**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**WRIT PETITION No.11362 of 2012**

**ORDER:**

Heard the learned counsel for petitioners, the learned Government Pleader for Prohibition and Excise (TS) for respondents 1 to 3 and the learned Standing Counsel for respondent No.4.

2. The petitioner submitted his bid pursuant to the notification issued by the District Collector, Warangal inviting bids for right to sale of Indian Made Foreign Liquor. He became successful bidder in respect of shop No.84 of Cherial Village, Ward No.14, Warangal District for a total consideration of Rs.1,20,00,999/- for the lease period from 01.07.2010 to 30.06.2012. The licence was granted on 12.07.2010. While so, the third respondent issued proceedings on 03.01.2011 stating that on 31.12.2010, consequent upon the seizure of a wine shop by name Sri Rama Wines at Maddur, The Assistant Prohibition & Excise Superintendent, Enforcement Wing, Warangal, inspected the shop of the petitioner and found two cartons of non-duty paid liquor affixed with stamp “Nagaland”. There are six bottles of A.C. Premium whisky of 750 ml., in one carton and 23 bottles of 180 ml., in another carton. Apart from the above, the inspecting authority has also seized certain duty paid liquor. Ultimately, the third respondent passed an order suspending the licence of the petitioner with immediate effect. After conducting enquiry, the said order was communicated by an order of cancellation dated 25.01.2011. Though the petitioner earlier filed a writ petition challenging the order of cancellation, it was dismissed as withdrawn with liberty to file an appropriate application before the authorities. The petitioner filed a statutory appeal on 24.02.2011 and the same was dismissed on 16.03.2011 confirming the order passed by the third respondent. He also filed an application on 07.02.2011 for compounding the offence before the second respondent and the same was also dismissed.

3. At the time of issuance of licence, the petitioner had taken two bank guarantees towards licence fee under Rule 19 of the A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2005 and consequent upon the cancellation of the licence, the third respondent invoked the bank guarantee No.59/2010, vide proceedings dated 17.02.2011 in lieu of third instalment. Similarly, another bank guarantee bearing No.60/2010 dated 21.06.2010 was also invoked in lieu of fourth instalment. The third respondent also auctioned the privilege of sale of IMFL for the remaining lease period in favour of another party and the licence was granted for an amount of Rs.1,06,99,991/-. This writ petition was filed challenging the invocation of bank guarantee bearing No.60/2010 dated 21.06.2010 of the petitioner.

4. The learned counsel for the petitioner submits that there was a specific rule with regard to forfeiture/revocation of bank guarantee consequent to the cancellation of licence and the same was deleted subsequently in the year 2006. When the said rule was in force, this Court in **G.Shankar Reddy v. Prohibition & Excise, Superintendent**[1] held that forfeiture of bank guarantee is not automatic and the authority who cancelled the licence had to pass a separate order of forfeiture of bank guarantee and when no such order is passed in the present case, the invocation of bank guarantee No.60/2010 is illegal.

5. A counter-affidavit is filed by the Government stating that a Full Bench of this Court considered the legal position in a case like this in **S.L.V.Wines, Cuddapah Dist. v. State of A.P. and others**[2] and held that in view of clear provision in Section 31 (3) of the A.P. Excise Act, 1968, the licensing authority has an unfettered power to collect the licence fee before hand and the licensee, whose licence was cancelled, cannot ask for refund of any fee paid or deposit made in respect thereof.

6. It is clear from the above pleadings and contentions of the parties that though at one point of time, a Rule was existing with regard to passing of an order by the competent authority for invoking the bank guarantee, such Rule was not existing at the time of cancellation of licence in favour of the petitioner. There is a substantive provision in Section 31(3) of the said Act and the relevant portion reads as follows:

> "**31. A.P. Excise (Arrack and Toddy Licenses General conditions) Rules, 1969 – Rule 28(2):-**
>
> (1)…
> (2)…
> (3) It in no manner prohibits the licensing authority from collecting the rentals payable by the licensee even for the period during which the licence has been kept under suspension pending enquiry. The licensee continues to hold the licence until the same is duly cancelled or suspended as a measure of punishment for any specific period."

7. In view of the above clear position of law and in view of the interpretation made by this Court in **S.L.V.Wines, Cuddapah Dist.**'s case (2 supra), the petitioner is not entitled for any relief in the present case and hence the writ petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

**A.RAMALINGESWARA RAO, J**

Date: 18.02.2016
TJMR

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[1] 1997 (5) ALT 177

[2] 2009 (5) ALD 170 (FB)