

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 18638 of 2016

Date :7.11.2016

Between :

Toddy Tappers Cooperative Society Banda Ranjal
Bansawada village and mandal, Nizamabad district
Rep by its Vice President Sai Gowd

Petitioner

And

The State of Telangana
Rep by its Principal Secretary to Government
Revenue (Excise) Department,
Secretariat, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

This writ petition is filed, praying to grant the following relief:

“.....writ or directing declaring Rc No. A3/53/2016 dated 24.5.2016 of the 2nd respondent in rejecting the request of the petitioner to send one of the sample to the independent laboratory is illegal, arbitrary, unjust, contrary to the Rule 27, violative of principle of natural justice and set aside the same and direct the respondent to send one sample to the independent laboratory and grant all consequential reliefs....”

2. Facts on record disclose that on 23.3.2016 the officials of Excise department along with mediators inspected the toddy shop Group TCS Banda Renjal No.1 and having suspected that the toddy is adulterated, have drawn the samples under cover of punchanama. A crime was registered on 23.3.2016 and sample was sent for examination to Government Chemical Examiner, Regional Prohibition and Excise Laboratory, Hyderabad. Based on the report of the Laboratory, license was suspended on 7.5.2016. Petitioner made a representation for subjecting the second sample to the Laboratory for analysis. Said request of the petitioner was rejected, by order impugned, on the ground that such request was made belatedly.

3. Only submission urged by the learned counsel for petitioner is that petitioner was unaware of collection of sample and he came to know about the same only for the first time when the order of suspension was passed on 7.5.2016 and immediately a request was made for referring the second sample to laboratory test. He therefore submits that request was made within the time prescribed in the A.P. Excise (Grant of Licence to Sell Toddy Conditions of Licence and Tapping of Excise Trees) Rules, 2007 and rejection on the ground that it was not requested within time was erroneous.

4. Learned Assistant Government Pleader would submit that the sample was collected in presence of person representing petitioner and therefore petitioner was aware of collection of sample and ought to have made such request within the time prescribed in the Rules, 2007, whereas, request was made much later. She would also submit that in fact the licence of the petitioner was already cancelled. Learned Assistant Government Pleader relied on decision of this Court in W.P. No. 4904 of 2016.

5. The only issue for consideration is whether the request of the petitioner for referring to second sample for testing was made within time.

6. The relevant provision for consideration on this issue is Rule 27 of the Rules, 2007. It 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 Licenced 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 drawl 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 drawl of sample. The application should be accompanied by 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;
.....”

7. Bare reading of this Rule would show that if sample is collected in presence of licensee/ authorized person a request should be made within 3 days from the drawl of the sample for reference of second sample for examination by independent Laboratory. In case, where Licensee or any one of his Nowkarnama holder was not present at the time of taking of sample, such request can be made within 7 days. Thus, in terms of this Rule, request for reference to further examination of second sample by independent Laboratory was not made within the time prescribed in the Rules. The service of order of suspension cannot give rise to fresh cause of action. In W.P. No.4904 of 2016 also request for sending second sample to independent laboratory was made beyond time. The decision to rejecting such request was upheld.

8. Therefore, I do not see any error in the decision of Authority rejecting the request for sending second sample to independent laboratory for examination. Accordingly, the writ petition is dismissed. No costs. All other issues are left open for consideration before the appropriate authority. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 07.11.2016
TVK

P NAVEEN RAO,J

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