

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 19182 of 2017

Order:

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

The petitioner is a licensee of A4 shop in respect of Shop situated at Sl.No.51, Addakal village and Mandal, Mahabubnagar district and the licence period is valid from 01.10.2015 to 30.09.2017. The petitioner opened the wine shop at shop Nos.10 and 11 in Survey No.18 of Addakal village and was doing business. While so, it appears that the third respondent employed a decoy who proceeded to the said shop and purchased one Mc Dowell's No.1 Whiskey bottle by giving Rs.500/- and an amount of Rs.260/- was returned as change. The MRP mentioned on the bottle was only Rs.230/- but the nowkarnama received Rs.240/- i.e., an excess amount of Rs.10/- for the bottle. On the said allegation, the licence of the petitioner was suspended by proceedings dated 08.06.2017 and a panchanama was conducted showing the decoy as panch witness. Challenging the said proceedings, the present Writ Petition is filed.

Learned counsel for the petitioner submitted that there is no proof for the allegation that an excess amount of Rs.10/- was collected and in any event it is not one of the cases where the power of suspension should have been exercised by the authorities and the second respondent misused his power. He further submitted that the decoy cannot be shown as panch witness in the panchanama. He relied on the observations of the Full Bench of this Court in Tappers Co-operative Society, Maddur v. Superintendent of Excise, Mahabubnagar¹.

¹ 1984 Law Suit (AP) 263 = 1986(1) AndhWR 387 = 1984(2) APLJ 1

No doubt, it is true that the Full Bench of this Court in the decision reported above observed as follows:

“However we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona fide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity as the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry. Further, the suspension pending the enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided, and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.”

But, in view of the allegation and in view of the exercise of power by the second respondent, this Court is not inclined to interfere with the order at this stage, but directs the respondents 2 and 3 to complete the enquiry as expeditiously as possible within a period of thirty (30) days from the date of receipt of a copy of this order, since the allegation is trivial in nature and the witnesses are immediately available.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 14.06.2017
Nsr