

WRIT PETITION No.4108 of 2018

ORDER:

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

“to issue Writ, order or orders specially one in the nature of Writ of Mandamus declaring the order of the 4th respondent passed in Rc.No.229/ 2017/ A4 dated 22.01.2018 as illegal, arbitrary and contrary to A.P.Excise Act, 1968 and the rules made there under and in violation of principles of natural justice and consequently set aside the impugned proceedings passed in Rc.No.229/ 2017/ A4 dated 22.01.2018 and pass such other.....”

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 proceedings of the Superintendent, Prohibition and Excise, dated 22.01.2018, reads that on 13.12.2017, the Inspector, Prohibition and Excise, Guntur, booked a case at Gundlapalli Village of Nakarikallu Mandal, involving 19 nips of three categories described in the said proceedings in possession of a person, on suspicion, when questioned, he disclosed his name as Shaik Dacheballi Hussain of Gundlapalli and seized the same by registering crime No.148 of 2017 and collected samples. The further disclosure of him is that he purchased the bottles from M/s.Andhra Wines, Gundlapalli, of the writ petitioner- K.Rama Lingeswara Rao for sale unauthorizedly and show cause notice issued to the writ petitioner of Andhra Wines

and the explanation submitted stating installation of HPFS system and selling liquor according to the rules and whenever HPFS system is not functioning, he sold liquor bottles by issuing bills to the customers and the accused boregrudged against him and stated as purchased liquor from his shop and not to cancel the license and there is also disclosure statements of persons conducted by the Station House Officer, Narasaraopet, about the licensee has clandestinely and unauthorizedly selling liquor for higher price, in violation of the license conditions and rules and not even installed C.C.camera and also verified transport permit, R1 and R2 registers, invoices and delivery challans, ICDC Code and identified from the indent for supply of the said stock covered by the transport permit that was delivered to M/s.Andhra Wines in establishing the stock produced is from A4 license shop of the writ petitioner and thereby, the reply is not tenable and in the public interest, pending enquiry, suspended the license.

4. It is the contention of the learned counsel for the petitioner in support of the prayer in the writ petition 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 under 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.

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.

¹ 1984(2) APLJ 1

² 1997(4) ALD 625

³ 2004(4) ALD 681

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.

Date: 08.02.2018
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JUSTICE Dr. B.SIVA SANKARA RAO

