

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.6622 of 2016

ORDER

-

Challenge in this writ petition is to the orders of the primary and the appellate authorities in relation to cancellation of the petitioner's A4 shop licence. The petitioner states that he made an application on 19.02.2016 for compounding of the offence but, without even considering the same, the authorities resorted to cancellation of his licence.

Sri O. Manohar Reddy, learned counsel for the petitioner, would state that in a similarly situated case, the excise authorities resorted to compounding of the offence by collecting Rs.2,50,000/-. A copy of the order dated 12.11.2015 passed by the Commissioner of Prohibition & Excise, Andhra Pradesh, in this regard is placed on record.

In the case on hand, it appears that the entire process relating to cancellation of the petitioner's licence and the dismissal of his appeal took less than ten days. The show-cause notice issued to the petitioner is dated 18.02.2016 whereby he was given seven days time to respond. He submitted an application on 19.02.2016 seeking to compound the offence by paying Rs.2,55,000/-. The amount was also paid into the treasury. The cancellation of the petitioner's licence was effected by the Prohibition and Excise Superintendent, Kakinada, under order dated 25.02.2016. Surprisingly, no reference was made therein to the application filed by the petitioner to compound the offence. Aggrieved by the cancellation of his licence, the petitioner filed an appeal before the Deputy Commissioner of Prohibition and Excise, Kakinada. This appeal was dismissed on 26.02.2016. Perusal of the appellate order reflects that a reference was made to the offer made by the petitioner to compound the offence. However, there was no discussion as to why the said offer did not warrant consideration. The appellate authority, having referred to the offer

made by the petitioner, concluded that the cancellation of the petitioner's A4 shop licence could not be found fault with and accordingly dismissed the appeal.

Learned Government Pleader for Excise would contend that there is no compulsion on the authorities to accept the offer made to compound an offence. There can be no dispute with this proposition. However, when such discretionary power is vested in the authorities, there needs to be transparency in the exercise of such power. It is not open to the authorities to exercise their discretion in a particular case and refuse to do so in another identical case.

Perusal of the earlier order dated 12.11.2015 of the Commissioner of Prohibition and Excise, Andhra Pradesh, reflects that the offence which was compounded thereunder was similar in terms to the offence alleged against the petitioner. This being the situation, it was for the authorities concerned to distinguish the cases and record reasons as to why the case on hand was not a fit one to recommend compounding of the offence.

The appellate order dated 26.02.2016 is accordingly set aside and the matter is remitted to the file of the Deputy Commissioner of Prohibition and Excise, Kakinada, to deal with the application filed by the petitioner for compounding the offence. In the event the authority is of the opinion that the application warrants consideration, it would be open to it to forward the same to the Commissioner of Prohibition and Excise, Andhra Pradesh, for further action. In the event the appellate authority does not opine so, it shall record reasons therefor and thereafter consider the appeal filed by the petitioner on its own merit in accordance with law and pass a reasoned order. This exercise shall be completed expeditiously and in any event, not later than one week from the date of receipt of a copy of this order.

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

1st March, 2016
PGS

JUSTICE SANJAY KUMAR