

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

WRIT PETITION No.5545 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 issued in e.File No.1129640/ 2017/ A2, dt.1.2.2018 as illegal, arbitrary and in violation of principles of natural justice and also one without jurisdiction 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 other material on record.

3. As held by this Court in W.P.No.1359 of 2018 and batch dated 08.02.2018, as loss of revenue and the public interest are the twin requirements for suspension pending enquiry for same is not a penal consequence but for to say before passing any final order as contemplated by Section 31 of the A.P.Excise Act (for short 'the Act') affording opportunity to submit any explanation by show cause notice and hearing is contemplated.

4. So far as pending enquiry suspension is concerned, there is no application of principles of natural justice and thus no need of giving any show cause notice and waiting for reply. Any giving of show cause notice and even receiving of reply is not a bar, provided, the above requirement is satisfied, leave about 15 days notice for passing final order under Section 31 of the Act is required and only 7 days time is mentioned in the show cause that is not germane. Even after giving of the said notice with 7 days time mentioned thereunder, without even

waiting till expiry of said period a suspension pending enquiry can be ordered in the public interest.

5. However, in the impugned order of suspension, pending enquiry to pass, leave about cannot be for indefinite period, there is no mention even of any loss of revenue or public interest. Thereby, the proceeding of suspension pending enquiry is unsustainable, equally, the show cause notice with 7 days not sufficient but for 15 days notice for passing any final order contemplated by Section 31 of the Act. Thereby, the show cause notice and the impugned order of suspension pending enquiry are set aside and the respondents are given liberty to issue any fresh order of suspension pending enquiry, if required in the public interest. If at all chosen to proceed under Section 31 of the Act by the respondents against the petitioner, it is only by giving opportunity with 15 days time in fresh show cause notice to give the reply and after hearing, to pass a reasoned order. Since the order of suspension pending enquiry is set aside, if any seals are put to the shop, the same have to be removed forthwith by the respondents.

6. Accordingly and with the above observations, this Writ Petition is allowed.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 20.02.2018

L.R.copy to be marked - yes

Note:

Issue C.C. tomorrow.

B/o.

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* HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+ WRIT PETITION No.5545 of 2018

%20-02-2018

Between:

Devaragatla Srinivas

...Petitioner

Vs.

State of Andhra Pradesh and four others

... Respondents

!Counsel for the Petitioner : Sri O.Manohar Reddy

Counsel for the Respondents: learned Government Pleader for
Prohibition and Excise

<Gist :

>Head Note:

? Cases referred:





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WRIT PETITION No.5545 of 2018

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State of Andhra Pradesh and four others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 20.02.2018

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/ No |
| 3 | Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? | Yes/ No |

