THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL NO.281 OF 2018

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 WP.No.1745 of 2018 dated 08.02.2018. This Writ Petition forms part of a batch of Writ Petitions, in WP.No.1359 of 2018 and batch, which were disposed of by the order of the Learned Single Judge dated 08.02.2018.

The appellant herein is among the petitioners in the batch of Writ Petitions wherein the orders passed by various Excise Superintendents, suspending the licenses of the petitioners all of whom were A-4 shop dealers, was questioned before this Court in proceedings under Article 226 of the Constitution of India. The learned Single Judge passed an elaborate order holding that there was no illegality or arbitrariness or unconstitutionality in the impugned action; the provisions of the A.P. Excise Act, 1968 ("the Act" for brevity) and the Rules made thereunder had not been violated; and there were grave allegations, based on confessions, justifying an interim order of suspension being passed. The learned Single Judge confined the order of suspension for a period of six weeks from the date of the impugned proceedings, so that either in the meanwhile or later the respondent could pass final orders, pursuant to the show cause notice issued earlier, after hearing the A-4 shop licensees, under Section 31 of the Act.

Sri O.Manoher Reddy, learned counsel for the appellant-writ petitioner would submit that, while Section 31 of the Act provides for cancellation or suspension of license as a measure of punishment, the power to suspend a license, pending further enquiry, has been held to inhere in the power conferred on the competent authority, under Section 31 of the Act, to pass a final order of suspension or cancellation of license; a Full Bench of this Court, in **Tappers Co-operative Society, Maddur v. Superintendent of Excise, Mahaboobnagar**[1], had held that, though such a power of suspension of the license pending enquiry was available, it could not be used as a matter of course; a learned Single Judge of this Court, in **Satyanna Goud v. Excise Superintendent, Mahboobnagar**[2], held that an order, based merely on a confessional statement, could not be passed suspending the license of an A-4 shop dealer; this principle was reiterated in a subsequent judgment of a learned Single Judge of this Court in **Sunil v. Assistant Commissioner of Prohibition and Excise/Excise Superintendent, Twin cities of Hyderabad, Narayanaguda and Another**[3]; and, in the absence of something more, apart from merely a confessional statement, suspension of the license, of an A-4 shop dealer, was illegal and was liable to be set aside.

In **Tappers Co-operative Socity**[1], a Full Bench of this Court observed as under.

"…**However we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona fide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity as the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry**. Further, the suspension pending the enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power

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[1] **1984(2) APLJ 1**
[2] **1994(2) APLJ 42 (HC)**
[3] **1997(4) ALD 625**

makes the order liable to be set aside. **Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided, and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.**

Hence we answer the reference holding that the licensing authority has got ancillary and incidental powers of suspending a licence or permit pending enquiry in a given case if the circumstances clearly warrant taking into account the urgency in the case....." (emphasis supplied).

The law declared by the Full Bench is that, while the power to suspend a license pending enquiry under Section 31 of the Act inheres in the competent authority; however, such a power cannot be exercised in a routine manner or as a matter of course; such a power must be exercised reasonably, *bonafide* and without negligence, considering the circumstances of the case; and, if the circumstances do not warrant such a drastic step, the authority is bound to afford an opportunity to the licensee; and the power to suspend the license, pending enquiry, should not be exercised as an invariable rule.

In **Sunil**[3], a learned Single Judge of this Court observed:-

"....**for suspension pending enquiry into the allegation that the licensee is getting the liquor sold outside the licenced premises through others in violation of Rule 19 of the conditions of Licences Rules, no prior notice need be given to the licensee and it cannot be complained of violation of principles of natural justice. Suspension of licence basing on confession made by the person selling the liquor coupled with the fact that the liquor sold by him is one supplied to the petitioner-licensee by the A.P. Beverage Corporation Limited, is not liable to be interfered as it is only an interim order pending enquiry.** It further held at Paras 4 to 9 as follows:

"4. **This Court as early as in the year 1984 took the view that "the power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with**

greater force when we notice that we are concerned with the liquor licences in which the citizen has no right guaranteed under Article 19 (1) (g) of the Constitution of India but only a privilege. No doubt once a licence is granted, valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction the proviso cannot have a larger affect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence or permit "(see 1984 (2) APLJ page 1 (FB)). **The impugned order in this case itself says that the licence of the petitioner is kept under suspension pending enquiry. It is not a final order. Enquiry is yet to be commenced and a final decision has to be taken. It is true that the petitioner is required to be given an opportunity of making his representation before taking a final decision in the matter. The statute does not require issuance of any notice or opportunity for keeping the licence under suspension pending enquiry. The requirement of notice and opportunity is only in cases of final decision of suspension or cancellation of the licence as the case may be. Therefore, the impugned order cannot be declared as ultravires the provisions of the Act or the Rules. The principles of natural justice have no application as the rights of the petitioner to hold the licence till the end of the period for which it is granted is yet to be decided. The order of suspension pending enquiry is an interim measure taken by the authority in public-interest.**

5. The learned Counsel for the petitioner, however, relied upon a decision rendered by this Court in **Satyanna Goud v. Excise Superintendent**1994 (2) ALT 270, in support of his submission that the petitioner's licence could not have been kept under suspension by merely depending upon the confessional statement of one D. Ramesh, who has no concern whatsoever with the petitioner's business. It is true there is a reference to the confessional statement of the said D. Ramesh that he is selling the liquor with the consent of the petitioner on a dry day i.e., on 1-7-1997. But, it is required to notice that on verification it was found that the liquor seized on 1-7-1997 from the possession of the said D. Ramesh was supplied to the petitioner's shop on 4-6-1997 and 25-6-1997 by the Andhra Pradesh State Beverage Corporation Limited for the purpose of selling the same in retail by the licensee. **In Satyanna Goud, the Court observed that there is no material whatsoever except the alleged oral statement of the person from whom the toddy was seized. In such view of the matter, the Court came to the conclusion that there was no basis whatsoever for keeping the licence under suspension. Such is not the case on hand. The suspension order passed by the respondent is not only based upon the confessional statement of the said D. Ramesh but also based upon the further material available on record that what was being sold by D. Ramesh was the same liquor supplied by the Beverage Corporation to the petitioner for the purpose of retail sale through the licenced shop. It cannot be said that there is no prima facie case for keeping the licence under suspension pending enquiry.** The observations of the Court are made only for the purpose of considering the submission made by the learned Counsel for the petitioner. No opinion as such is expressed on the merits of the case and the observations shall have no bearing whatsoever on the enquiry to be made by the respondents for taking further appropriate action in accordance with law. The decision in M/s. Madhavi Wines, Mancherial v. Excise Superintendent, Adilabad,

1994 (3) ALT 17 (NRC) has no application, whatsoever, to the instant case. It was a case where the licence was suspended as a substantive punishment and not an interim measure pending enquiry of the charges leveled against the licensee. It was a case where final order of suspension was passed without giving any opportunity to the licensee to represent his case. The Division Bench came to the conclusion that such a final orders suspending the licence without giving a reasonable opportunity to the licensee is ultravires Section 31 (1) (b) of the A.P. Excise Act, 1968. Here is a case of suspension pending enquiry and not a final order. The decision relied upon by the learned Counsel for the petitioner in **Sree Devi Wines v. Dy. Commissioner of Excise, Kakinada and Ors.** 1995 (1) ALD 164 = 1995 (1) ALT 1 (NRQ) also has no application. It was a case where the impugned order of suspension was construed and viewed as final order of suspension as the authority passing the order has already concluded about the violations of the condition by expressing final opinion that the licensee has wilfully violated the licence conditions and rules and indulged in malpractices Under Section 36 (b) of the A.P. Excise Act, 1968. No such final opinion is expressed by the authority in this case. Therefore, the present impugned order is an order which is pure and simple order of suspension of the licence of the petitioner pending enquiry.

6. It is settled law that this Court in a judicial review proceeding under **Article 226** of the Constitution does not act as a Court of appeal against the orders passed by the statutory authorities. **The Court is more concerned with the decision making process**. Court is not required to express any opinion on the merits of the case while considering the validity of an order of suspension pending enquiry. Rights of the licensee are yet to be adjudicated. In such cases, a very limited judicial review is available. **The Court would interfere only in a case where the impugned order is passed without jurisdiction or which could be said to be so perverse that no reasonable person could have taken such a decision in the facts and circumstances of the case**. Such is not the case on hand.

7. In the similar circumstances, this Court declined to interfere and disposed of a Writ Petition at the admission stage with a direction to the authority to dispose of the enquiry pending before him within a period of four weeks from the date of receipt of a copy of the order after affording an opportunity of being heard to the licensee (**See the order dated 8-7-1997 in W.P. No. 14393 of 1997**). I feel that similar directions in this case would meet the ends of justice.

8. I do not see any reason whatsoever to interfere in the matter and set aside the impugned order.

9. The Writ Petition is accordingly disposed Of with a direction to the 1st respondent i.e., the Assistant Commissioner of Prohibition & Excise/Excise **Superintendent, Twin Cities of Hyderabad at Narayanaguda, Hyderabad District, to dispose of the enquiry pending before him within a period of four weeks from the date of receipt of a copy of this order after affording an opportunity of being heard to the petitioner**. No costs." (emphasis supplied)

The law declared by this Court, in **Satyanna Goud[2]** and **Sunil[3]**, is that a license of an A-4 shop dealer should not be suspended based merely on the confessional statement of the person in whose hands liquor bottles are seized; there must be some link between the A-4 shop dealer and the person from whom the bottles are seized; and there must be material on record to show that the bottles so seized were sold from the shop of the A-4 shop licensee whose license is sought to be suspended.

Bearing these principles in mind, let us now examine the facts of the present case. The appellant in WA.No.281 of 2018 is the petitioner in WP.No.1745 of 2018, and is aggrieved by the common order passed by the learned Single Judge in WP.No.1359 of 2018 and batch dated 08.02.2018. In the present case, while the show cause notice was issued to the appellant on 11.01.2018, the impugned order of suspension came to be passed thereafter on 19.01.2018. The impugned order of suspension takes note of the earlier show cause notice dated 11.01.2018, a copy thereof having been served on the appellant on 19.01.2018, and the appellant having submitted his explanation to the show cause notice on the same day i.e. 19.01.2018. The Excise Superintendent, thereafter, proceeds to suspend the appellant's license for the reasons mentioned in the order which shall be referred to hereinafter.

Sri O.Manoher Reddy, learned counsel for the appellant, would submit that, having issued a show cause notice to the appellant on 11.01.2018 and having received their objections thereto on 19.01.2018, the competent authority ought to have proceeded to pass a final order thereupon; at that stage it was not open to him to suspend the appellant's license pending further enquiry; even otherwise, the facts as stated in the show cause notice dated 11.01.2018 is at variance with the allegations levelled in the order dated 19.01.2018 whereby the appellant's license was suspended; in reply to the jurisdictional facts referred to in the show cause notice, the appellant had already filed their reply on 19.01.2018; new facts, of which the appellant was not put on notice, cannot form the basis of an order suspending their license; the appellant cannot be put in a position worse than what they were when the show cause notice was issued; and, in any event, the order of the learned Single Judge restricting the period of suspension to six weeks would expire within the next few days.

Jurisdictional facts must be stated in the show cause notice to enable the person, against whom action is sought to be taken, to submit their reply thereto. Passing a final order, based on facts which are not reflected in the show cause notice, is in violation of principles of natural justice as the person, against whom action is being taken, is denied the opportunity to put forth his objections thereto, or to satisfy the authority that the facts, which formed the basis of the final order and which were not reflected in the show cause notice issued earlier, would not justify such an order being passed. This, however, would not apply to an order of suspension pending enquiry, since no opportunity to show cause against the proposed order, of suspending the licence pending enquiry under Section 31 of the Act, is provided either by the Act or the Rules, nor can principles of natural justice be invoked in relation to an order suspending the license pending enquiry.

The order of suspension records that, on investigation, the accused had confessed that, on the instructions of the appellant-licensee, he had purchased 30 bottles of IML from the appellant's shop, and had handed over the bottles to Smt. B.Bangaramma, a relative of the accused, for the purpose of selling them through belt shops unauthorizedly at Moghalipuram Village. This allegation is not reflected in the show cause notice issued on 11.01.2018. While these facts cannot form the basis of a final order, and the appellant would be entitled to be put on notice regarding these allegations, and to be given an opportunity to submit his objections thereto, before a final order is passed, that would not disable the competent authority from placing reliance on facts which came to his notice after the show cause notice was issued, or on facts which escaped his attention while issuing the show cause notice, in order to suspend the license of an A-4 shop dealer pending enquiry under Section 31 of the Act.

As laid down, in **Satyanna Goud**[2] and **Sunil**[3], mere confession of an accused, that he had purchased the seized liquor bottles from the licensee would not suffice, to place the license of the A-4 shop dealer under suspension; and the order of suspension must reflect a link between the dealer and the person from whom the bottles are seized. The impugned order of suspension records the confession of the accused that he had purchased 30 bottles of IML from the appellant's shop, on the instructions of the appellant, to be handed over to Bylapudi Bangaramma, a relative of the accused, for the purpose of selling these bottles unauthorisedly through belt shops at Moghalipuram Village. These allegations reflect a link between the appellant and the accused and, if true, would result in violation of the conditions of the license.

Whether these allegations are true or not will be examined in the enquiry, to be held against the appellant, under Section 31 of the Act. We see no reason, therefore, to interfere with the order of suspension which is impugned in the Writ Petition. It is, however, made clear that, since jurisdictional facts must be stated in the show cause notice, the Excise Superintendent can rely on facts, which are not reflected in the earlier show cause notice dated 11.01.2018, only after a show cause notice is issued afresh, and the appellant is given an opportunity of submitting his objections thereto, before final orders are passed against him under Section 31 of the Act. Needless to state that as this appeal is preferred by the petitioner in the Writ Petition, the order of the learned Single Judge, confining the period of suspension for a period of six weeks from the date of the impugned proceedings (the order of suspension), does not necessitate interference in an intra-Court appeal under Clause 15 of the Letters Patent.

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

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(RAMESH RANGANATHAN, ACJ)

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(KONGARA VIJAYA LAKSHMI, J)

26th February 2018
RRB