

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.32373 of 2017

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Prohibition & Excise.

The petitioner herein is the licensee of A4 shop at Kaja village, Movva mandal, Krishna District. The Prohibition & Excise Superintendent, Machilipatnam-fourth respondent herein issued a show cause notice in Rc.No.306/2017/A2 dated 09.08.2017 calling upon the petitioner to show cause as to why the licence of the petitioner should not be suspended on the ground of alleged violation of Rule 35 of the Andhra Pradesh Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012 (for brevity, 'the Rules') and condition Nos.10 and 12 of A4 licence conditions. Responding to the said show cause notice, the petitioner herein submitted an explanation. The Prohibition & Excise Superintendent-fourth respondent herein passed an order, vide proceedings in Rc.No.306/2017/A2, signed on 13.09.2017, suspending the operation of A4 licence of the petitioner herein pending enquiry into the case until further orders. The present Writ Petition challenges the validity and legal sustainability of the said order of suspension.

According to the learned counsel for the petitioner the impugned action of suspension is highly illegal, arbitrary and violative of Articles 14 and 19 (1) (g) of the Constitution of

India and not in consonance with the A.P.Excise Act, 1968 and the Rules framed thereunder. It is the further submission of the learned counsel that to the facts and circumstances of the case on hand, Rule 35 of the Rules would not apply. It is further submitted that the confessional statement of the accused cannot be the basis for initiating action against the petitioner herein.

On the other hand, it is submitted by the learned Government Pleader that, since the Prohibition & Excise Superintendent-fourth respondent herein passed the impugned order only after issuing show cause notice and after giving opportunity to the petitioner, the same is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned action and, as such, the petitioner herein is not entitled to any relief from this Court under Article 226 of the Constitution of India. There is absolutely no dispute with regard to the fact that the petitioner herein, in response to the show cause notice dated 09.08.2017, submitted an explanation categorically denying the allegations made in the show cause notice. A perusal of the order under challenge discloses that, except stating that the explanation submitted by the petitioner was not convincing, the Prohibition & Excise Superintendent, Machilipatnam-fourth respondent herein did not consider the

contents of the explanation offered by the petitioner herein. In the considered opinion of this Court the said action on the part of the Prohibition & Excise Superintendent-fourth respondent cannot be sustained in the eye of law. Having called for explanation, it is incumbent on the part of the fourth respondent to consider the explanation also for arriving at a just and reasonable conclusion. In the instant case the same is totally absent. Therefore, this Court is of the considered opinion that the matter requires re-consideration by the Prohibition & Excise Superintendent-fourth respondent herein, in the light of the explanation offered by the petitioner herein.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension Rc.No.306/2017/A2, signed on 13.09.2017 and the matter is remanded to the Prohibition & Excise Superintendent, Machilipatnam-fourth respondent for passing orders, strictly in accordance with law, after considering the explanation offered by the petitioner and after affording opportunity of hearing to the petitioner.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

21st September, 2017
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