THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL NO.280 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.1359 of 2018 dated 08.02.2018. This Writ Petition forms part of a batch of Writ Petitions, in W.P.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**

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

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 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.**
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> 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.
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> 8. I do not see any reason whatsoever to interfere in the matter and set aside the impugned order.
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> 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 case on hand wherein the impugned order, suspending the license of the appellant, is dated 12.01.2018. The reasons recorded therein, for suspending the license of the appellant, is that 18 IML bottles of 180 ml were seized from the accused; on being questioned Smt. Ch.Manikyam, aged 75 years, had confessed that she had purchased the stocks from the shop of the appellant for selling the same at a higher price; the case was registered in Crime No.23 of 2018 dated 11.01.2018 under Section 34(a) of the Act; since these seized 18 IML bottles, of 180 ml each, belonged to the appellant's establishment, the appellant had deliberately violated the Rules; and it was, therefore, necessary to suspend his A-4 shop's license pending enquiry.

In the present case, there is no material on record, other than merely the confessional statement of the person from whom the bottles were seized, that the seized IML bottles belonged to the appellant-writ petitioner's shop. As held by this Court, in **Satyanna Goud**[2] and **Sunil**[3], a confessional statement would alone not suffice to suspend the licence of the appellant's A-4 shop. The impugned order of suspension must, therefore, be set aside. Suffice to make it clear that setting aside the order, suspending the appellant's A-4 shop license, will not disable the competent authority from conducting an enquiry, and passing a final order thereafter under Section 31 of the Act. As a show cause notice has already been issued to the appellant, they shall file their reply thereto within two weeks from today. The competent authority shall consider the explanation, submitted by the appellant-writ petitioner, to the show cause-notice, and pass final orders within four weeks thereafter. In case the appellant-writ petitioner fails to submit his explanation to the show-cause notice, within the aforesaid period of two weeks, it is open to the competent authority to proceed and pass final orders, under Section 31 of the Act, without awaiting the reply to the show cause notice from the appellant-writ petitioner. As the impugned order of suspension has been set aside, the appellant-writ petitioner would be entitled to carry on business in his A-4 retail shop, subject however to the final order to be passed under Section 31 of the Act.

The Writ Appeal is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

26th February 2018
RRB