

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

WRIT PETITION No.30321 of 2017

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed by the Prohibition and Excise Superintendent, Machilipatnam, Krishna District, first respondent herein, vide proceedings Rc.No.92/2017/B2, dated 01.09.2017.

2. Heard learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise (A.P) for the respondents and perused the material available on record

3. Followed by registration of Crime No.100/2017 on 27.07.2017 on the file of the Station House Officer, Prohibition and Excise Station, Bhavanipuram, Vijayawada, the first respondent issued a show cause notice bearing Rc.No.92/2017/B2, dated 18.08.2017, calling upon the petitioner herein to show cause as to why his A-4 licence should not be suspended for alleged violation of Section 34(a) of the Andhra Pradesh Excise Act, 1968 (for short, the Act) and conditions 10 and 12 of the licence conditions. In response to the said show cause notice, the petitioner submitted his explanation on 30.08.2017. The petitioner also filed W.P.No.2968 of 2017 questioning the show cause notice dated 18.08.2017. This Court, on 01.09.2017, disposed of the said writ petition with a direction to the first respondent to consider the explanation dated 30.08.2017 submitted by the petitioner and to take further action in accordance with law, after giving opportunity to the petitioner. On the same day i.e., on 01.09.2017, the first respondent passed an order vide Rc.No.92/2017/B2, keeping the A-4 licence of the petitioner under suspension pending enquiry under Section 34(1)(b) of the Act.

4. According to the learned counsel for the petitioner, the action impugned is highly illegal, arbitrary and violative of the provisions of the Act and the Rules framed thereunder. It is the further submission of the learned counsel that the confession statement of the accused cannot be the criteria to resort to the impugned action. It is also the submission of the learned counsel that the first respondent did not consider the explanation of the petitioner dated 30.08.2017 in the proper perspective and, had the same been considered in the proper manner, the order impugned would not have emanated.

5. On the other hand, it is submitted by the learned Government Pleader that only after issuing the show cause notice, the first respondent passed the impugned order, as such, there cannot be any complaint of violation of principles of natural justice and the said action is strictly in accordance with the provisions of the statute.

6. The material available before this Court manifestly discloses that on 30.08.2017, the petitioner submitted explanation to the show cause notice dated 18.08.2017, categorically stating that the accused sent 5 different persons to get the bottles (liquor) and the petitioner is not selling more than a bottle to a single person and that he is strictly adhering to the instructions of the department. A perusal of the order under challenge discloses that, except stating that the explanation of the petitioner was not convincing, the first respondent did not assign any cogent and valid reasons for discarding the contents of the explanation offered by the petitioner. On this ground alone, in the considered opinion of this Court, the matter requires reconsideration by the first respondent.

7. For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the first respondent vide proceedings Rc.No.92/2017/B2, dated 01.09.2017, and remitting the matter back to the first respondent for fresh consideration and passing of orders on the explanation of the petitioner dated 30.08.2017, in accordance with law, after affording the opportunity of hearing to the petitioner. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

Date: 08.09.2017
TJMR

