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

WRIT PETITION No.29180 and 29183 of 2017

COMMON ORDER:

Since the issue involved in these two writ petitions is similar, this Court deems it appropriate to dispose of these writ petitions by way of this common order.

Heard learned counsel for the petitioners and learned Government Pleader for Prohibition and Excise for the respondents.

The orders of suspension of 2B licences, pending enquiry passed by the Deputy Commissioner of Prohibition and Excise, Vijayawada, 3rd respondent herein, are under challenge in the present writ petitions.

The petitioners are 2B licence holders under the provisions of A.P. Excise (Grant of Licence of Selling by Bar and Conditions of License) Rules 2017 (for short, "the Rules"). Followed by a raid conducted by the excise officials and registration of Crime No.30 of 2017 against the petitioners under Section 36(1)(b&c) of the A.P. Excise Act, 1968 (for short, "the Act") read with Rule 17(1) of the Rules, the 3rd respondent passed the impugned orders, keeping the licences of the petitioners under suspension, pending enquiry.

According to the learned counsel for the petitioners, the provisions of law, namely, Rule 17(1) of the Rules and condition Nos.1 and 9 of conditions of licence are of no application to the facts and circumstances of these cases. It is further submitted that under the facts and circumstances of these cases, the orders of suspension are unwarranted and opposed to the very spirit and object of the provisions of Section 31(1)(b) of the Act and also contrary to the Full Bench judgment of this Court in **Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar**[1].

On the contrary, it is vehemently contended by the learned Government Pleader that the instant violations squarely fall under the above provisions of law, as such, the contention of the petitioner, contrary to the same, cannot be sustained. It is submitted that the offence alleged is a grave one and as such there is no illegality in the impugned orders. It is further submitted that as against the impugned orders of suspension there is an effective alternative remedy of appeal to the Commissioner of Prohibition and Excise, 2nd respondent herein, under Section 63 of the Act and without availing the same, directly the present writ petitions are filed before this Court and on this ground alone, they are liable to be rejected.

Rule 17(1) of the Rules notified by G.O.Ms.No.235, Revenue (Ex.II) Department, dated 23.06.2017, imposes an obligation on the licensee to sell the liquor only at the premises specified in the licence. Rule 3(c) defines "Bar". According to the said Rule, "Bar" means the privilege granted under the Rules to an establishment where food is served, for

[1] 1984 (2) APLJ 1

sale of Indian Made Foreign Liquor and Foreign Liquor, in loose or in sealed bottles for consumption on the licensed premises.

According to the learned Government Pleader, the provisions of Rule 17(1) and Rule 3(c) shall be read together, but cannot be read in isolation. It is also the submission of the learned Government Pleader that Condition No.1 of the licence conditions specifically stipulates that no liquor shall be sold for removal from the licensed premises and Condition No.9 obligates that the licensee shall not act in any manner prejudicial to the interest of the revenues of the Government.

A copy of the case diary in Crime No.30 of 2017 is also filed along with the writ petition as a material paper. According to the said case diary, one of the constables of the Prohibition and Excise Department was sent to decoy operation. The nowkarnama present in the shop, on being asked to give a Kingfisher beer, took the money of Rs.120/- and had given a Kingfisher strong premium beer of 650 ml capacity by keeping the same in a black polythene cover.

The contention of the learned counsel for the petitioners that the allegation cannot be treated as a grave one, in the considered opinion of this Court, cannot be sustained. In the instant cases, it is not the case of the petitioners that the Deputy Commissioner of Prohibition and Excise, Vijayawada, has no jurisdiction to pass the orders under challenge and admittedly they are only the orders of suspension, pending enquiry.

Having heard the learned counsel for the petitioners and the learned Government Pleader, this Court is not inclined to grant any relief in the present writ petitions by scuttling the enquiry. In view of the above submissions of the learned Government Pleader and the rule position and as the enquiry is pending consideration before the Deputy Commissioner of Prohibition and Excise, this Court deems it appropriate to dispose of these writ petitions with a direction to the Deputy Commissioner of Prohibition and Excise to complete the enquiry, within a period of four weeks from the date of receipt of this order. However, it is open for the petitioners to avail the remedy of appeal available under Section 63 of the Act. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

A.V.SESHA SAI, J

Date: 06.09.2017
ES