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

WRIT PETITION No.29022 of 2017

ORDER:

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

In the present writ petition, challenge is to the order passed by the Prohibition and Excise Superintendent, Nandyal, 4th respondent herein, vide proceedings Rc.No.B3/44/2017, dated 24.08.2017.

Petitioner herein is the licensee of A4 liquor shop, running the business in the name and style of M/s. Saradha Wines at H.No.10-221/27/36, Koilakuntla Village and Mandal, Kurnool District. The Prohibition and Excise Superintendent, Nandyal, issued a show cause notice bearing Rc.No.B3/44/2017, dated 09.08.2017, under Section 31(1)(b) of the A.P. Excise Act, 1968 (for short, "the Act"), calling upon the petitioner to show cause as to why suitable action cannot be initiated on the ground of registration of Crime No.92 of 2017 under Section 34(a) of the Act on the file of Prohibition and Excise Station, Kollakuntla, against one Talari Subramanyam, who, allegedly was in possession of 33 nips of Directors Special fine whisky (Duty paid liquor). In response to the said show cause notice, the petitioner submitted an explanation on 16.08.2017 in the form of legal notice categorically denying his involvement in the alleged offence.

Thereafter, the Prohibition and Excise Superintendent, Nandyal, by way of the proceedings under challenge, dated, 24.08.2017, suspended the licence of the petitioner under Section 31(1)(b) of the Act.

Broadly, there are three contentions raised by the learned counsel for the petitioner in the present writ petition. They are (1) The Prohibition and Excise Superintendent, Nandyal, 4th respondent herein, passed the order under challenge, without indicating the period of suspension and therefore the same cannot be sustained in view of non-stipulation of such condition; (2) The 4th respondent failed to consider the explanation offered by the petitioner in response to the show cause notice; and (3) The confessional statement of the accused in Crime No.92 of 2017 cannot be a ground to initiate action against the petitioner. In support of the third contention, learned counsel for the petitioner placed reliance on the judgment of this Court in **V.P. Thimmaiah v. Commissioner of Prohibition and Excise, Government of A.P., Hyderabad**[1].

A perusal of the order under challenge clearly discloses that the 4th respondent did not stipulate any period of suspension in it. It is also a fact that having called for the explanation and having received the same, the 4th respondent did not assign any reason for disbelieving the explanation offered by the petitioner nor considered the validity of the said

[1] 2001 (6) ALD 201

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 pertinent to note in this context that this Court in the case of **V.P. Thimmiah (supra)** at paragraph 14 categorically held that the confessional statement of an accused cannot be a ground for initiating action under Section 31(1)(b) of the Act. Therefore, in the considered opinion of this Court, the matter requires re-consideration by the 4th respondent in the light of the above submissions made by the learned counsel for the petitioner.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 4th respondent, Prohibition and Excise Superintendent, Nandyal, Kurnool District, vide proceedings Rc.No.B3/44/2017, dated 24.08.2017, and the matter is remitted to the 4th respondent for fresh consideration in accordance with law, after giving opportunity to the petitioner. It is open for the petitioner to place before the 4th respondent the judgment of this Court referred to supra. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

A.V.SESHA SAI, J

Date: 31.08.2017
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