

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

WRIT PETITION No.30573 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, Anantapuramu District, fourth respondent herein, vide proceedings Rc.No.216/2017/B, dated 05.09.2017, is under challenge in the present writ petition.

3. The fourth respondent, followed by registration of a crime against the petitioner under the provisions of the A.P. Excise Act, 1968 (for short, the Act), issued a show cause notice bearing Rc.No.216/2017/B, dated 15.08.2017, calling upon the petitioner to show cause as to why his 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 conditions of the A-4 licence conditions. In response to the said show cause notice, the petitioner submitted an explanation on 21.08.2017. In the said explanation, while denying the violation of the provisions of the Act and the Rules, the petitioner made a request to furnish copies of the FIR, panchanama and statement of accused. There is absolutely no dispute with regard to the fact that the respondents furnished the said information to the petitioner. Pursuant to the receipt of the above information, according to the petitioner, he submitted further explanation on 04.09.2017 to the fourth respondent, once again denying the allegations made against

him. Eventually, the fourth respondent, vide the impugned order dated 05.09.2017, 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 the very initiation of the proceedings, in view of the clear language of the provisions of Rule 35 of the Rules, cannot be sustained. It is also the submission of the learned counsel that though the petitioner submitted an explanation initially on 21.08.2017, the fourth respondent did not consider the same in the proper perspective while passing the impugned order.

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. It is further submitted that only after affording opportunity to the petitioner, the fourth respondent passed the impugned order, suspending the licence, as such, the same cannot be faulted. It is also the submission of the learned Government Pleader that having sought the information and having received the same, the petitioner did not file any explanation, as such, he is not entitled to seek indulgence of this Court under Article 226 of the Constitution of India.

6. There is absolutely no dispute with regard to the fact that in response to the show cause notice dated 15.08.2017 issued by the

fourth respondent, the petitioner submitted his explanation on 21.08.2017, stating that he did not sell the liquor in excess of the permissible quantity, never violated the conditions of licence and did not commit any misconduct of the licence and also did not violate the provisions of the Act and the Rules framed thereunder.

7. At the hearing, it is the submission of the learned counsel for the petitioner that Rule 35 of the Rules cannot be made applicable to the facts of the present case and that the confession statement of the accused cannot be the basis for drawing a presumption against the petitioner.

8. A perusal of the impugned order of suspension discloses that the fourth respondent stated that the explanation offered by the petitioner is not sufficient to rule out the involvement of A-4 shop in the unauthorized sales of liquor case. The fourth respondent, assigning the reason that having requested for the case documents, the petitioner did not submit further explanation, came to the conclusion that the petitioner has no explanation to offer. It is further evident from the impugned order that the fourth respondent did not record any finding as to whether the petitioner violated Rule 35 of the Rules or not for initiating action against the petitioner, having indicated the alleged violation in the impugned show cause notice. On this ground alone, the writ petition is liable to be allowed. In the considered opinion of this Court, the matter requires re-consideration by the fourth respondent.

9. For the aforesaid reasons, the writ petition is allowed, setting aside the order of the fourth respondent dated 05.09.2017 and the matter is remanded to the fourth respondent for consideration of the

issue afresh, after affording the opportunity of hearing to the petitioner. The fourth respondent shall also consider the applicability of Rule 35 of the Rules to the case of the petitioner. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

Date: 13.09.2017
TJMR

