

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.33175 of 2017

ORDER:

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

An order of suspension of A4 licence of petitioner, passed by the Prohibition and Excise Superintendent, Proddatur, YSR Kadapa District (respondent No.3), vide proceedings in Rc.No.A/263/2017 dated 22.09.2017, is under challenge in the present Writ Petition. Respondent No.3 passed the said order of suspension in exercise of powers conferred under Section 31 of the A.P.Excise Act, 1968 (for short 'the Act').

Followed by registration of Crime No.25 of 2017 on the file of Prohibition and Excise Police Station, Yerraguntla, under Section 34(a) of the Act, against one O.Ramanjaneya, respondent No.3 issued a show cause notice dated 09.08.2017 calling upon the petitioner to show cause as to why appropriate action for alleged contravention of the A.P.Excise Act, 1968 and A.P. Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012 should not taken. In response to the said show cause notice, and the allegations contained therein, the petitioner herein submitted an application on 15.09.2017 denying the allegations made in the show cause notice. Eventually, respondent No.3, by way of the order under challenge dated 22.09.2017, suspended the licence of the petitioner herein.

According to the learned counsel for the petitioner, the impugned action which culminated in passing order by respondent

No.3 is highly arbitrary, illegal and opposed to the very spirit and object of the Act and the rules framed therein. It is also the submission of the learned counsel for the petitioner that, the confession of accused in Crime No.25 of 2017 cannot be the sole criterion for initiating action under Section 31 of the Act. It is further submitted by the learned counsel for the petitioner that though the petitioner submitted explanation to the show cause notice on 15.09.2017, respondent No.3 did not consider the said explanation and passed the impugned order. According to the learned counsel, the said order is a patent violation of the principles of natural justice.

On the contrary, it is submitted by the learned Government Pleader for Prohibition and Excise that there is no illegality nor there is any procedural infirmity in the impugned order and, in the absence of the same, the impugned action is not amenable to judicial review under Article 226 of the Constitution of India.

There is absolutely no controversy on the reality that, in response to the show cause notice dated 09.08.2017 issued by respondent No.3, the petitioner herein submitted explanation on 15.09.2017 categorically denying the allegations made in the show cause notice and urging number of aspects for consideration of respondent No.3.

A perusal of the impugned order discloses, in clear and real terms, that except referring to the explanation as one of the references in the impugned order, respondent No.3 did not make any sort of endeavour to consider the contents of the explanation of the petitioner herein. Having called for explanation and having

acknowledged the same, this Court does not find any justification on the part of respondent No.3 in not considering the contents of the explanation offered by the petitioner herein. This exercise, undertaken by respondent No.3 for arriving at the conclusion in the impugned order, can neither be sustained nor can be approved by this Court. In the considered opinion of this Court, the matter requires reconsideration by respondent No.3 taking into consideration the explanation offered by respondent No.3.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the order of suspension passed by respondent No.3, vide proceedings in Rc.No.A/263/2017 dated 22.09.2017, and the matter is remanded to respondent No.3 for fresh consideration of the issue, strictly, in accordance with law, after considering the explanation offered by the petitioner and after giving opportunity of hearing to him.

Consequently, miscellaneous petitions, if any pending in this writ petition shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:11.10.2017
usd