

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.33153 OF 2017

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise (A.P.) appearing for the respondents.

2. An order of suspension of A-4 licence of the petitioner passed by the Prohibition and Excise Superintendent, Amalapuram, East Godavari District/respondent No.4 herein *vide* proceedings in Rc.No.A2/372/2017, dated 23.09.2017, is under challenge in the present writ petition.

3. The petitioner herein is the licensee of A-4 shop at Inavillilanka Village, Inavilli Mandal, East Godavari District. Pursuant to registration of Crime No.105/2017 on the file of the Prohibition and Excise Station, Amalapuram under Section 34(a) of the A.P. Excise Act, 1968 on 08.09.2017 and basing on a confession statement made by the accused therein, respondent No.4 herein issued a show cause notice *vide* Rc.No.A2/372/2017, dated 08.09.2017, calling upon the petitioner to show cause as to why his licence should not be cancelled/suspended. In response to the said show cause notice, the petitioner herein submitted his explanation and the same was acknowledged by the respondents on 17.09.2017. Subsequently, respondent No.4, *vide* the order impugned in the present writ petition in Pro.Rc.No.A2/372/2017, dated 23.09.2017, suspended the A-4 licence of the petitioner herein pending enquiry in exercise of the powers conferred under

Section 31 of the A.P. Excise Act, 1968. The validity of the order of suspension is under challenge in the present writ petition.

4. According to the learned counsel for the petitioner, the impugned order passed by respondent No.4 is highly illegal, arbitrary and is opposed to the provisions of the A.P. Excise Act, 1968 and the Rules framed there under. It is also the submission of the learned counsel that the confession statement of the accused in the above mentioned crime cannot be the sole criterion for resorting to the impugned action against the petitioner. It is the further submission of the learned counsel that having called for the explanation, respondent No.4 grossly erred in not considering the explanation submitted by the petitioner herein from proper perspective.

5. On the contrary, it is submitted by the learned Government Pleader that there is absolutely no illegality in the impugned action and the impugned order is strictly in accordance with law and the Rules framed there under. It is the further submission of the learned Government Pleader that since the respondent authorities strictly adhered to the provisions of the A.P. Excise Act and the Rules and the principles of natural justice, the impugned order is not amenable under Article 226 of the Constitution of India.

6. There is absolutely no dispute with regard to the reality that in response to the show cause notice, dated 08.09.2017, the petitioner herein submitted his explanation on 17.09.2017 wherein the petitioner herein categorically denied the allegations made in the show cause notice and also brought to the notice of the

respondents various aspects, which according to the petitioner prove his innocence. A perusal of the order under challenge discloses that respondent No.4 did not properly consider the contents of the said explanation offered by the petitioner herein and did not refer to the various aspects pointed out by the petitioner herein. In the considered opinion of this Court, the impugned order can neither be sustained nor approved and hence, the same is liable to be set aside. In the considered opinion of this Court, the matter requires reconsideration by respondent No.4 in the light of the explanation offered by the petitioner herein.

7. For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension passed by the Prohibition and Excise Superintendent, Amalapuram, East Godavari District/respondent No.4 herein *vide* proceedings in Rc.No.A2/372/2017, dated 23.09.2017, and the matter is remanded to respondent No.4 for fresh consideration of the issue after taking into consideration the contents of the explanation offered by the petitioner herein and after giving an opportunity of hearing to the petitioner herein. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 04.10.2017
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



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AMD