

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

WRIT PETITION No.31200 of 2017

ORDER:

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

On 06.07.2017, the Prohibition and Excise Superintendent, Guntur, 4th respondent herein, granted 2B licence in favour of the petitioner. Pursuant to registration of Crime No.90 of 2017 on the file of Prohibition and Excise Inspector, Guntur, the Deputy Commissioner, Prohibition and Excise, 3rd respondent herein, issued a show cause notice on 16.08.2017, asking the petitioner to show cause as to why his 2B bar licence should not be cancelled for the alleged violation of licence condition No.1 and Rules 4, 25 and 30 of the A.P. (Grant of Selling of Bar and Conditions of Licence) Rules, 2017. The petitioner claims to have submitted a representation to the 2nd respondent, Commissioner of Prohibition and Excise, Vijayawada, with a request to cancel the order of the Prohibition and Excise Superintendent, dated 16.08.2017, and along with the said representation, he enclosed a challan for Rs.1 lakh towards compounding fee and requested to drop further action.

Earlier, questioning the very action of initiation of proceedings by issuing a show cause notice, the petitioner filed W.P.No.28659 of 2017 before this Court and this Court

on 24.08.2017, disposed of the said writ petition, leaving it open for the petitioner to submit explanation to the show cause notice, dated 16.08.2017, within a period of one week with a further direction to the respondents to consider the same and to pass appropriate orders in accordance with law, within a period of two weeks thereafter, after giving notice and opportunity of hearing to the petitioner.

Pursuant to the above said order, the petitioner on 24.08.2017 submitted a representation to the respondent authorities reiterating his request for compounding the offences on the ground that without his knowledge his supplier has committed the wrong. Now, by virtue of the impugned notice, once again the petitioner has been called upon to show cause as to why his licence should not be cancelled.

At the hearing, it is pointed out that as per the instructions of the Commissioner of Prohibition and Excise, A.P., Hyderabad, bearing Cr.No.3600/2010/CPE/G2, dated 10.03.2011, the competent authority for the purpose of compounding the offences of the present nature is the Commissioner of Prohibition and Excise.

A perusal of the said instructions shows that the competent authority is the Commissioner of Prohibition and Excise, but not the Deputy Commissioner of Prohibition and Excise. Therefore, this Court is of the opinion that the matter should have been referred to the Commissioner of Prohibition

and Excise instead of proceeding further with the issue by the Deputy Commissioner of Prohibition and Excise. In fact, the Deputy Commissioner of Prohibition and Excise also referred to the instructions of the Commissioner of Prohibition and Excise, dated 10.03.2011. It is evident from the reading of the above instructions, dated 10.03.2011, that in cases in which the Commissioner of Prohibition and Excise is competent to compound, proposals have to be submitted to the office of the Commissioner of Prohibition and Excise for disposal.

In view of the above, this writ petition is liable to be allowed and is accordingly allowed, setting aside the show cause notice, dated 05.09.2017, with a direction to the Deputy Commissioner of Prohibition and Excise, Guntur, 3rd respondent, to refer the case to the Commissioner of Prohibition and Excise in terms of circular, dated 10.03.2011, for appropriate action. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

A.V.SESHA SAI, J

Date: 14.09.2017
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