

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.2228 OF 2016

ORDER:

The grievance of the petitioner is that the appellate authority, the Deputy Commissioner of Prohibition and Excise, Ongole, Prakasam District, dismissed his appeal without affording him proper opportunity to present his case.

The petitioner was shown as accused No.5 in PR.No.168/2015-16 which was registered under the provisions of the A.P. Excise Act, 1968, on the file of the Prohibition and Excise Station, Ongole. His licence was cancelled by the Prohibition and Excise Superintendent, Markapur, under proceedings dated 19.12.2015. Aggrieved thereby, he preferred an appeal to the appellate authority. By order dated 04.01.2016, the appellate authority opined that the cancellation order passed by the Prohibition and Excise Superintendent, Markapur, was in accordance with the rules and rejected the appeal.

Smt. Manchikalapati Renuka, learned counsel for the petitioner, would place reliance on Rule 9(1) of the Andhra Pradesh Excise (Appeal and Revision) Rules, 1969, which reads as under:

"Hearing:-- (1) The appellate or revisional authority, if it does not reject the appeal or revision application under sub-rule (1) of Rule 7, may fix a date for personal hearing of the case, if it considers necessary so to do."

Learned counsel contends that the petitioner specifically asserted in his appeal grounds that prejudice is caused to him by the cancellation of his licence and that there was no material to support the charge against him whereby his licence could have been cancelled. Learned counsel places reliance on the judgment of the Supreme Court in **The Barium Chemicals Ltd. v. A.J. Rana**^[1] which dealt with the meaning to be given to the words 'considers it necessary'. The Supreme Court held that in the context of the phrase

‘considers it necessary’, the authority concerned must apply its mind and such application is sine qua non for the making of the order. However, perusal of the appellate order dated 04.01.2016 reflects that there is no mention of the petitioner in the capacity of accused No.5 in the subject crime till the end of the order. The role of the petitioner, if any, was therefore not discussed so as to satisfy the rule.

However, as the appellate authority has already passed the order dated 04.01.2016, it would serve the interests of justice if the petitioner is provided a post-decisional hearing. During the course of such hearing, it would be open to the petitioner to put forth his case before the appellate authority and it would be open to the appellate authority to either cancel, modify or affirm the order dated 04.01.2016 passed by him. The appellate authority shall intimate the result of such post-decisional hearing to the petitioner separately. This exercise shall be completed within one week from today.

The writ petition is disposed of with the above directions. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

**JUSTICE SANJAY
KUMAR**

29th January, 2016
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[\[1\]](#) AIR 1972 SC 591