

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.36297 OF 2016

ORDER:

The writ petition is filed challenging the order dated 21.03.2016, passed by the 3rd respondent.

One of the grounds raised by the petitioner is that there was no show cause notice issued and thereby petitioner did not have the opportunity of submitting the explanation. It is also the contention of the petitioner that the spot test conducted by the officials of the respondents was based for passing the impugned order was also not made available to the petitioner.

On the other hand, the learned Government Pleader for Prohibition submits that the order itself discloses the number of attempts made by the respondent-authorities to serve the papers on the petitioner were futile. On each occasion, the respondent-authorities were informed either the petitioner was not in station or he had gone to Hyderabad to attend the marriage function of his relatives. In those circumstances, the respondents having no other alternative, considering the petitioner has evading the notices, the impugned orders were passed based on the material available on record.

Having considered the respective submissions and perusal of the A.P. Excise (Grant of Licence to Sell Toddy Conditions and Licence and Tapping of Excise Trees) Rules, 2007 (for short "the Rules), does not indicate the mode of service of notice in cases filing under the A.P. Excise Act and the Rules made thereunder. In those circumstances, there being no procedure prescribed for service of notices with respect to the action to be taken under the relevant Rules, the General Clauses Act, 1897 would apply. Nothing prevented the respondent-authorities to have dispatched the notices through registered post. In the facts of the present case, the order does not disclose even notice having been served

on any of the available members at the address of the petitioner. In those circumstances and considering the fact that the impugned order was made in the month of March, 2016, subject to the condition of the petitioner filing appeal before the Commissioner within a period of two weeks from the date of receipt of copy of the order, the appeal shall be entertained by the appellate authority and orders be made on merits after considering the submissions that may be made by the petitioners. As the petitioner complains of non furnishing the material based on which the impugned order has been made on application being made by the petitioner forthwith the same shall furnished to the petitioner so as to enable the petitioner to file an appeal.

Subject to the above, the writ petition is disposed of. No order as to costs.

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

Dated:27.10.2016

Note: Issue CC in three days.

B/o.

Gk

CHALLA KODANDA RAM, J

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Date:27.10.2016

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