

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.33757 OF 2017

ORDER:

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

Petitioner herein is the licensee of A4 shop situated at Jammalamudugu, YSR Kadapa District. Followed by registration of Crime No.21/2017 on the file of the Prohibition and Excise Station, Jammalamudugu under Section 34(a) of the A.P. Excise Act, 1968 (for brevity, 'the Act') and basing on the confessional statement given by the accused therein, the Prohibition and Excise Superintendent, Proddatur, YSR Kadapa District-fourth respondent herein, issued a show cause notice vide Rc.No.A4/294/2017 dated 14.09.2017, calling upon the petitioner to show cause as to why appropriate action, for the alleged contravention of the Act and the A.P.Excise (Grant of licence of selling by bar and conditions of licence) Rules, 2012, should not be taken. Thereafter, questioning the said show cause notice, dated 14.09.2017, petitioner herein filed W.P.No.32709 of 2017 before this Court. This Court disposed of the said Writ Petition by way of an order, dated 22.09.2017, keeping it open to the petitioner to submit his explanation to the show cause notice within a

period of one week with a further direction to the fourth respondent to consider the same and to take appropriate action as per law after hearing the petitioner.

Petitioner herein submitted his explanation on 27.09.2017, denying the allegations made in the show cause notice. The fourth respondent herein, vide the impugned order, dated 06.10.2017, suspended the A4 licence of the petitioner herein in exercise of the powers conferred under Section 31 of the Act.

According to the learned counsel for the petitioner, the impugned order passed by fourth respondent is highly illegal, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. It is also the submission of the learned counsel that, though this Court directed specifically in W.P.No.32709 of 2017, the fourth respondent herein, without affording opportunity of hearing to the petitioner herein, passed the order of suspension. It is further contended that the confessional statement of the accused in the above mentioned crime cannot be a ground to initiate action against the petitioner. 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, Hyderabad¹**.

¹ 2001 (6) ALD 201

On the contrary, it is submitted by the learned Government Pleader that the Prohibition and Excise Superintendent passed the order under challenge strictly in accordance with law and after giving opportunity to submit his explanation to the petitioner herein, as such, the order impugned cannot be faulted.

A perusal of the order under challenge shows, in clear terms, that except indicating the explanation offered by the petitioner herein as one of the references, the fourth respondent did not consider the contents of the said explanation nor assigned any reasons for disbelieving the explanation offered by the petitioner herein nor the fourth respondent considered the validity of the reasons in the explanation. In the considered opinion of this Court, the impugned order is liable to be set aside on these grounds.

It is also pertinent to note in this context that in the case of **V.P. Thimmaiah** (1 cited supra), at paragraph No.14, categorically held that the confession statement of an accused cannot be a ground for initiating action under Section 31 of the Act. Therefore, in the considered opinion of this Court, the matter requires reconsideration by the fourth respondent in the light of the above aspects.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension passed by the

Prohibition and Excise Superintendent, Proddutur, YSR Kadapa District-fourth respondent herein, vide proceedings in Rc.No.A4/294/2017 dated 06.10.2017, and the matter is remanded to the fourth respondent for fresh consideration in accordance with law after giving opportunity of hearing to the petitioner herein and after considering the representation of the petitioner. It is open for the petitioner herein to place before the fourth respondent the above referred judgment of this Court. There shall be no order as to costs.

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

24th October, 2017
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A.V.SESHA SAI,J

