

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

WRIT PETITION No.5251 of 2018

ORDER:

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

“to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 4th respondent passed in RC.No.143/ 2017/ A2, dt._.02.2018 signed on 12.02.2018 as illegal, arbitrary and one without jurisdiction and in violation of principles of natural justice and pass such other or further orders.....”

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 the impugned order preceded by the show cause notice and reply and other material on record.

3. It is the submission of the learned counsel for the petitioner vis-à-vis the affidavit averments in support of the prayer in the writ petition that the explanation called for by giving show cause notice not even considered with a single line not convincing, that it was ignored of the total quantity of liquor permissible limit is not exceeding 4500 ml. and from 22 bottles of 180 ml. each taken together it comes upto 3960 ml. only to say it is within the permissible limit of condition No.1 of A4-licence in Form-A4, pursuant to the amended rules in G.O.Ms.No.112 dated 22.03.2017 and the impugned order is not at all in the public interest and the same is liable to be set aside, for, the authorities

to pass final order for no grounds to suspend pending enquiry until further orders.

4. The learned Government Pleader supported the impugned order saying, giving of show cause notice or receiving of any explanation are for final orders to be passed to consider and not for suspension pending enquiry, leave about no principles of natural justice apply for suspension pending enquiry for any notice for explanation and hearing including from the expression of the Full Bench of this Court in *Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahaboobnagar*¹ and series of judgments delivered later following the same and thereby, the writ petition is liable to be dismissed, leave about there is statutory remedy of appeal/revision under Sections 63 and 64 of the A.P. Excise Act (for short 'the Act') to avail if at all aggrieved otherwise.

5. The facts for the suspension order pending enquiry referred shows that there are 22 liquor bottles seized from one A.Murali Krishna, in the course of conducting raids by the Assistant Commissioner with Staff at Bhogireddypalli Village, on 24.01.2018, covered by the crime No.9 of 2018 of Prohibition and Excise Station, Machilipatnam. The description of it are Imperial Blue Classic Grain Whisky-180 ml. batch No.132, 10 bottles; Mc.Dowell's No.1 Luxury liquor whisky-180 ml. batch No.229, 4 bottles and similar 2 bottles of batch No.228; and Old Tavern Fine

¹ 1984(2) APLJ 1

Whisky-180 ml. batch No.192 of 6 bottles shows those were from the shop of petitioner.

6. No doubt, as per the calculation of the petitioner mentioned in the affidavit filed in support of the petition, this quantity comes to 3960 ml. which is less than the permissible limit comes to 4500 ml. Said contention is untenable for the fact that condition No.1 of A4-license in Form-A4 pursuant to G.O.Ms.No.181 dated 13.10.2000 is again amended by G.O.Ms.No.273 dated 21.07.2017 and it clearly speaks as per the amended rules that 6 nip bottles of 180 ml. is the maximum quantity and herein undisputedly, 22 nip bottles of the shop of petitioner stated found with the person arrested supra.

7. Insofar as the sustainability of the interim suspension therefrom concerned, from show cause notice given in this regard and the reply given shows only denial in saying the seized property no way concerned with M/s.V.R.Wines and it is not even referred in saying the batch numbers do not relate to the shop in question specifically though required to be stated so. A perusal of the impugned proceedings once shows the reply received is not convincing for interim suspension pending enquiry ordered in the public interest and to prevent the loss of revenue, there is nothing to interfere with the impugned proceedings, but for, to say pending enquiry the suspension shall not be for any indefinite period or until further orders, but for, to confine to six weeks, as observed by this Court in batch of writ petitions.

8. Accordingly and with the above observations, this Writ Petition is disposed of, by confining the period of suspension pending enquiry for six weeks from the date of service of the proceedings.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 19.02.2018

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