

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.10759 OF 2017

ORDER:

The order dated 21.03.2017, passed by the 2nd respondent, refusing the request of the petitioner to send the second sample drawn from Toddy Depot of TCS, Vikarabad for chemical examination, is challenged before this Court.

It is the specific case of the petitioner that in terms of Rule 27 of A.P. Excise (Grant of License to Sell Toddy, Condition of License and Taping of Excise Trees) Rules, 2007 (in short "the Rules") the petitioner made an application seeking to send the second sample to the State Food and Health, Nacharam, Hyderabad, Independent Lab, for analysis and report. However, the same was rejected on the ground that the application has not been submitted within seven days from the date of communication of the drawl of sample. Learned counsel for the petitioner submits that the petitioner was not aware of the drawl of the sample and, at any rate, the same was not intimated to the petitioner though the panchanama was conducted on 20.01.2017.

Learned Government Pleader opposes the writ petition and submits that the petitioner Society has the knowledge about the surprise check and panchanama being conducted on 28.01.2017. In that view of the matter, he opposed the writ petition.

The controversy in issue is only in relation to sending of the second sample which is governed by the Rules. Rule 27 gives a right to a licensee to seek the second sample to be sent for chemical examination subject to the condition that the said request is made within three days, if the seizure has been effected in the presence of the petitioner or its authorised nowkarnama and if the seizure has been effected in the absence of petitioner or petitioner's nowkarnama, within seven days from the date of

communication of drawl of sample. In the present case, there is no material to support that there was any intimation given to the petitioner with respect to the drawl of the sample on 20.01.2017. It is the case of the petitioner that he came to know about taking of the sample only on issuance of impugned notice, thereafter, he made a representation dated 20.03.2017 for sending the second sample to an independent laboratory for analysis, and the same has been rejected on 21.03.2017. As there is no material before this Court, any intimation having been sent to the petitioner, the rejection to send the sample on the ground that the application has not been made within seven days, cannot be sustained.

Accordingly, writ petition is allowed setting aside the impugned order dated 21.03.2017, passed by the 2nd respondent, with a direction to the 2nd respondent to send the second sample, drawn from the petitioner's society, to an independent lab for chemical examination. However, the 2nd respondent shall not take any coercive steps against the petitioner's society till receipt of the report from the independent lab.

Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J

Date:27.03.2017.
Ssv