

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**Writ Appeal No.115 of 2017**

**JUDGMENT:** {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.18638 of 2016 dated 07.11.2016. The appellant herein filed the said writ petition seeking a mandamus to declare the proceedings of the 2<sup>nd</sup> respondent dated 24.05.2016, rejecting their request to send one of the samples to an independent laboratory, as illegal, arbitrary and contrary to Rule 27 of the A.P. Excise (Grant of Licence to Sell Toddy Conditions of Licence and Tapping of Excise Trees) Rules, 2007 (for short "the Rules").

In the impugned order dated 24.05.2016, the 2<sup>nd</sup> respondent referred to Rule 27(1) of the Rules which requires the licensee, in case he desires that the sample should be sent for analysis to an independent laboratory, to apply to the Prohibition and Excise Superintendent within three (3) days of the drawal of the sample; in case, where the licensee or any one of his Nowkarnama holders is not present, at the time of taking the sample, the licensee may apply within seven days from the date of communication of drawal of sample; if no such application is filed, within the requisite time limit, the licensee shall not be entitled to seek analysis thereafter; in the present case, samples were drawn on 23.03.2016; the appellant had applied for second analysis after a lapse of 57 days; and, hence, their request was being rejected.

It is not in dispute that the sample was drawn on 23.03.2016, and the appellant made a request for the sample being sent for second

analysis on 20.05.2016 i.e 57 days after the sample was drawn. The submission of Sri V.Ramakrishna, learned counsel for the appellant, is that it is only when the order of suspension dated 07.05.2016 was communicated to the appellant on 17.05.2016, did he come to know that the sample was drawn; and, since the application was made three days thereafter on 20.05.2016, the application is filed within time.

A panchanama was recorded on 23.03.2016 in the presence of the toddy vendor working in the subject premises, the Station House Officer and two witnesses. The fact that the toddy vendor was present, during drawal of the sample, is not in dispute. The appellant contends that, since neither he nor the Nowkarnama was present and it is only the vendor who was present, the date of drawal of the first sample cannot be reckoned as the relevant date; and it is only the date of communication of the order of suspension which should be taken into consideration as the relevant date under Rule 27. We disagree.

Rule 27(1) of the Rules, which relates to drawal of samples, requires that, even in case where a licensee or his Nowkarnama holder is not present at the time of taking of the sample, it is for the licensee to apply within 7 days from the date of communication of the drawal of the sample. The panchanama has been signed by the vendor in the shop and, consequently, the seven day time limit prescribed in Rule 27(1) is required to be reckoned from 23.03.2016 (the date of drawal of the sample) which would expire by 30.03.2016. As the request for the sample to be sent was made only on 20.05.2016, it is far beyond the time limit specified in the said Rule, and the request was rightly rejected.

In the order under appeal the Learned Single Judge observed that, in terms of Rule 27(1) of the Rules, a request for further examination of the second sample should be made within the time limit

specified therein; and service of the order of suspension cannot give rise to a fresh cause of action. In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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**(RAMESH RANGANATHAN, ACJ)**

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**(ABHINAND KUMAR SHAVILI, J)**

01<sup>st</sup> November, 2017  
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**Date: 01.11.2017**

