

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.32730 OF 2017

ORDER:

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

2. The petitioner is the licensee of A-4 shop situated at Alur Village and Mandal, Kurnool District. The Prohibition and Excise Superintendent, Kurnool, Kurnool District, who is respondent No.4 herein, issued a show cause notice *vide* Rc.No.B1/186/2017, dated 04.09.2017, calling upon the petitioner to show cause as to why the licence of the petitioner herein should not be suspended. Respondent No.4 issued the said show cause notice pursuant to registration of Crime No.200 of 2017 of Prohibition and Excise Station, Alur under Section 34(a) of the A.P. Excise Act, 1968 against one Mr.Dalavai Thimmappa. In response to the said show cause notice, the petitioner herein submitted his explanation on 12.09.2017, denying the allegations made in the show cause notice. Respondent No.4, *vide* the order impugned, dated 18.09.2017, suspended the A-4 licence of the petitioner herein on the ground of alleged violation of the provisions of the A.P. Excise Act, 1968 and the A.P. Excise (Lease of Right of selling by shop and conditions of license) Rules, 2012.

3. According to the learned counsel for the petitioner, the order of suspension is not sustainable on the following three grounds:

(1) the confession statement of the accused in Crime No.200 of 2017 cannot be a ground to initiate action against the petitioner
 (2) respondent No.4 failed to consider the explanation offered by the petitioner in response to the show cause notice and
 (3) respondent No.4 passed the impugned order without indicating the period of suspension and the same cannot be for an indefinite period. In support of his submissions and contentions, learned counsel for the petitioner places reliance on the judgment of this Court in **V.P. Thimmaiah vs. Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad**¹.

4. A perusal of the order under challenge clearly discloses that respondent No.4/Prohibition and Excise Superintendent, while passing the suspension order, did not stipulate any period of suspension. There is no dispute with regard to the fact that in response to the show cause notice, petitioner herein submitted his explanation on 12.09.2017, categorically denying the allegations made against him in the show cause notice while urging a number of aspects, touching the legality of the very initiation of the proceedings on the basis of the confession statement of the accused in Crime No.200 of 2017. A reading of the order under challenge shows that respondent No.4, except extracting the contents of the explanation, did not make any endeavour to assign the reasons for disbelieving the contents of the explanation offered by the petitioner. It is also pertinent to note in this context that this Court, in the case of V.P. Thimmaiah (cited supra), at paragraph No.14, categorically held that the confession statement of an accused cannot be a ground for initiating action under

¹ 2001 (6) ALD 201

Section 31 of the A.P. Excise Act, 1968. In fact, respondent No.4, having received the explanation offered by the petitioner herein, failed to consider all the above aspects while passing the impugned order of suspension. Therefore, in the considered opinion of this Court, the matter requires reconsideration by respondent No.4 in the light of the above aspects.

5. For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension passed by the Prohibition and Excise Superintendent, Kurnool/respondent No.4 *vide* proceedings in Rc.No.B1/186/2017, dated 18.09.2017, and the matter is remanded to respondent No.4 for fresh consideration in accordance with law after giving opportunity of hearing to the petitioner herein. It is open for the petitioner herein to place before respondent No.4 the above referred judgment of this Court. There shall be no order as to costs.

6. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 06.10.2017
AMD

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