THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.27403 OF 2016

ORDER:

The writ petition is filed challenging the proceedings dated 18.07.2016, issued by the 3rd respondent, canceling Form 2B, license granted to the petitioner.

The facts are not in dispute. The license granted in favour of the petitioner was cancelled on the ground that there is a violation of Rule 25(vi) of the A.P. Excise (Grant of Sale by Bar and Conditions of License) Rules, 2005 (Telangana Adaptation Order, 2015) (for short, "the Rules").

Rule 25(vi) of the Rules reads as under:

> "(25) Indian Made Foreign Liquor and Foreign Liquor shall not be given or sold to certain persons:-
>
> (vi) Persons below (21) years of age."

It is not in dispute that the petitioner was issued with a show-cause notice on 11.07.2016, asking the petitioner to submit his explanation as to why A-4 license (2B) granted in favour of the petitioner shall not be cancelled for violation of Rule 25(vi) of the Rules. Petitioner further submitted his explanation on 16.07.2016 that is within the period given to him. Petitioner submits that on 18.07.2016, he had given another letter dated 18.07.2017, requesting the respondents to provide the opportunity of personal hearing in the matter, so as to enable him to produce all the relevant documents, but the 3rd respondent without giving any opportunity of personal hearing, passed the impugned order violating the principles of natural justice.

Sri M.S. Prasad, learned senior counsel appearing for the petitioner submitted the following points:

1) The impugned order made is contrary to the procedure prescribed under the Rules particularly in denying the opportunity of hearing and thereby violating the principles of natural justice, by

applying the well settled principles of General Clauses Act, 1897 the date on which the notice is issued and the last date would have to be excluded. In that view of the matter, the impugned order passed is premature and as such is bad.

2) The respondents having given seven days notice could not have made the order before the same and viewed in that angle, the request made for personal hearing through the letter dated 18.07.2016, could not have been ignored.

3) At any rate, there is no provision under the A.P. Excise Act, 1968 (for short, "the Act") for sealing the restaurant premises and as such, such act is arbitrary, illegal, unconstitutional and ultra vires the provisions of the Act.

4) The respondents failed to consider the detailed representation submitted by the petitioner and as such for non consideration of the material, the impugned order is liable to be set aside.

5) The offence alleged that the serving of liquor to an under aged person falling within the provisions of Section 31(1)(b) of the Act, is a compoundable offence on payment of compounding fees, which is evident from the circular dated 15.12.2015, issued by the Commissioner and as such there was no warrant for cancellation of licence.

6) At any rate, the statute prescribes giving of 15 days notice and whereas only seven days notice has been given to the petitioner thereby depriving him the benefit of seeking compounding, which is held to be bad in the judgment reported in **N. Malla Reddy vs. State of Andhra Pradesh and others[1].**

Having considered the respective submissions, at the outset, this Court is not inclined to decide the controversy as to whether the circular dated 15.12.2015, issued by the Commissioner, is not binding on the Deputy Commissioner of Prohibition and Excise, Hyderabad, as the matter is an academic one in the facts of the present case. The facts are not in dispute particularly with respect to the show cause notice having been issued on 11.07.2014 and the impugned order is being made on

[1] 2013(6) ALD 247

18.07.2015. By applying the principles of computation as enunciated under the General Clauses Act, 1897, it can be safely concluded, the order dated 18.07.2016, came into existence prematurely and thereby depriving the petitioner of the opportunity of hearing which was specifically sought for. Further, the proviso to Section 31(1) of the Act itself mandates the opportunity to submit explanation is required to be given to the petitioner. Considering the fact that the suspension/cancellation of licence to run a Bar deprives the right to carry on business an opportunity of hearing to be read into the provision. In the case on hand, there was a specific request made by the petitioner for opportunity of hearing, which could not have been denied. It is well settled that an adverse order resulting in civil consequences mandate providing opportunity of hearing. A reference may be made to 1) **Raghunath Thakur vs. State of Bihar**[2], 2) **K.L. Tipathi vs. State Bank of India and others**[3] and 3) **Chandrama Tewari vs. Unionof India**[4]. Further, the violation of fifteen days notice rule has been held to be bad by this Court in the judgment reported in **N. Malla Reddy** case (1 supra). The ratio laid down in the said judgment squarely applies to the case on hand.

It may also be noted that the offence alleged against the petitioner is violation of Section 31(1)(b) of the Act and read with Rule 25(vi) of the Rules. The offence of the nature is compoundable offence in terms of Section 47 of the Act read with Rules, with compounding fees. In the facts of the present case, the allegation is that the petitioner's Bar has served liquor to an under aged person. It is the specific assertion of the respondents that the identity proofs produced by the respective persons were checked and the liquor was served only thereafter. The impugned order does not deal with the said assertion except simply stating that the

[2] (1989) 1 SCC 229
[3] 1984 SCR (1) 184
[4] 1988 SCR (1) 1102

petitioner himself had admitted that the individuals produced fake identity proofs. In the facts and circumstances of the case, the offence being a compoundable one and considering the fact that the petitioner's right under Article 19(1)(g) of the Constitution of India are affected on account of the order made in violation of the principles of natural justice, the impugned order is liable to be set aside. There is no provision which has been brought to the notice of this Court wherein the excise authorities are authorized to seize and lock up a business premises for violation of a 2B licence conditions. As such, the seizure of the premises of the petitioner is totally unauthorized and the respondents shall remove the seals and allow the petitioner to carry on his business.

Accordingly, the writ petition is allowed setting aside the proceedings dated 18.07.2016, issued by the 3rd respondent. However, it is made clear that the respondents are at liberty to pass orders afresh in the matter after hearing the petitioner. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:13.03.2017,
Gk.

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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