

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.5287 of 2018

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader from oral instructions on behalf of the respondents and perused the prayer in the writ petition with supporting affidavit and the impugned proceedings, dated 14.02.2018, of the Superintendent, Prohibition and Excise, Machilipatnam, preceded by show-cause notice, dated 29.01.2018, mentioning to give explanation within seven days and other material on record.

2. The prayer in the writ petition reads as follows:

“.....to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 4th respondent passed in RC.No.95/2017/A2, dt.14.02.2018 as illegal, arbitrary and one without jurisdiction and in violation of principles of natural justice and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.”

3. It is the contention of the learned counsel for the petitioner with supporting writ petition affidavit averments that he is conducting business without contravention any of the conditions of the licence or the provisions of the A.P. Excise Act, 1968 (for short, 'the Act') and the Rules made thereunder and the Superintendent, Prohibition and Excise, issued show-cause notice, dated 29.01.2018, on the basis of report submitted by the Station House Officer, Prohibition and Excise, dated 26.01.2018, which shows, in the course of the rounds by the

Station House Officer with staff for patrolling for implementation of dry day, found one person with 30 Nips of duty paid liquor without seals and on questioning made a disclosure of the said liquor purchased from the shop of the petitioner on 25.01.2018 to sell the same on the dry day 26.01.2018 vide Crime No.14 of 2018 and there is violation of the conditions of licence, and the Rule 34 of the A.P. Excise (Grant of Licence of Selling by Shop and conditions of licence) Rules, 2012 (for short, 'the Rules, 2012') and to give show-cause notice within seven days and the show-cause notice was served on 31.01.2018. The petitioner when contacted the office of the Superintendent, he was informed orally of 15 days time available and that 15 days would expire by 15.02.2018, however, on 14.02.2018 he was informed of already order passed of suspension pending enquiry and this order of suspension pending enquiry is by mentioning as if failed to submit explanation and same is violation of the principles of natural justice and contrary to law for the 4th respondent should have been waited till giving of reply and its consideration once decided to issue show-cause notice and the interim suspension is unsustainable.

4. A perusal of the show-cause notice, dated 29.01.2018, referring to the above facts of found Battula Phani Kumar outside the shop of the petitioner, selling whisky of 30 Nips for high price and the bottles are without seals and apart from his disclosure, samples collected of the seized bottles having registered the crime and it is referred violating condition No.1 of A.4 licence the liquor bottles above

permissible quantity cannot be sold to an individual as per Rule 35 of the Rules, 2012 and shall not stock IMFL & FL at any place other than the licensed premises for any unauthorised keeping of the stock out side or nearby the licence premises, which is a deliberate violation of the Licence Rules and Rule 35 of the Rules, 2012 and Condition Nos.1, 10 and 12 of the form of A.4 licence and thereby called upon to show-cause notice within seven days from the date of receipt of the notice. Undisputedly, the notice was served on the petitioner on 30.01.2018 as per para 3 of the writ petition affidavit. There is no force in the submission or the mention in the writ petition affidavit of having the show-cause notice given seven days making an oral enquiry or oral submission of 15 days time for undisputedly no reply given on or before 7/8.02.2018 for the impugned order passed is on 14.02.2018. The impugned order, no doubt, refers as a lapse of the non-giving of explanation and the impugned order no doubt mentions the show-cause notice given as if of 15 days. However, once the show-cause notice filed as part of the material in the writ petition clearly shows 7 days. So far as the suspension pending enquiry concerned, the Court need not go into, much less to allow to raise any controversy of the oral say of 15 days is correct and thereby mentioned in the impugned proceeding of 15 days, though the show-cause notice speaks of 7 days, but for any further action taken pursuant to the show-cause notice and with reply or no reply of any order passed under Section 31 of the Act concerned to raise. The law is fairly settled right from the Full Bench judgment of this Court in

Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar¹, reiterated in series of expressions including by the batch of writ petitions disposed by this Court in W.P.No.1359 of 2018, dated 08.02.2018, of giving of show-cause notice or any explanation is not a bar to the suspension pending enquiry nor any person can complain about violation of principles of natural justice for not a fundamental right of liquor business or licence, but for a privilege conferred practically a contractual relation and governed by the conditions of licence and Rules. Further, the series of expressions clearly say that for suspension pending enquiry, the twin objects are public interest and loss of revenue to the Government from the abuse of the licence conditions. The impugned proceeding clearly speaks that the continuation of the shop for violation of the licence conditions and the Rules supra is detriment to the Government Revenue and public interest, thereby with immediate effect in public interest and revenue and pending enquiry and until further orders, the licence is suspended. Even the show-cause notice issued is under Section 31 of the Act for passing final orders and not for any suspension pending enquiry for no such show-cause notice is contemplated as answered in this regard.

5. Having regard to the above, there is nothing to interfere with the impugned proceeding on loss of revenue and the public interest once suspended even after show-cause notice, to take recourse for

¹ 1984 (2) APLJ Page 1

final orders under Section 31 of the Act as an interim measure but for to say the order shall not be indefinite, thereby confining to six weeks.

6. Accordingly, the writ petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

19th February 2018

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