

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

W.P.No. 3135 of 2000

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Neither is Sri B. Sai Ram Goud, learned counsel for the petitioner present, nor is there any representation on his behalf. This writ petition is filed seeking a mandamus to declare deletion of the proviso to Section 45 (3) of the Andhra Pradesh Excise Act, 1968 (hereinafter referred to as "the Act") by Section 10 of the A.P. (amendment) Act 4 of 1994 dated 15.1.1994 and substitution of Section 46 (2) by Section 6 of the A.P. (amendment) Act 20 of 1994 dated 20.5.1994 as illegal, unconstitutional, and in violation of Articles 14 and 21 of the Constitution of India; and for a consequential direction to declare the impugned proceedings of the respondents as arbitrary and illegal.

The proceedings under challenge in the writ petition is the order of the Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad (2nd respondent) dated 11.2.2000, confirming the order passed by the Deputy Commissioner of Prohibition and Excise, Mahabubnagar Division (3rd respondent) in his proceedings dated 24.7.1999 confiscating the tractor and trailer bearing No. AP 22 T 5976 along with (32) toddy crates. The ground on which the validity, of deletion of the proviso to Section 45 (3) of

the Act, is subjected to challenge is that it is violative of Articles 14 and 21 of the Constitution of India.

Facts, to the limited extent necessary, are that on 2.5.1999 at 10.30 A.M. the Prohibition and Excise officers conducted a raid at Narsingapur Cherla Thanda, and detected one Tractor with trailer bearing No. AP 22 T 15976 loaded with (20) wooden crates of toddy parked near an illegal toddy depot. The toddy was tested with the prescribed chemicals, and was found to have been adulterated with Chloral Hydrate. During the enquiry, the driver of the tractor stated that he was transporting toddy to Sadanandam Goud at Bhoothpur village; and that he was working with Jagan Goud who was running the toddy depot illegally. The tractor, along with trailer, was seized under the cover of a panchanama; and the driver was arrested. A case in PCR No. 483/98-99 dated 22.4.1999 was registered under Sections 34 (a) and 37 (a) of the Act against the driver and owner of the vehicle and others. The samples, sent for chemical examination, confirmed that the toddy was adulterated with Chloral Hydrate. The petitioner furnished a bank guarantee for Rs.40,000/- seeking release of the vehicle to his custody and, accordingly, the vehicle was released. Subsequently an order of confiscation was passed.

The petitioner contended that a copy of the show-cause notice was not served on him though he was not on the spot; and that the order was passed in a routine manner.

In the order, impugned in the writ petition, the Commissioner of Prohibition and Excise, after going through the records, noted that a notice was issued by the Deputy Commissioner of Prohibition and Excise on 7.6.1999 calling upon the petitioner to show cause within 15 days; the show-cause notice was served on the petitioner on 29.6.1999 by the Station House Officer, Jadcherla; and both the accused and the petitioner had failed to submit their explanation within the stipulated time.

When the writ petition was admitted on 13.3.2000, a Division Bench of this Court directed the respondents to release the vehicle by continuing the earlier bank guarantee of State Bank of Hyderabad, Hanwada Branch dated 5.7.1999 for Rs.40,000/-; and the petitioner was directed not to alienate the vehicle.

Learned Government Pleader for Prohibition and Excise would point out that the scope of Section 45 (3) of the Act fell for consideration in *Commissioner, Prohibition and Excise, A.P. and another Vs. Sharana Gouda*¹ and the Supreme Court, after taking note of the omission of the proviso to Section 45 (3) of the Act by A.P. Act 4/94, observed that when the proviso was part of the statute, it provided that, if anything specified in clause (3) of Section 45 was not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed; at that stage, there was a

¹ (2007) 6 Supreme Court Cases 42

prohibition on confiscation, if the owner of the property in question had no reason to believe that such offence was being or was likely to be committed; this was the position if the offender was not the owner of the property; the position changed after omission of the proviso; consequently, after deletion of the proviso, any vehicle, in which anything liable for confiscation under clauses (1) or (2) was found, was also liable for confiscation.

Section 45 (1) of the Act deals with any intoxicant materials, and Section 45 (2) with any intoxicant. In view of the deletion of the proviso, the authorities are empowered under Section 45(3) to confiscate the subject vehicle irrespective of whether or not the owner of the vehicle had reason to believe that the vehicle was being used for the commission of the offence.

On the question, whether the omission of the proviso to Section 45 (3) of the Act is constitutionally valid, it must be borne in mind that there is a presumption regarding the constitutionality of legislation – plenary or subordinate, and the burden lies heavily on the petitioner to establish that deletion of the proviso to Section 45 (3) of the Act is ultra vires Articles 14 and 21 of the Constitution of India. Except for a vague and bald averment that deletion of the proviso violates Articles 14 and 21 of the Constitution of India, the petitioner has not elaborated, in the affidavit filed in support of the writ petition, as to how and why deletion of the proviso violates Articles 14 or 21 of the Constitution of India. In the absence of any

valid ground being urged in support of the plea that deletion of the proviso to Section 45(3) of the Act violates Articles 14 and 21 of the Constitution of India, we see no reason to hold the omission ultra vires Part-III of the Constitution, or to declare that the proviso continues to remain a part of the statute. Needless to state that it is open to the respondents to encash the bank guarantee furnished by the petitioner, and also take action against them in accordance with law.

Subject to the above observations, the writ petition fails and is accordingly dismissed. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.



(RAMESH RANGANATHAN, ACJ)

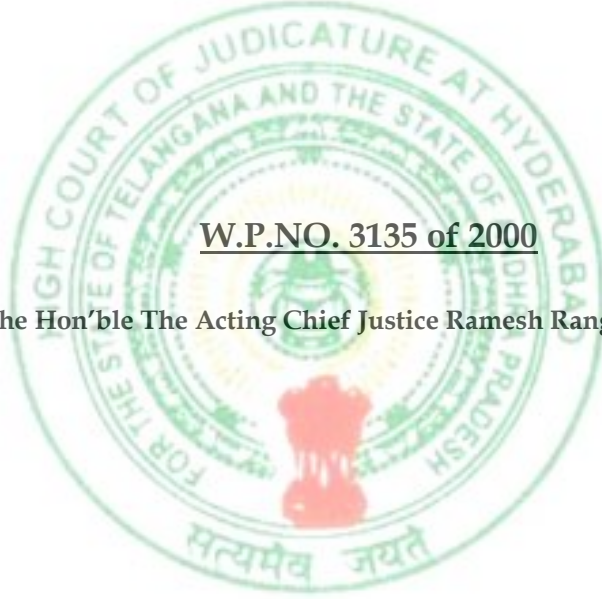
(J.UMA DEVI, J)

17.08.2017
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Dt. 17.8.2017