

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

WRIT PETITION No.29515 of 2017

ORDER:

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

The petitioner is a licensee of A4 shop, being run in the name and style of M/s. Jabili Wines at Gudlavalleru Village and Mandal, Krishna District. The Prohibition and Excise Superintendent, Machilipatnam, 4th respondent herein, followed by registration of a crime against Perisetti Parvathi, W/o. Konda under Section 34(a) of the A.P. Excise Act, 1968 (for short, "the Act"), issued a show cause notice bearing Rc.No.274/2017/A1, dated 26.08.2017, calling upon the petitioner to show cause as to why action should not be taken for the alleged violation of Rule 35 of the A.P. Excise (grant of license of selling by shop and conditions of license) Rules, 2012 (for short, "the Rules") and licence condition Nos.10 and 12 of the A4 licence. In response to the said show cause notice, the petitioner submitted explanation on 29.08.2017. The Prohibition and Excise Superintendent by way of an order vide Rc.No.274/2017/A1, dated 29.08.2017, suspended the operation of A4 shop of the petitioner under Section 31(1)(b) of the Act. This writ petition challenges the validity and legal sustainability of the said order passed by the 4th respondent.

According to the learned counsel for the petitioner, the order passed by the 4th respondent, which is impugned in the present writ petition, is highly illegal, arbitrary, unreasonable and not in conformity with the Act and the Rules framed thereunder. It is further submitted that the confessional statement of the accused in Crime No.135 of 2017 cannot be the basis for initiating action against the petitioner. It is also submitted that Rule 35 of the Rules is not relevant to the facts of the present case and the action in terms of the same is impermissible. It is argued by the learned counsel that the 4th respondent grossly erred in not recording the reasons for discarding the explanation filed by the petitioner.

On the other hand, it is submitted by the learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the writ petition is not maintainable and the petitioner is not entitled to any relief under Article 226 of the Constitution of India. It is further submitted that strictly complying with the principles of natural justice, the 4th respondent passed the order under challenge.

In the above background, now the issue that emerges for consideration of this Court is:-

Whether the questioned order is sustainable or not and whether the petitioner is entitled for any relief under Article 226 of the Constitution of India?

Admittedly, in response to the show cause notice issued by the 4th respondent, the petitioner submitted explanation on 29.08.2017, denying the allegations made against him. He also stated in the explanation that he did not sell the liquor bottles in excess of the permissible quantity to the accused and in the absence of any evidence to show that either himself or the Noukarnama holder sold the liquor bottles, the very action initiated by the respondents is impermissible. The petitioner also stated in the said explanation that the statement of the accused is inadmissible in evidence and he did not violate any conditions of licence.

A perusal of the order under challenge clearly reveals that the 4th respondent did not take into consideration any one of the points raised in the explanation and failed to consider the validity of the same nor recorded any reasons for discarding the same and simply stated in the impugned order that explanation of the petitioner was not convincing. In the considered opinion of this Court, the said action on the part of the 4th respondent in passing the impugned order, without considering the explanation offered by the petitioner and the points raised therein, can neither be countenanced nor approved by this Court and the matter requires re-consideration by the 4th respondent, after taking into consideration the points raised in the explanation offered by the petitioner.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 4th respondent vide Rc.No.274/2017/A1, dated 29.08.2017, and the matter is remanded to the 4th respondent for fresh consideration in accordance with law, after considering the contents of the explanation offered by the petitioner and after giving opportunity of hearing to the petitioner. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

A.V.SESHA SAI, J

Date: 01.09.2017
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