

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

WRIT PETITION No.3961 of 2018

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

....to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, to declare the impugned order passed by the 4th respondent in File No.PE-FIN/ 53/ 2018-JA(A3)-ESGWK dt.5-2-2018 suspending the A-4 shop bearing GSL No.115, without properly considering the explanation submitted by the petitioner on 2-2-2018 to the show cause notice bearing Rc.no.258/ 2017/ A4 dt.27-1-2018, as being illegal, arbitrary, against to the principles of natural justice and consequently set aside the same, and to grant such other order or orders as this Hon'ble Court..."

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise for the respondents and perused the prayer in the writ petition with supporting affidavit and other material on record.

3. The impugned order of the Superintendent, Prohibition and Excise, dated 05.02.2018, stated served on the same day reads that on 26.01.2018, the Sub-Inspector, Prohibition and Excise, Gajuwaka with staff and ESTF proceeded to Chattivanipalem and found group of persons surrounded a pan shop and a female person seated in a chair and on seeing them, the persons gathered ran away, but for, the female in the shop on chair, when trying to ran away, stopped her and taken to custody and on questioning, she disclosed about cardboard box and white plastic gunny bag, what it

contains, and her name as Sudha Satyavathi of Chattivanipalem and there are liquor bottles, and the cardboard and the plastic gunny bag were seized and found therein the liquor bottles described in the impugned proceedings of suspension pending enquiry and of the 160 ml. bottles therein are not having HEAL codes and found labels affixed 'for sale in Andhra Pradesh only' and collected sample and disclosure further shows without permit for IML bottles for sale secured to sell at high price, from M/s. Madhuri Wines of the writ petitioner licensee at Gajuwaka of the total 48 nip bottles in the cardboard box and it is supplied by one Koteswararao of said Madhuri Wines and it is clear of there is a deliberate violation of the licensee and the rules and conditions of A4-license and a show cause notice was issued to the said licensee of Madhuri Wines, by name, N.Srinivasarao, for which he gave explanation which is not proper to consider and thereby, pending enquiry thereon, in the public interest, as continuation of the license detrimental to the public interest, suspended the license.

4. It is the contention of the learned counsel for the petitioner in support of the prayer in the writ petitioner from the affidavit averments vis-à-vis oral submissions that the impugned proceedings are penal in nature under Section 31

of the A.P.Excise Act (for short 'the Act'), without even referring to the explanation given in the show cause notice, by simply throwing away of no proper reply given and the suspension cannot be continued.

5. In fact, as held by this Court in batch of 19 writ petitions on even date viz., W.P.No.1359 of 2018 and batch referring to the several expressions including that of Full Bench expression of this Court in Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahaboobnagar¹, apart from other expressions including Sunil v. Assistant Commissioner of Prohibition and Excise/Excise Superintendent, Twin Cities of Hyderabad, Narayanguda and another² and Venkateswara Wines v. Superintendent of Prohibition and Excise³, it is stated that pending enquiry, in the public interest a suspension can be ordered for the licensee cannot claim for a liquor shop any fundamental right including Article 19(1)(g) of the Constitution of India, for, it is only a privilege to suspend for said violation in the public interest including giving of any show cause notice and reply not a bar for suspension pending enquiry.

¹ 1984(2) APLJ 1

² 1997(4) ALD 625

³ 2004(4) ALD 681

6. Having regard to the above, though, otherwise, the suspension pending enquiry is sustainable in view of the expressions supra, which clearly laid down that it shall not be indefinite but confine to a limited period.

7. Accordingly, this Writ Petition is disposed of by confining the impugned proceedings of suspension for a period of six weeks from the date of receipt of the impugned proceedings so that either meantime or later to it as the case may be, the respondents shall pass final orders pursuant to the show cause notice issued and from submission of any explanation and on hearing by giving reasons to the final order under Section 31 of the Act and the Rules made thereunder.

8. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 08.02.2018

Note:

Issue C.C. by 12.02.2018.

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