

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1415 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in WP.MP.No.36615 of 2017 in WP.No.29427 of 2017 dated 31.08.2017 whereby interim stay of all further proceedings, including recovery of Rs.8,36,757.11 ps as passed by order dated 18.08.2017 of the Managing Director of the Telangana State Beverages Corporation Limited was granted. The Learned Single Judge granted interim stay as prayed for, subject to the condition that the petitioner paid half the amount, covered by the impugned proceedings, within a period of three weeks from the date of receipt of a copy of the order. Aggrieved thereby, the present writ appeal is filed.

Sri N.Jayasurya, learned counsel for the appellant-writ petitioner, would submit that the learned Single Judge had erred in directing the petitioner to deposit 50% of the disputed loss as estimated by the respondents; it is not open to the respondents themselves to adjudicate upon the quantum of the loss; in any event, the earlier order, imposing a penalty in excess of Rs.5.00 crores, has been stayed by this Court; the petitioner was also blacklisted earlier, and the order black listing them was set aside by this Court directing the authorities to consider the matter afresh; subsequent to filing of the present Writ Petition the authorities have again blacklisted the appellant-writ petitioner; in

such circumstances, the learned Single Judge, instead of directing deposit of 50% of the amount covered by the impugned proceedings, should have directed them to furnish bank guarantee for a like sum; and a sum in excess of Rs.8.00 crores is still due and payable to them by the respondents.

Learned Government Pleader for Excise would take us through the proceedings dated 18.08.2017 to submit that the loss suffered by the Corporation was sought to be recovered, from the petitioner herein, by way of the impugned order; 90 ml liquor bottles were short-filled to an extent of 30 ml to 80 ml; the strength was also less than what is prescribed for liquor; the liquor supplied to the Corporation was also made out of the rectified spirit, instead of ENA based spirit; and the liquor so supplied is unfit for potable purposes. Learned Government Pleader would submit that, as allegations against the appellant-writ petitioner are grave and serious in nature, the learned Single Judge was in fact indulgent in directing interim stay on condition of deposit of only 50% of the amount covered by the impugned proceedings.

In an appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. Whether the petitioner should have been asked to deposit 50% of the estimated loss, or whether they should have been permitted to furnish a bank guarantee, are all matters for the learned Single Judge, in his discretion, to decide. Exercise of discretion by the Learned Single Judge, in directing the appellant to deposit only 50% of the estimated loss which they were directed to pay in terms of the impugned order, would not, ordinarily, necessitate interference in proceedings under Clause 15 of the

Letters Patent. The rival submissions, on merits, are again matters which the learned Single Judge would decide when the Writ Petition is finally heard. The interlocutory order passed by the learned Single Judge adequately protects the interests of both the appellant and the respondents herein in as much as only 50% of the amount claimed by the respondents has been directed to be paid by the appellant. The appellant's claim that a sum in excess of Rs.8.00 crores is due and payable to them by the respondents is again a matter for examination after the respondents file their counter affidavit. We find no justification in either examining the appellant-writ petitioner's claim on merits, or to interfere with the discretion exercised by the learned Single Judge, in proceedings under Clause 15 of the Letters Patent.

The Writ Appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

21st September 2017
RRB