

HON'BLE SRI JUSTICE A.V.SESHA SAI
WRIT PETITION No.5672 of 2010

ORDER:

In the present Writ Petition, challenge is to the order passed by the Commissioner of Prohibition & Excise, A.P., Hyderabad (first respondent herein), vide proceedings in CR.No.13857/2009/CPE/D4 dated 05.02.2010, whereby and whereunder the first respondent confirmed the order of confiscation passed by the Deputy Commissioner of Prohibition and Excise, Ananthapur (second respondent herein).

Heard Sri N.Aswartha Narayana, learned counsel for the petitioner, and the learned Government Pleader for Prohibition and Excise for respondents.

The Scorpio Car bearing No.AP 13 M 666 was seized by police on 29.07.2009, and a case was registered vide Crime No.90/2009 on the file of Penukonda, Prohibition and Excise Police Station, under Section 34(a) of the A.P. Excise Act, 1968 (hereinafter referred to as 'the Act'). The second respondent herein passed an order vide Rc.No.361/209/B2 dated 10.11.2009, directing the petitioner to furnish fixed deposit receipt for a sum of Rs.4,65,000/- for having interim custody of the vehicle. Aggrieved by the same, the petitioner filed W.P.No.18475 of 2009 before this Court. This Court, by way of an order dated 02.09.2009 disposed of the said Writ Petition reducing the amount to Rs.2,50,000/-. Subsequently, in terms of the above orders of this Court, the vehicle was released for interim custody in favour of the petitioner vide proceedings, in Rc.No.361/09/B2 dated 22.09.2009, issued by the second respondent.

The second respondent issued a show cause notice, calling upon the petitioner to show cause as to why the subject vehicle should not be confiscated to the government under Section 46(a) of the Act. Admittedly, no explanation was submitted to the said show cause notice by the petitioner. Thereafter, in exercise of powers conferred, under Section 46 of the Act, the second respondent passed an order of confiscation of the subject vehicle. Subsequently, the petitioner herein preferred a statutory appeal before the first respondent, under Section 46(c) of the Act read with Section 13(c) of the A.P. Prohibition Act. The first respondent passed an order on 05.02.2010, vide CR.No.13857/2009/CPE/D4, dismissing the appeal filed by the petitioner, confirming the order of confiscation passed by the second respondent. Calling in question the validity and legal sustainability of the said order passed by the primary and appellate authorities under the provisions of the Act, the Writ Petition came to be filed.

This Court while ordering rule nisi on 11.03.2010 passed an interim order, in WPMP.No.7290 of 2010, suspending the impugned orders subject to the condition that the petitioner should continue bank guarantee furnished by him during the pendency of confiscation proceedings and keep the same valid till the disposal of the Writ Petition.

Relying on the averments made in the affidavit filed in support of the Writ Petition and justifying the action of the respondents, counter affidavit is filed by the respondents.

It is contended by the learned counsel for the petitioner that the orders passed by the first respondent dismissing the appeal filed by the petitioner and, thereby, confirming the orders of confiscation passed by the second respondent is highly

illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the Act. It is also the submission of the learned counsel that the Station House Officer did not adhere to the provisions of Section 46 of the Act. According to the learned counsel, the vehicle shall be produced without any reasonable delay before the second respondent. It is also the submission of the learned counsel that no mens rea can be attributed to the petitioner as the petitioner had no knowledge of the commission of offence by the driver. It is further contended that the first respondent (appellate authority) did not consider the other infirmities in the procedure pointed out in the grounds of appeal. It is also submitted that the first respondent, being a quasi-judicial authority, ought to have answered all points raised in the grounds of appeal raised by the petitioner herein.

On the contrary, it is vehemently contended by the learned Government Pleader for Excise that there is no illegality nor there exists any procedural infirmity in the impugned order. According to the learned Government Pleader, only after thoroughly and meticulously adhering to all the mandatory provisions of law, the respondents herein passed the impugned orders and, as such, the same are not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that knowledge of the owner of the vehicle is of no consequence, and the owner is vicariously liable for the acts of the driver. In support of his submissions and contentions, learned Government Pleader places reliance on the decision in the case of **Commissioner, Prohibition and Excise v. Sharana**

Goud^[1].

The information available before this Court manifestly discloses that, as against the orders of confiscation passed by the second respondent, vide proceedings in Rc.No.361/2009/B2 dated 10.11.2009, the petitioner herein filed a statutory appeal before the first respondent and raised the following eight grounds in the memorandum of appeal:

1. The order of the Deputy Commissioner is illegal, against the law, arbitrary, against the weight of the evidence and probabilities of the case.
2. The Deputy Commissioner ought to have seen that SHO has blatantly not followed the provisions of Section 46(1) of the A.P. Excise Act which lays things liable for confiscation shall be produced without unreasonable delay before the Deputy Commissioner.
3. The Deputy Commissioner ought to have seen that I.Os. not taken samples, affixed I.D clips which should contain signatures of I.O. panch witnesses and accused at the time of alleged seizure.
4. The Lower Court ought to have seen the credentials of the owner of the jeep/scorpio and he never involved in any case.
5. The Deputy Commissioner ought to have examined the witnesses/I.Os to arrive at conclusion. He ought not to have relied on the alleged records, would have verifying the facts and corroboration of statements.
6. The Deputy Commissioner ought to have seen the discrepancy with regard to date and hour of occurrence with police F.I.R. and Excise F.I.R. Police F.I.R. is on 29.07.2009 and Excise station FIR, the date and hour of occurrence is 31.07.2009.
7. The Deputy Commissioner ought to have seen that only the Excise personnel have drawn samples etc not by the detection police who not only registered the case and send the accused to remand. The police without sample, without property send the accused to Court.
8. The Deputy Commissioner ought to have seen that there are 9 accompanying police personnel along with A.P. Special Police party alleged to have participated in the seizure. The panchanama does not contain a single personnel. On this short ground itself would not have relied on police record.

A perusal of the order passed by the first respondent

(appellate authority) clearly shows that except the aspect of knowledge of owner, the appellate authority did not consider the other grounds urged in the grounds of appeal. The first respondent herein is a quasi judicial authority. It is a settled and well established proposition of law that orders of quasi judicial authorities should necessarily be supported by reasons. The impugned order did neither deal with the grounds raised in the grounds of appeal nor recorded any findings on the same. This mode of consideration by the first respondent (appellate authority), by any stretch of imagination, cannot be sustained. One of the grounds raised by the learned counsel for the petitioner is lack of knowledge of the owner of the vehicle and, as rightly pointed out by the learned Government Pleader, the said ground is now not available in view of the law laid down by the Apex Court in **Commissioner, Prohibition and Excise** (1 supra). But, however, on the other grounds raised by the petitioner, no findings were recorded by the first respondent (appellate authority). Therefore, this Court deems it appropriate to remand the matter to the first respondent for fresh consideration

For the aforesaid reason, the Writ Petition is allowed setting aside the order of the first respondent (appellate authority), in proceedings No.13857/2009/CPE/D4 dated 05.02.2010, and the appeal filed by the petitioner stands restored to file, and the same is remanded to the first respondent for fresh consideration, in accordance with law, after giving notice and opportunity of hearing to the petitioner. Till such exercise attains finality, the interim arrangement made by this Court, in WPMP.No.7290 of 2010 dated 11.03.2010, shall continue. Miscellaneous Petitions pending, if any, shall also

stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI,J

Date: 20.06.2016
usd

[\[1\]](#) (2007) 6 SCC 42