

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.V.M.P.No.1423 of 2017

in

WP.No.5344 of 2017

and

C.C.No.536 of 2017

COMMON ORDER :

1. The parties will be referred to as per their array in the Writ Petition.

2. Petitioner is a Trader in kirana items including jaggery. He contends that vide Memo No.47802/Ex.III.1/2006-13, dt.20.12.2011, the State Government had clarified that black jaggery is to be viewed as agricultural produce only and inclusion of black jaggery in the list of 'materials' under Section 2 of A.P. Excise Act, 1968 used in the manufacture of I.D. liquor may adversely affect the interest of genuine ryots and the traders like him and so the Government decided not to impose restriction on any agricultural produce particularly black jaggery and rejected the proposal to include rotten jaggery under the definition of 'material'.

3. Petitioner contends that earlier when there was harassment by the respondents, he filed W.P.No.20234 of 1999 and on 29.12.1999 this Court disposed of the Writ

Petition directing the respondents not to interfere with his business, if he is not violating any provisions of law in force.

4. Petitioner contended that in spite of the said order, the respondents are interfering and threatening the petitioner to close down his business and had foisted two cases against his shop.

5. He therefore filed W.P.MP.No.6491 of 2017 to direct the respondents not to take any coercive steps against him without following due process of law, pending disposal of the W.P.No.5344 of 2017.

6. On 15.02.2017, this Court granted interim direction as sought by the petitioner in W.P.MP.No.6491 of 2017 in view of the order dt.29.02.1999 in W.P.No.20234 of 1999.

7. Alleging that the said order was not implemented and the stocks seized in Crime PR No.59 of 2017 on the file of the 2nd respondent have not been released, petitioner filed C.C.No.536 of 2017.

8. Counter affidavit/WV.MP.No.1423 of 2017 has been filed by 3rd respondent to vacate the order

dt. 15.02.2017 in W.P.MP.No.6491 of 2017 in W.P.No.5344 of 2017.

9. In the vacate stay petition it is contended that as per the decision of the Full Bench of this Court in ***Ganesh Traders vs District Collector, Karimnagar***¹, black jaggery is to be treated as 'material' within the meaning of Sections 13 and 34 of the A.P. Excise Act, 1968 and that if it is reasonably believed that it is kept for manufacturing of ID liquor, the authorities may register a case under Section 34(e) of the A.P. Excise Act, 1968. It is stated that the petitioner is indulging in supply of black jaggery and Alum to the neighbouring thandas and villages where ID liquor manufacturing centers are existing and two cases have been registered against him for the said purpose. It is stated that the petitioner had filed Crl.P.No.1408 and 1409 of 2017 seeking interim custody of the stocks seized.

10. A reading of the order dt.21.02.2017 passed in Crl.P.Nos.1408 and 1409 of 2017 would show that the said petitions were filed to consider the petitioner's representation for grant of interim custody of black jaggery seized in connection with criminal cases registered against him and this Court directed disposal of the representations made by the petitioner within a period of one month.

¹ 2002(1) ALD 210 FB

11. It is also stated in the vacate petition that the black jaggery referred to in the above two cases was in fact seized in a search conducted on 15.02.2017 at 11.30 a.m., at the business premises of the petitioner and that the said search was conducted without being aware of the order dt.15.02.2017 passed in W.P.MP.No.6491 of 2017 in W.P.No.5344 of 2017.

12. The Government Pleader for Excise relying on the Full Bench judgment in **Ganesh Traders's** case(1 supra) supported the seizure of the stocks in the raid conducted on 15.02.2017 and sought to vacate the interim order dt.15.02.2017 in W.P.MP.No.6491 of 2017 in W.P.No.5344 of 2017.

13. In view of the above contentions of the respective parties, the question to be considered is "*whether the Government Memo No.47802/Ex.III.1/2006-13, dt.20.12.2011, (which directed the black jaggery to be viewed as an agricultural produce and wherein a decision was taken not to impose any restriction on black jaggery on the ground that its inclusion in the list of 'materials' used in the manufacture of I.D. liquor was adversely affecting the interest of genuine ryots and the traders) continues to be valid or not?*"

14. While the petitioner has specifically placed reliance on the said memo in para 7 of the affidavit, in the counter affidavit/vacate stay petition filed by the respondents there is no reference to this Memo at all *nor* it is stated that the said Memo has subsequently been superseded, annulled or withdrawn by the State Government.

15. Though the Government Pleader for Excise sought to contend that the purpose of the Memo is only to protect the interest of genuine ryots and traders, and that the petitioner does not fall within the said category, a reading of the Memo dt.20.12.2010 clearly shows that there is no restriction on possession of black jaggery. The Government Pleader for Excise then sought to contend that there are other memos issued subsequently by the Government, but no such memo is placed before this Court.

16. Therefore, I am not inclined to vacate the interim order granted on 15.02.2017 in W.P.MP.No.6491 of 2017 in W.P.No.5344 of 2017 and the same is made absolute. Consequently, the WV.MP.No.1423 of 2017 is dismissed.

17. In view of the fact that the raid on the petitioner's premises appears to have been taken place at 11.30 a.m. on 15.02.2017, the interim order granted by this Court on

15.02.2017 in W.P.MP.No.6491 of 2017 in W.P.No.5344 of 2017 cannot be said to be known to the respondents at the time when they conducted the raid on the petitioner's shop.

18. I find substance in the contention of the Government Pleader that raid was conducted on the basis of the confessions made by three traders in the morning of 15.02.2017 that the petitioner was supplying black jaggery to them.

19. In this view of the matter, I am not inclined to punish the respondents for violation of the order dt.15.02.2017 in W.P.MP.No.6491 of 2017 in W.P.No.5344 of 2017. Accordingly, the Contempt Case is closed. No costs.

20. Consequently, miscellaneous petitions pending if any, in the Contempt Case shall also stand closed.

M.S. RAMACHANDRA RAO, J

10th April, 2017.

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