

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 16694 of 2016

ORDER :

The present writ petition is filed with the following prayer:

“To issue an appropriate order or direction more particularly a writ of Mandamus declaring the orders passed by respondent No.4 vide proceedings Rc.No.A7/73/2016, dated 20.05.2016 in suspending the license of the petitioner wine shop without issuing any notice and without giving any opportunity to the petitioner even though the petitioner has not violated any of the conditions of the license, as illegal, arbitrary, unconstitutional, against principles of natural justice, equity and fair play and contrary to the provisions of A.P.Excise Act, 1968 and consequently set aside the orders passed by respondent No.4 vide proceedings Rc.No.A7/73/2016, dated 20.05.2016 by further directing the respondents to restore the license of the petitioner wine shop namely M/s.Venkatasai Wine Shop, situated at Khanapur village and Mandal, Adilabad District in the interest of justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case”.

The facts in issue are as under:

Pursuant to a notification, the petitioner applied for grant of license to sell Indian made foreign liquor. As the petitioner was found eligible, the authorities selected the petitioner and issued license bearing No. 41/2015-17, dated 15.10.2015. Thereafter, the petitioner started running wine shop in the name and style of M/s. Venkatasai Wines in the premises bearing No.24-157, situated at Khanapur Village and Mandal, Adilabad District. While things stood thus, on 13.05.2016, the respondent-authorities registered a case in COR No.162 of 2016 for the offences punishable under Sections 34

(a) read with Section 36(1)(b)(c) of A.P.Excise Act, 1968, in which the petitioner was shown as Accused No.5. In the said report, it is alleged that on the said date of search at the house of one Vasudeva Reddy, situated at Sakera Village, Nirmal Mandal, Adilabad District by the Prohibition and Excise, Adilabad, they found huge quantity of Indian made foreign liquor. On questioning, the three persons who were present there namely Rallabandi Mahender, Thota Laxman and Nandula Ravi Kumar failed to produce any license or permit to possess or sell the same. The spot test conducted at the site revealed that the whiskey was diluted with water with a proof strength of 42 UP as against the permitted strength of 25 UP. On enquiry, the above said persons confessed that as per the orders of one Proddutoori Ramana Reddy and his friend K.Ganga Reddy (petitioner herein), they are getting IML Stock from M/s.Venkata Sai Wines, Khanapur and then adulterating the same with water. Basing on the above, a crime was registered and respondent authorities by invoking Section 31(1)(b) of the A.P.Excise Act, suspended the license of the petitioner. Challenging the same, the present writ petition came to be filed.

The only ground urged by the learned counsel for the petitioner is that the impugned order of suspension came to be passed without giving an opportunity to explain the facts. Even otherwise he submits that nothing happened in the shop of the petitioner and the entire procedure came to be initiated basing on the confession of accused No.2 in the crime.

Learned Government Pleader for Excise on instructions strenuously opposed the application contending that the question of issuing show cause notice would not arise as the petitioner along with others were involved in adulteration of whiskey bottles thereby violating the conditions of license and provisions of law.

Before proceeding further, it would be appropriate to refer to Section 31 of the Excise Act, which reads as under:

Section 31. Power to cancel or suspend licence etc.:

- (1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it (irrespective of the period to which the licence or permit relates.)
- (a) If any duty or fee payable by the holder thereof is not duly paid or;
 - (b) In the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or
 - (c) If the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act, or
 - (d) If the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under (the Narcotics Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958 or under Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489 of the Indian Penal Code or of any offence punishable under Section 112 or Section 114 of the Customs Act, 1962, (irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or)
 - (e) If the conditions of the licence or permit provide for such cancellation or suspension at will:

Provided that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence granted or permit issued to such persons under this Act, or under the Opium Act, 1878.

(3) The holder of licence or permit shall not be entitled to any compensation for its cancellations or suspension nor to the refund of any fee paid or deposit made in respect thereof.”

Proviso of Section 31 (1) states that no license or permit shall be cancelled or suspended unless holder thereof is given an opportunity of making his representation against the action proposed.

A reading of the impugned order does not anywhere indicate that the petitioner was given an opportunity to make his representation against the action proposed to be taken. On the other hand, it only refers to the contents of FIR which came to be registered pursuant to the raid conducted on 13.05.2016. Infact, identical issue came up for consideration before the Division Bench of this Court in ***Goka Bujjamma Vs. Prohibition and Excise Superintendent, Srikakulam and others***^[1] wherein a Division Bench, while reversing the finding given by a learned Single Judge Bench held as under:

“We have perused the grounds of appeal. The grounds of appeal are only general in nature and no specific reference has been made with reference to the proviso to Section 31(1) of the A.P.Excise Act, 1968 (for short, ‘the Act’), which says that no license or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed. In the order impugned, show cause notice was issued to the appellant under Section 31(1)(b) of the Act for cancellation of the licence under the said proviso and pending the said proceedings the licence issued to the appellant had been suspended, which, in our opinion, is against the proviso to the said section. Since an opportunity was not given, the licence, the

licence cannot be suspended. A Division Bench of this Court comprising of Chief Justice and V.V.S.Rao, J., in the judgment reported in K.Srinivasa Reddy Vs. Superintendent, Prohibition and Excise in an identical matter held as follows:

“The proviso appended to Section 31(1) of the Act clearly states that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed. In the instant case, the 1st respondent neither gave any notice to the appellants nor gave them any opportunity to make their representation against the action proposed. The 1st respondent, instead of proposing the action of suspending the licence, has passed a final order suspending the licence of the appellants, which is illegal and against the provisions of Section 31(1) of the Act.”

We, therefore, set aside only the order of suspension but retain the show-cause notice for cancellation of licence. The appellant has already submitted her objection for the proposed action of cancellation of licence. We, therefore, direct the 1st respondent viz., the Prohibition and Excise Superintendent, Srikakulam to decide the matter on merits and dispose of the same within ten days from today.”

Further, a learned Single Judge of this Court by an order dated 11.02.2016, while dealing with the case where without considering the explanation submitted to the show cause notice, the authorities suspended the license, held as under:

“The suspension pending enquiry was effected under proceedings dated 25.01.2016 issued by the Prohibition and Excise Superintendent, Medak Excise unit. Admittedly, a show-cause notice was also issued to the society on the very same day. The society would have to respond to the show-cause notice in the context of the allegations of adulteration of toddy leveled against it. Pending such enquiry, as there are allegations of adulteration of toddy, the society cannot be permitted to continue with the sale of toddy. This Court therefore finds no grounds to interfere with the order of suspension pending enquiry. However, as the livelihood of the members of the society would be at stake, it would serve the interests of justice if the enquiry is completed expeditiously.

The writ petition is accordingly disposed of directing the

Prohibition and Excise Superintendent, Medak, to complete the enquiry expeditiously in accordance with the due procedure and in any event, not later than three weeks from the date of receipt of a copy of this order.”

The record further discloses that the impugned order and the show cause notice calling upon the petitioner to explain came to be passed on the same day i.e., on 20.05.2016. It is practically impossible for any person to give an explanation to a show cause notice which was issued on the same day. It appears to be a case where without giving any time to the petitioner to explain to the show cause notice, the impugned order came to be passed on the very same day.

In view of the above circumstances and the judgments referred to above, the order under challenge is set aside. The petitioner shall submit his explanation to the show cause notice dated 20.05.2016, within a period of 10 days from the date of receipt of a copy of this order and thereafter the authorities shall consider the same afresh and pass orders, in accordance with law. However, respondent authorities are at liberty to follow the dicta laid down in the judgments referred to above before taking any coercive steps against the petitioner. Further, if no orders are passed within the time prescribed, the petitioner is always at liberty to make suitable application for continuing the wine shop.

Accordingly, the writ petition is allowed.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

08.07.2016

Note:

Issue CC in three days.

B/o.
vnb

[\[1\]](#) 2003 II ALD DB 549