

THE HONOURABLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.26583 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 declaring the action of the respondents in canceling the license vide proceedings Rc.No.B3/13/2015 dated 14.07.2015 of the petitioner as arbitrary and illegal.”

Heard Sri V.Ramachander Goud, learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise for the respondents.

The Prohibition and Excise Superintendent granted Tree For Tapper (TFT) licence in favour of the petitioner for the period ending by 30.09.2017. Followed by an inspection on 09.04.2015, the 1st respondent *vide* orders dated 16.06.2015 suspended the licence of the petitioner and the 1st respondent also issued a show-cause notice on the even date asking the petitioner to show-cause as to why the licence should not be cancelled. Subsequently, by the proceedings dated 14.07.2015 the 1st respondent in exercise of the powers conferred under clause (b) of sub-section (1) of Section 31 of the A.P. Excise Act, 1968 cancelled the licence of the petitioner. Calling in question the validity and the legal sustainability of the said order passed by the 1st respondent, the present writ petition has been filed.

It is contended by the learned counsel for the petitioner that the impugned order of cancellation is highly illegal, arbitrary unreasonable and violative of principles of natural justice and opposed to the very spirit and object of the provisions of the Andhra Pradesh Excise Act and the Andhra Pradesh Excise (Grant of Licence to sell Toddy,

Conditions of Licence and Tapping of Excise Trees) Rules, 2007 (for short 'the Rules') as notified in G.O.Ms.No.1128, Revenue (Ex.II), dated 09.09.2007.

It is further submitted by the learned counsel for the petitioner that the entire exercise undertaken by the 1st respondent is a patent infraction of Rule 27 of the said Rules. It is also submitted that in the facts and circumstances of the case the order passed by the 1st respondent is unwarranted.

Per contra, it is strenuously contended by the learned Government Pleader for Prohibition and Excise appearing for the respondents that there is no illegality nor any procedural infirmity in the impugned action which culminated in passing of order of cancellation, as such the present writ petition is not maintainable and the petitioner is not entitled for any relief under Article 226 of the Constitution of India.

It is further contended by the learned Government Pleader that in view of the availability of alternative remedy of appeal to the Deputy Commissioner of Prohibition and Excise under Section 63 of the A.P. Excise Act, 1968, the present writ petition is not maintainable under Article 226 of the Constitution of India. It is also submitted by the learned Government Pleader that having failed to file explanation in response to the show-cause notice, it is absolutely not open for the petitioner to challenge the order of cancellation.

The information available before this Court discloses that the premises of the petitioner were inspected by the authorities on 09.04.2015 and immediately on 10.04.2015, 16.04.2015 and 18.04.2015 petitioner submitted applications to the 1st respondent, requesting for sending the second sample for examination. There is absolutely no material on record to show that the said second sample

bottles were sent to the expert for examination. In this connection, it may be appropriate to refer to Rule 27 of Provisions relating to Functioning of Toddy Shops and Conditions contained in Andhra Pradesh Excise (Grant of Licence to sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules, 2007, which reads as under :-

27(1) Drawal of the samples :- Any Prohibition & Excise Officer, not below the rank of Sub-Inspector of Prohibition & Excise or Food Inspector appointed under the Prevention of Food Adulteration Act, 1954, shall be competent to inspect at any time and to take samples from the toddy possessed by the Licensee or any other person, for the purpose of analysis. Such Officer shall take three (3) samples in the presence of the Licensee or his Agent or other person in charge of the Licensed premises or who is found selling toddy in the said premises, after conducting a panchanama. The samples shall be sent to the Court having jurisdiction with a requisition to send, one of the samples expeditiously to the Chemical Examiner of the Prohibition & Excise Department having jurisdiction in the region, in which licensed premises are situated or to any independent laboratory as instructed by the Commissioner for Chemical Examination. If the sample sent to the Chemical Examiner/Laboratory is damaged, in transit or otherwise before the completion of the analysis, the Court may be requested by the concerned officer to send a second sample to the Chemical Examiner/Laboratory. If the Licensee desires that the sample should be sent for analysis to an independent laboratory he may apply to the Prohibition and Excise Superintendent within three (3) days of the drawal of sample. In case, where Licensee or any one of his Nowkarnama holder was not present at the time of taking of sample, the Licensee may apply to the concerned Prohibition & Excise Superintendent within seven (7) days from the date of communication of drawal of sample. The application should be accompanied by a demand draft for an amount sufficient to cover the analysis charges. If no such application is filed within the requisite time limit, the Licensee shall not be entitled to seek analysis thereafter. On receipt of the application within the time and with requisite demand draft, the concerned officer shall request the Court to send a sample to the independent laboratory.

Provided that any adverse analysis report will constitute sufficient cause for the purpose of exercising the power under Section 31 of the Act, by the authority granting licence or permit to safeguard the public health.

Provided further that the officer requesting the Court to send a sample to an independent laboratory on the application of the Licensee has to indicate the name of the independent laboratory in the Court.”

The above provision of law enables the petitioner to apply for

sending the sample to the independent laboratory and the petitioner in the instant case availed the said opportunity. But the respondent authorities did not respond to the same and proceeded to pass the present order under challenge, canceling the licence. This action, in the considered opinion of this Court, cannot be sustained. Another aspect which is pointed out by the learned Government Pleader is that as against the orders of cancellation of 1st respondent, statutory appeal lies under the provisions of Rule 63 of the A.P. Excise Act, 1968. It is also required to be noted at this juncture that even according to the respondents the officers tested the toddy with prescribed chemical in the presence of the mediators and found that the toddy is free from adulteration with Floral hydrate. This Court does not find any justification on the part of the respondent authorities in not sending the samples as requested by the petitioner in accordance with the provisions of Rule 27 of the said Rules.

In the facts and circumstances and having regard to the nature of controversy, this Court is of the considered opinion that the petitioner is at liberty to avail the alternative remedy of appeal to the Deputy Commissioner of Prohibition and Excise as rightly contended by the learned Government Pleader appearing for Prohibition and Excise. At the same time in view of the reasons mentioned supra, this Court is inclined to make an arrangement pending such appeal by suspending the operation of the impugned order of cancellation.

For the aforesaid reasons, this Writ Petition is disposed of, permitting the petitioner to file statutory appeal under Section 63 of the A.P. Prohibition and Excise Act, 1968 against the order impugned in the present writ petition within the statutory period as stipulated under the provisions of law. On filing such appeal, it is open for the Deputy Commissioner of Prohibition and Excise to pass appropriate orders on the same after giving notice and opportunity of being heard to the

petitioner. Pending such exercise before the Deputy Commissioner of Prohibition and Excise, the operation of the impugned order issued by the 1st respondent vide proceedings in Rc.No.B3/13/2015 dated 14.07.2015 shall stand suspended.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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A.V. SESA SAI, J

Date : 21.08.2015

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