

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**MONDAY, THE TWELVETH DAY OF SEPTEMBER,
TWO THOUSAND AND SIXTEEN**

**Present
HON'BLE SRI JUSTICE P.NAVEEN RAO**

Writ Petition No.5721 of 2011

Between:

Toddy Tappers Cooperative Society Nizamabd Group-I, Nizamabad
District at Nizamabad, rep. by its President, Shankar Goud.

.. Petitioner

AND

The Government of Andhra Pradesh, rep. by its Principal Secretary
Revenue (Excise-II) Department, Secretariat Buildings, Hyderabad
and others.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.5721 of 2011

ORDER

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

“to issue a writ, order or direction, preferably a writ in the nature of mandamus declaring Lr.No.11445/2007/CPE/E2 dated 05.01.2011 of the Commissioner of Prohibition and Excise, A.P., Hyderabad, in reviewing his own orders in Cr.No.11445/2007/CPE/E2 dated 10.06.2008, as illegal, biased, without jurisdiction, contrary to law and is liable to be set aside”.

2. Heard learned counsel for petitioner Sri T. Amarnath Goud, learned Government Pleader for Prohibition and Excise for Respondent Nos.1 to 3 and 5, learned Government Pleader for Revenue for Respondent No.4 and learned senior counsel Sri K. Sudarshan Reddy, holding for Sri G. Madhusudan Reddy, learned counsel for respondent No.6.

3. The case of the petitioner is that it is a registered society in Nizamabad Town and was granted toddy tappers licence. It has been operating the shops assigned to it in Nizamabad town. Proposals were mooted for establishment of one more society called Tappers Cooperative Society No.III (TCS No-III) and to assign certain shops to the said society. The proposal for such recognition and assignment was rejected by the Commissioner of Prohibition and Excise vide his orders dated 10.06.2008. This order has become final as the Government also affirmed the same. While so, the Commissioner vide his letter dated 05.01.2011, addressed to the

District Collector, Nizamabad, called for proposals on the request of Chief Promoter of TCS No.III based on the proposals submitted by the Deputy Commissioner of Prohibition and Excise, Nizamabad, for grant of recognition and allotment of shops. This letter of the Commissioner dated 05.01.2011 was challenged on the ground that the same amounts to renewing the earlier decision and the Commissioner has no competence to take such decision as decision taken earlier has become final.

4. Interim order was granted on 09.03.2011 directing the respondents not to take further steps in pursuance of the letter dated 05.01.2011. W.V.M.P.No.2750 of 2011 in W.P.M.P.No.7126 of 2011 filed praying to vacate the said order was dismissed by order dated 02.11.2011.

5. Learned Government Pleader for Prohibition and Excise contended that the writ petition has become infructuous as the cause in the writ petition does not survive in view of the subsequent developments. Learned Government Pleader informs the Court that on 29.02.2016, Government passed orders affirming the decision of Prohibition and Excise Superintendent dated 03.09.2012 canceling the licence of petitioner and since licence was already cancelled, petitioner cannot maintain grievance or at least question grant of licence to any other person and therefore, the cause in the writ petition does not survive.

6. Learned counsel for petitioner submits that the 6th respondent was not registered as Society under the Andhra Pradesh

Cooperative Societies Act and unless it is registered as Society, it cannot apply for grant of licence to Toddy shops of Nizamabad Town. He would further submit that aggrieved by the orders of Government dated 29.02.2016, petitioner filed W.P.No.23630 of 2016 and the same is pending consideration before this Court. He would further submit that the issue is sought to be resolved and there is a possibility of amicable settlement among the rival claimants for running the toddy shops in Nizamabad town and in such an event, the entire litigation can be closed.

7. Sri T. Amarnath Goud, sought to contend that if the proceedings are allowed to be final by virtue of the letter impugned in the writ petition, it would amount to granting licence to 6th respondent, which is not even registered as a society and unless it is registered as a society, no such licence can be granted. There is no merit in the said contention in view of the further orders of the Government dated 03.06.2016.

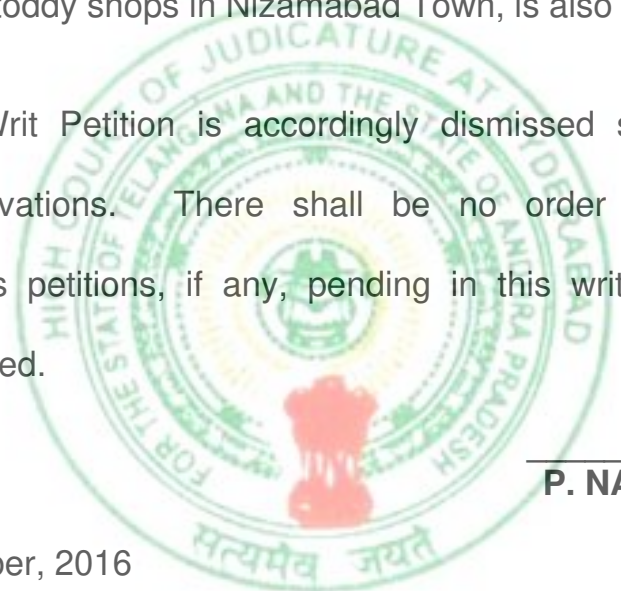
8. Learned senior counsel Sri K. Sudarshan Reddy for the 6th respondent submits that once the licence was cancelled, petitioner has no cause to continue the writ petition. He would further submit that on 03.6.2016, Government passed orders, taking note of cancellation of licence granted in favour of petitioner, directing the competent authority to accord recognition to the 6th respondent society and to grant licence and the said matter is pending consideration and no further orders are passed due to pendency of this writ petition.

9. As noted above, the prayer sought in the writ petition was against calling for proposal from the District Collector. What is challenged in this writ petition is an internal correspondence between the Commissioner and the District Collector. No decision was taken by the Commissioner. The cause of action would arise only when a decision was taken and an order was passed contrary to the earlier decision and would offend rights of writ petitioner.

10. Be that as it may, as contended by learned Government Pleader as well as learned senior counsel for 6th respondent, licence earlier granted to petitioner was cancelled by the Prohibition and Excise Superintendent vide his order dated 03.09.2012. On a revision filed by petitioner before the Government, the Government granted stay of the orders of Commissioner on 09.11.2012 and this stay was operative till further orders were passed by the Government on 29.02.2016. After 29.02.2016, petitioner does not hold licence and is not operating the toddy shops. Petitioner can commence operations only if it succeeds in the pending writ petition or a fresh licence is granted in its favour. Therefore, petitioner cannot restrain grant of licence to any other person to operate the shops. Further more, on account of pendency of the writ petition, even though the licence of the petitioner was cancelled on 29.02.2016, no one is operating the toddy shops from that day. It is not just and equitable to prevent toddy tappers from carrying on their avocation and it would amount to depriving their livelihood.

11. In view of the subsequent developments, the cause in the writ petition does not survive and the writ petition is liable to be dismissed. However, it is made clear that if petitioner succeeds in W.P.No.23630 of 2016 and if licence is restored to it, it is open to the petitioner to challenge any further orders that may be passed by the Government in favour of 6th respondent. It is also open to the petitioner to challenge all other proceedings issued by the Government including its right to challenge the recognition that may be granted in favour of 6th respondent as a society to obtain licence for operating toddy shops in Nizamabad Town, is also preserved.

12. The Writ Petition is accordingly dismissed subject to the above observations. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.



P. NAVEEN RAO, J

12th September, 2016

sj