

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.32360 OF 2017

ORDER:

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

The petitioner herein is the licensee of A4 shop situated at Pedavutapalli Village, Ungutur Mandal, Krishna District. Followed by registration of Crime No.162/2017 on the file of the Prohibition and Excise Station, Vijayawada under Section 34(a) of the A.P. Excise Act, 1968 (for brevity, 'the Act') against one Smt.Kondeti Kanaka Durga and basing on the confession statement given by the said individual, the Prohibition and Excise Superintendent, Machilipatnam, Krishna District, who is respondent No.4 herein, issued a show cause notice, dated 12.09.2017, calling upon the petitioner to show cause as to why the licence of the petitioner herein should not be suspended. In response to the said show cause notice, the petitioner herein submitted his explanation, denying the allegations made in the show cause notice. Respondent No.4, vide the order impugned in the present Writ Petition in Rc.No.133/2017/B2, dated 18.09.2017, suspended the A-4 licence of the petitioner herein pending enquiry in exercise of the powers conferred under Section 31(1)(b) of the Act.

According to the learned counsel for the petitioner, the impugned order passed by respondent No.4 is highly illegal, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. It is also the submission of the learned counsel that confession statement of the accused in the above

mentioned crime cannot be a ground to initiate action against the petitioner. In support of his submissions and contentions, learned counsel for the petitioner places reliance on the judgment of this Court in **V.P. Thimmaiah vs. Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad**¹.

On the contrary, it is submitted by the learned Government Pleader that the Prohibition and Excise Superintendent passed the order under challenge strictly in accordance with law and after giving opportunity to submit his explanation to the petitioner herein, as such, the order impugned cannot be faulted.

A perusal of the order under challenge shows, in clear terms, that except indicating the explanation offered by the petitioner herein as one of the references, respondent No.4 did not consider the contents of the said explanation nor assigned any reasons for disbelieving the explanation offered by the petitioner herein nor respondent No.4 considered the validity of the reasons in the explanation. In the considered opinion of this Court, the impugned order is liable to be set aside on these grounds.

It is also pertinent to note in this context that in the case of **V.P. Thimmaiah** (1 cited supra), at paragraph No.14, this Court categorically held that the confession statement of an accused cannot be a ground for initiating action under Section 31 of the Act. Therefore, in the considered opinion of

¹ 2001 (6) ALD 201

this Court, the matter requires reconsideration by respondent No.4 in the light of the above aspects.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension passed by the Prohibition and Excise Superintendent, Machilipatnam, Krishna District/respondent No.4 vide proceedings in Rc.No.133/2017/B2, dated 18.09.2017, and the matter is remanded to respondent No.4 for fresh consideration in accordance with law after giving opportunity of hearing to the petitioner herein. It is open for the petitioner herein to place before respondent No.4 the above referred judgment of this Court. There shall be no order as to costs.

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

09th October, 2017.
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A.V.SESHA SAI,J

