

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

WRIT PETITION No.30383 of 2017

ORDER:

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

2. An order of suspension of A-4 licence of the petitioner herein passed by the Prohibition and Excise Superintendent, Machilipatnam, Krishna District, fourth respondent herein, vide proceedings Rc.No.163/2017/B1, dated 04.09.2017, is under challenge in the present writ petition.

3. The fourth respondent, followed by registration of a crime under the provisions of the A.P. Excise Act, 1968 (for short, the Act), issued a show cause notice bearing Rc.No.163/2017/B1, dated 29.08.2017, calling upon the petitioner to show cause as to why her licence should not be suspended for alleged violation of Rule 35 of the A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short, the Rules) and Condition Nos.10 and 12 of A-4 licence. In response to the said show cause notice, the petitioner submitted an explanation dated Nil, stating that the provisions of law indicated in the show cause notice would not apply and denied all the allegations levelled in the show cause notice. Thereafter, the fourth respondent, vide the impugned order dated 04.09.2017, suspended A-4 licence of the petitioner in exercise of the powers conferred on him under Section 31(1)(b) of the Act.

4. According to the learned counsel for the petitioner, the impugned order of suspension is highly illegal, arbitrary,

unreasonable and violative of the provisions of the Act and the Rules. It is the further submission of the learned counsel that very initiation of the proceedings in view of the clear language of the provisions of Rule 35 and the Condition Nos.10 and 12 of A-4 licence cannot be sustained. It is further submitted that though the petitioner had submitted an elaboration explanation, the fourth respondent did not consider the same in the proper perspective which resulted in passing of the order under challenge.

5. On the contrary, it is submitted by the learned Government Pleader that there is no illegality nor there exists any infirmity in the impugned action and, in the absence of the same, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India. He further submitted that there cannot be any compliant of violation of principles of natural justice as the fourth respondent afforded the opportunity of hearing also to the petitioner.

6. There is absolutely no dispute with regard to the fact that in response to the show cause notice issued by the fourth respondent, the petitioner submitted her explanation, categorically stating about inapplicability of the provisions of Rule 35 of the Rules and the conditions of the licence mentioned in the show cause notice. A perusal of the order under challenge discloses that except stating that the statement of the licensee was examined with respect to the case record and the explanation was not convincing, the fourth respondent did not undertake any exercise to consider the contents of the explanation, wherein the petitioner stated that the provisions of law mentioned in the show cause notice would be of no application. The fourth respondent, in the impugned order, did not

record any reasons for discarding the said stand taken by the petitioner in the explanation. In the considered opinion of this Court, the mode adopted by the fourth respondent in considering the explanation offered by the petitioner, by any stretch of imagination, cannot be sustained and, in the definite opinion of this Court, the matter requires re-consideration by the fourth respondent.

7. For the aforesaid reasons, the writ petition is allowed, setting aside the order of the fourth respondent dated 04.09.2017 and the matter is remanded to the fourth respondent for consideration of the issue afresh by considering the contents of the explanation offered by the petitioner, after affording the opportunity of hearing to the petitioner. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 08.09.2017

Note: Issue CC by 13.09.2017.
B/o. TJMR

A.V. SESA SAI, J

