent herein, after giving notice and opportunity of being to the petitioners herein and after considering the grounds raised by the petitioners in the memorandum of appeal and the written arguments and the judgments cited by the counsel for the petitioners.

19. For the aforesaid reasons and having regard to the nature of controversy, Writ Petition Nos. 9127, 9215 and 11788 of 2015 are allowed, setting aside the orders vide proceedings Nos.449/2015/CPE/TS/F3, 955/2015/CPE/TS/F3 and 448/2015/CPE/TS/F3, dated 27.03.2015 respectively, and the matters are remanded to the Commissioner of Prohibition and Excise/second respondent herein, for fresh consideration in accordance with law, after giving notice and opportunity of being heard to the petitioners herein in terms of the observations made *supra*. However, it is made clear that as the orders of the Commissioner of Prohibition and Excise/second respondent herein are *set aside*, the petitioners herein are entitled to make their applications for compounding, if any, in accordance with law and the same shall be considered according to the provisions of A.P. Excise Act, 1968 and the Rules made thereunder. This exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand disposed of. There shall be no order as to costs

20. Writ Petition Nos.6776, 6784, 6788, 6812 and 6847 of 2015 are dismissed. However, it is open for the petitioners herein to make appropriate application before the competent authority as per the provisions of Section 47 of the Act. Miscellaneous Petitions, if any,

pending in these writ petitions, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: .07.2015
grk



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

WRIT PETITION Nos.6776, 6784, 6788, 6812,

6847, 9215, 9127 and 11788 of 2015

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Dated July, 2015

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THE HON’BLE SRI JUSTICE A.V.SESHA SAI
WRIT PETITION No.

Dated July, 2015

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Between:

... Petitioner

and

... Respondents