THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.3933 OF 2016

O R D E R

The petitioner is Sri Lakshmi Narasimha Wines, an A-4 wine shop, situated at Rajapet Village and Mandal, Nalgonda District, represented by its licensee, Adepu Ganesh, who appears as a party-in-person. Challenge in the writ petition is to the order dated 29.12.2015 of the Commissioner of Prohibition and Excise, State of Telangana, dismissing the appeal filed by the petitioner against the proceedings dated 02.03.2015 of the Prohibition and Excise Superintendent, Nalgonda, canceling the petitioner's A-4 license under Section 31(1)(b) of the Andhra Pradesh Excise Act, 1968.

Earlier, the petitioner's appeal against the proceedings dated 02.03.2015 was rejected under order dated 27.03.2015 of the Commissioner of Prohibition and Excise, State of Telangana. This order was subjected to challenge before this Court in W.P.No.11788 of 2015. By order dated 15.07.2015, this case was disposed of, along with a batch of cases, setting aside the said order dated 27.03.2015 and remanding the matter to the Commissioner of Prohibition and Excise, State of Telangana, for fresh consideration in accordance with law after giving notice and opportunity of being heard to the petitioner. The reason for such interference was that the Commissioner had, in his order, merely extracted the chronology of events and various provisions of law but did not undertake any objective consideration of the issues. However, the Commissioner again dismissed the appeal under order dated 31.08.2015, but the same was set aside by this Court in W.P.No.29894 of 2015, by order dated 25.11.2015. Therein, this Court found that the Commissioner had failed to abide by the directions in W.P.No.11788 of 2015 and he was directed to undertake a fresh exercise and complete the same expeditiously. It was on the basis of this direction, that the present order dated 29.12.2015 came to be passed.

Perusal of the proceedings dated 02.03.2015 of the Prohibition and Excise Superintendent, Nalgonda, reflects that a surprise inspection was conducted at Sai Wines in Yadagirigutta Village and Mandal on 23.01.2015 and one Meka Venkat Reddy was found conducting the sales at the counter of the said shop. The A-4 licence of the said shop stood in the name of one Gangadari Mahender and Meka Venkat Reddy was not even his authorized nowkarnama holder. The search of the premises of the said shop revealed 7 cartons of Officer's Choice Whisky, which were non-duty paid and spurious. Each carton contained 48 Nips and no transport permits were found in relation thereto. Upon interrogation, Meka Venkat Reddy revealed the complicity of various individuals in hatching a plan to earn money by purchasing 500 cartons of non-duty paid and spurious Officer's Choice Whisky from one A.Rajanikanth Reddy. The proceedings dated 02.03.2015 state to the effect that Meka Venkat Reddy had implicated Adepu Ganesh, the licensee of the petitioner shop, by saying that he had also purchased a hundred cartons. These proceedings further record that upon the confession made by Meka Venkat Reddy, the Excise Officials proceeded to Harihara Cottage, Mailarugudem Village, Yadagirigutta Mandal, where they found a Ford Fiesta Car loaded with 2 cartons of non-duty paid and spurious Officer's Choice Whisky. Upon enquiry with T.Laxma Reddy and Repaka Venkatesh, who were apprehended there, they confessed that the seized liquor was purchased from A.Rajanikanth Reddy, who had run away from the scene upon seeing the Excise Officials. Upon a search of the cottage, the Excise Officials found 75 cartons of non-duty paid and spurious Officer's Choice Whisky. The proceedings further record that upon the confessions of T.Laxma Reddy, Repaka Venkatesh and Meka Venkat Reddy, the Excise Officials carried out an inspection at Bhavani Wines, Raghunathapur Village, Rajapet Mandal. Adepu Ganesh, the licensee of the petitioner shop, was stated to have been at the said shop and upon a search, the Excise Officials found 23 cartons of non-duty paid Officer's Choice Whisky. Adepu Ganesh was stated to have confessed that he purchased 100 cartons of such non-duty paid and spurious Officer's

Choice Whisky, each containing 48 Nips, from Meka Venkat Reddy, Repaka Venkatesh and T.Laxma Reddy and sold six (6) such cartons to one Chindam Swamy and the remaining cartons to other consumers. On this basis, show-cause notice dated 07.02.2015 was issued to Adepu Ganesh proposing cancellation of his licence. Under proceedings dated 28.01.2015, his license was also subjected to suspension. Adepu Ganesh submitted his explanation under reply dated 11.02.2015, claiming that a false case had been hoisted against him. Thereupon, the Assistant Prohibition and Excise Superintendent, Nalgonda, was requested to conduct an enquiry and submit a report regarding the allegations leveled against the Excise Officials by Adepu Ganesh. Under report dated 26.02.2015, the Assistant Prohibition and Excise Superintendent, Nalgonda, stated that the case had been registered against Adepu Ganesh on the strength of the panchanama and the materials available in evidence and therefore, his attack against the Excise Officials was baseless and untrue. The proceedings dated 02.03.2015 concluded by stating that in view of the facts narrated, the licence dated 10.07.2014 of the petitioner shop was cancelled under Section 31(1)(b) of the Andhra Pradesh Excise Act, 1968 (for brevity, 'the Act of 1968'), with immediate effect.

Perusal of the order dated 29.12.2015 of the Commissioner of Prohibition and Excise, State of Telangana, dismissing the appeal filed against the proceedings dated 02.03.2015, reflects as under:

The factual aspects as to the inspections carried out on 23.01.2015 at Sai Wines, Yadagirigutta Village and Mandal, Harihara Cottage, Mailarugudem Village, Yadagirigutta Mandal, Sri Laxmi Narsimha Wines, Rajapet Village and Mandal, the petitioner herein, and Bhavani Wines, Raghunathapur Village, Rajapet Mandal, were set out along with the statements said to have been made by various accused persons, including Adepu Ganesh. Significantly, this order also reiterates that Meka Venkat Reddy implicated Adepu Ganesh even before he accompanied the Excise Officials to Harihara Cottage, Mailarugudem

Village, Yadagirigutta Mandal.

The order dated 29.12.2015 records that after the second remand, under order dated 25.11.2015 in W.P.No.29894 of 2015, Adepu Ganesh filed written arguments, wherein he pointed out that no non-duty paid liquor was seized in his shop, as was evident from the panchanama, and alleged that his signature had been obtained on the ground that he was present in the other shop with which he had no relation. He also pointed out that the licence of P.R.Wines, Ibrahimpatnam, was not subjected to any action though the nowkarnama holder of the said shop had confessed to supplying 250 cartons of non-duty paid liquor. Considering these aspects, the Commissioner relied upon the confession made by Meka Venkat Reddy and the fact that Adepu Ganesh was found on the premises of Bhavani Wines, Raghunathapur Village, Rajapet Mandal, wherein 23 cartons of non-duty paid and spurious liquor were found. The confession said to have been made by Adepu Ganesh to the effect that he had purchased 100 cartons of such non-duty paid and spurious liquor was also taken into consideration and the Commissioner opined that the confessions of Meka Venkat Reddy and Adepu Ganesh were sufficient to establish that Adepu Ganesh was involved in sale of non-duty paid and spurious liquor. Reference in this regard was made to his counter-part agreement in Form A-6 apart from various Sections, Rules and License conditions. Dealing with the specific contention of Adepu Ganesh that no spurious liquor had been found in his licensed shop, the Commissioner observed that the same was of no relevance as he was an active member of the gang which had procured and sold such liquor. Further, as he was physically present in the premises of Bhavani Wines, Raghunathapur Village, Rajapet Mandal, where 23 cartons of such liquor were seized, the Commissioner held him responsible.

As regards his contention that no action had been taken against P.R.Wines, Ibrahimpatnam, despite a similar confession having been extracted from the nowkarnama holder, the Commissioner opined that citing the said case would not absolve Adepu Ganesh of the offence committed by him. The Commissioner thereupon concluded that he had indulged in acquisition and sale of non-duty paid spurious liquor and therefore stood disqualified from holding a licence. The proceedings dated 02.03.2015 were accordingly upheld and the appeal was dismissed.

As Adepu Ganesh raised various issues in his written arguments filed before the Commissioner touching upon factual aspects, the Excise Authorities were directed to produce the record.

Perusal of the panchanamas available in the record reflects that on 23.01.2015 at about 2.45 PM, an inspection was conducted in the presence of two panchas at Sai Wines, Yadagirigutta. However, the statement of Meka Venkat Reddy recorded during this inspection, as set out in the panchanama, does not indicate any mention having been made of Adepu Ganesh at that point of time. The proceedings dated 02.03.2015 and the appellate order dated 29.12.2015, which state to this effect, are therefore factually incorrect. It appears that after this inspection, along with Meka Venkat Reddy and the same two panchas, the Excise Officials went to Harihara Cottage, Mailarugudem Village, Yadagirigutta Mandal, at about 4.30 PM on 23.01.2015. During the inspection and recording of statements at this cottage, Meka Venkat Reddy, T.Laxma Reddy and Repaka Venkatesh were stated to have informed the Excise Officials that out of the 250 cartons purchased by them, 100 cartons of non-duty paid spurious liquor were sold to Adepu Ganesh on three separate occasions. After completion of this inspection, the panchas along with Meka Venkat Reddy, T.Laxma Reddy, Repaka Venkatesh and the Excise Officials went to the premises of the petitioner shop, Sri Lakshmi Narasimha Wines, Rajapet Village and Mandal, Nalgonda District, at about 5.40 p.m. on 23.01.2015. The panchanama records that no irregularities were detected at the said shop and no non-duty paid spurious liquor was found there. The panchanama however indicates that the nowkarnama holder of Adepu Ganesh informed them that he was at Bhavani Wines, Raghunathapur Village. Thereupon, the inspecting team along with the accused and the panchas went to the premises of Bhavani Wines, Raghunathapur Village, at about 7.20 p.m. on

23.01.2015. The panchanama records that Adepu Ganesh was found sitting at the counter of the said shop conducting sales. The confession said to have been made by Adepu Ganesh is mentioned in this panchanama and is to the effect that upon the instructions of the license holder of Bhavani Wines, he purchased 100 cartons of non-duty paid spurious Officer's Choice Whisky from Meka Venkat Reddy and sold six cartons to one Chindam Swamy, the nowkarnama holder of Sri Laxmi Wines, Rajapet, and only 23 cartons remained.

The afore-stated panchanamas demonstrate that neither the Commissioner nor the Superintendent was faithful in recording the actual events emerging from the panchanamas. Meka Venkat Reddy did not implicate Adepu Ganesh during his examination at Sai Wines, Yadagirigutta Village and Mandal, and it was only after he accompanied the Excise Officials and the panchas to Harihara Cottage, Mailarugudem Village, that the name of Adepu Ganesh was mentioned for the first time. The Prohibition and Excise Superintendent, Nalgonda, did not even mention in the proceedings dated 02.03.2015 that the petitioner's shop was also subjected to inspection and that nothing untoward was found there. The Commissioner did refer to this aspect but did not indicate as to what the effect of such a clean inspection report would be. Further, in the confession allegedly made by Adepu Ganesh, which was treated as the clinching factor by the Commissioner and the Superintendent, Adepu Ganesh never said that he had purchased non-duty paid spurious liquor for the purpose of selling the same through his own licensed shop. According to this confession, as recorded in the panchanama, Adepu Ganesh informed the Excise Officials that acting upon the instructions of the licensee of Bhavani Wines, he purchased 100 cartons of non-duty paid spurious Officer's Choice Whisky and sold 6 cartons to Chindam Swamy, the nowkarnama holder of Sri Laxmi Wines and some more cartons to consumers, leaving 23 cartons in the premises of Bhavani Wines. Even if this confession is to be taken at face value, it did not implicate the petitioner shop. Adepu Ganesh denied making such a confession and this Court finds no material corroborating the said confession except for the so-called statement made by Meka Venkat Reddy and the other accused at Harihara Cottage, which itself assumes a suspicious character as the initial statement of Meka Venkat Reddy at Sai Wines did not even indicate any participation by Adepu Ganesh.

According to the Excise authorities, Adepu Ganesh was guilty of violating Section 36(1)(b) & (c) of the Act of 1968 and Rules 34 and 41 of the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for brevity, 'the Rules of 2012), apart from License Condition Nos.5 and 10 (Form A4). Section 36 of the Act of 1968 deals with penalties for misconduct by licensees and the relevant sub-sections read as under:

> '**36. Penalty for misconduct of licensees etc.,:-** (1) Whoever being a holder of a licence or permit granted or issued under this Act or being in the employ of such holder and acting on his behalf:-
>
> (a) ....
>
> (b) willfully does or omits to do any thing in breach of any of the conditions of his licence or permit not otherwise provided in this Act; or
>
> (c) willfully contravenes any rule made under this Act; or
>
> ....
>
> shall, on conviction, be punished—
>
> (i) in the case of an offence falling under clause (a), clause (b), or clause (c), with imprisonment for a term which shall not be less than six months but which shall not exceed two years and with fine which may extend to one thousand rupees;
>
> (ii) in any other case, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.'

Section 31 of the Act of 1968 deals with the power to cancel or suspend a licence. The relevant sub-section thereof reads as under:

> '**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) ………

(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.'

Rules 34 and 41 of the Rules of 2012 read as under:

'**34. Licensee not to stock unauthorized Indian Made Foreign Liquor and Foreign Liquor:-** The Licensee shall not stock or sell in the licensed premises IMFL and FL of any kind which he is not authorized to buy, stock or sell under the provisions of Act or Rules, Regulations or Orders made thereunder.'

'**41. Sale of only duty paid Indian Made Foreign Liquor and Foreign Liquor:-**

(1) The Licensee shall sell only duty paid IMFL and FL.

(2) The Licensee or his Nowkarnama holder appointed under Rule-44 shall purchase IMFL and FL from the allotted depot of the APBCL only on such terms as may be prescribed. However, the Commissioner of Prohibition & Excise may permit the Licensee to purchase the requirement of IMFL and FL from any other depot of the APBCL.'

Condition No.5 of the Licence Conditions (Form A4) reads as under:

'All Indian Made Foreign Liquor and Foreign Liquor sold under this licence shall be duty paid and obtained from the IML Depot of the Telangana State Beverages Corporation Limited as allotted by the Licensing Authority.'

Condition No.10 thereof reads as under:

'The Licensee shall not act in any manner prejudicial to the interests of the revenues of the Government.'

Significantly, it is nobody's case that Adepu Ganesh was found stocking and selling non-duty paid and spurious liquor in the licensed premises of his A4 shop, Sri Lakshmi Narasimha Wines at Rajapet Village and Mandal, Nalgonda District. However, the provisions which are sought to be pressed into service by the Excise authorities speak of acts by the licensee or by his employee in the context of his own operations..

That being so, the finding of the Prohibition and Excise Superintendent, Nalgonda, that Adepu Ganesh was involved in the sale of non-duty paid spurious liquor which was injurious to public health, apart from causing huge loss of revenue to the Government by violating the cited rules and conditions, does not stand to reason as all that Adepu Ganesh could be held guilty of was his role, if any, in the irregularities committed by another licensee, owing to his presence at Bhavani Wines. No such imputations could be made against him in the context of his own licence or licensed premises, where nothing whatsoever was found. If he was liable as an accessory to the offence committed by the licensee of Bhavani Wines, he could be proceeded against only to that extent. No violation of the cited Sections, Rules or Licence Conditions could be held established against Adepu Ganesh in the context of his own licence, whereby the licensing authority could have resorted to cancellation thereof.

The Order dated 29.12.2015, in appeal, by the Commissioner of Prohibition and Excise, State of Telangana, blindly affirmed the applicability of the aforestated Sections, Rules or Licence Conditions as justification for cancellation of the licence of Adepu Ganesh. There was no application of mind as to whether the alleged violations would stand established in the light of the indisputable fact that no irregularity was detected at the licensed premises of Adepu Ganesh - Sri Lakshmi Narasimha Wines, Rajapet Village and Mandal, Nalgonda District.

That apart, the only basis for implicating Adepu Ganesh in the entire episode, apart from his presence at the counter in Bhavani Wines, is the so called confession made by him to the effect that he had purchased 100 cartons of such spurious liquor upon the instructions of the licensee of Bhavani Wines and sold six such cartons to Chindam Swamy and some to other customers, leaving 23 cartons in the premises of Bhavani Wines. The changing stance of Meka Venkat Reddy, who did not even name Adepu Ganesh in the first panchanama at Sai Wines, is a significant fact which dilutes his confession and consequently, the case against Adepu Ganesh. I n ***V.P. THIMMAIAH V/s. THE COMMISSIONER OF PROHIBITION AND EXCISE, GOVERNMENT OF ANDHRA PRADESH***[1], this Court held that to make out an excise offence justifying cancellation of a licence, the confessional statement of a co-accused cannot be the sole basis thereof. Except for the extra-judicial confessions of Meka Venkat Reddy and Adepu Ganesh, there is no material whatsoever to corroborate the allegation that Adepu Ganesh violated any of the Sections, Rules or Licence Conditions cited by the Excise authorities in his own operations, warranting cancellation of his licence. In the absence of such corroboration, this Court is of the opinion that mere involvement, if any, of Adepu Ganesh in the illegalities committed by the licensee of Bhavani Wines would not be sufficient to infer any violations by him in the context of his own licence and licensed premises, whereby the Excise authorities could have resorted to cancellation of his licence. The cancellation of his licence by the licensing authority which was thereafter upheld in appeal cannot therefore be sustained in the light of the aforestated analysis.

The writ petition is accordingly allowed, setting aside the proceedings dated 02.03.2015 of the Prohibition and Excise Superintendent, Nalgonda, as confirmed by the Commissioner of Prohibition and Excise, State of Telangana, under his order dated 29.12.2015. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

12th APRIL, 2016

PGS/SVV

---

[1] 2001(6) ALD 201