

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21054 OF 2018

ORDER:

In the present Writ Petition, challenge is to the Order of the 4th respondent-Prohibition & Excise Superintendent, Anakapalli, issued vide RC.No.369/2017/A4, dated 12.03.2018. By way of the said Order, the 4th respondent cancelled A4 licence of the petitioner.

2. Heard Sri O.Manohar Reddy, learned Counsel for the petitioner and learned Government Pleader for Prohibition and Excise for the respondents.

3. The 4th respondent-Prohibition & Excise Superintendent granted A4 License in favour of the petitioner vide Licence No.162/2017-19, dated 10.07.2017 for the period from 01.07.2017 to 30.06.2019. Vide proceedings Rc.No.369/2017/A4, dated 30.01.2018, consequent upon the raid conducted in the petitioner's shop and registration of Crime No.19 of 2018, dated 29.01.2018, on the file of the S.H.O., Yellamanchili, for the alleged offence under Section 36 (II)(b) and (c) of the A.P.Excise Act, 1968 (hereinafter referred to as 'the Act'), respondent No.4 suspended the licence on the ground that the licensee violated Rules 36 and 37 of the A.P.Excise (Grant of License of Selling by Shop and Conditions of License) Rules, 2012 (hereinafter, referred to as 'the Rules').

4. Assailing the validity of the said suspension orders, the petitioner herein filed W.P.No.3491 of 2018 and the said Writ Petition along with similar cases, was dismissed by this Court, vide Orders, dated 08.02.2018, however with a liberty to the 4th

respondent to conclude the enquiry and pass final orders. Thereafter, the 4th respondent issued a show-cause notice, vide RC.No.369/2017/A4, dated 27.02.2018, asking the petitioner to show-cause as to why license should not be cancelled. On 02.03.2018, the petitioner herein submitted an explanation. Vide proceedings RC.No.269/17/A4, dated 12.03.2018, the 4th respondent cancelled the license on the ground that the licensee contravened Section 36 (1)(b) and (c) of the Act and Rule 37 of the Rules, in exercise of the powers conferred under Section 31(1)(b) of the Act.

5. The sum and substance of the case of the petitioner, as advocated by the learned Counsel for the petitioner is that the impugned Order is highly illegal, arbitrary and unreasonable and violative of the Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of Section 47 of the Act. In elaboration, it is further maintained by the learned Counsel that the respondents ought to have compounded the offence under Section 47 of the Act instead of resorting to the impugned action of cancellation. It is also further submitted that the alleged offence falls under clauses (a) and (b) of Section 36 of the Act. Learned Senior Counsel for the petitioner places reliance on the judgment of this Court reported in **N.MALLA REDDY v. STATE OF A.P.**¹.

6. Per contra, it is contended by the learned Government Pleader that there is no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under

¹ 2013 (5) ALT, 713

Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that in view of the alternative remedy available to the petitioner under Section 63 of the Act, the present Writ Petition is not maintainable under Article 226 of the Constitution of India and that the offences alleged against the petitioner are not compoundable under Section 47 of the Act. It is further submitted by the learned Government Pleader that the petitioner never filed any application before the competent authority i.e., the Commissioner of Prohibition and Excise nor he made any request for compounding in the explanation offered in response to the show cause notice of cancellation.

7. Admittedly, on the ground of involvement in crime No.15/2018 on the file of Prohibition and Excise Station, Anakapali, and Cr.No.19/2018 on the file of S.H.O., Yellamanchili, the 4th respondent herein initiated action by issuing show cause notice of cancellation, on 27.02.2018. In response to the said show cause notice, the petitioner herein submitted explanation, on 02.03.2018, to the Excise Superintendent, stating that his *naukarnama* K.Arun Kumar, committed the offence without his knowledge and requested to condone by treating the same as first offence. Except saying so, admittedly, the petitioner herein did not make any request to the Commissioner/competent authority to compound under Section 47 of the Act and Rule 5 of the A.P.Excise (Compounding of Offences) Rules 1973. It is also not in dispute that as per Section 63 of the Act, the impugned order is appealable before the Deputy Commissioner of Prohibition and Excise.

8. Having regard to the nature of allegations and as the sustainability of the impugned Order is required to be verified by a

fact finding authority, this Court is not inclined to go into the said controversies under Article 226 of the Constitution of India. So far as the aspect pertaining to compoundability, this Court is of the opinion that the petitioner can be given an opportunity to approach the appropriate authority under the Act.

9. For the aforesaid reasons, the Writ Petition is disposed of, keeping it open for the petitioner herein to file statutory appeal under Section 63 of the Act against the Order of cancellation, dated 12.03.2018, within a period of two weeks from the date of receipt of a copy of this Order. If any such appeal is filed, within the said period, the same be considered and appropriate orders be passed within a period of four weeks thereafter. It is also open for the petitioner herein to file an application under Section 47 of the Act before the Commissioner of Prohibition and Excise, within a period of one week from the date of receipt of a copy of this Order and if any such application is filed within the time stipulated above, the same be considered and appropriate orders be passed within a period of three weeks thereafter.

Miscellaneous Petitions pending consideration, if any, in this Writ Petition shall stand closed. No costs.

JUSTICE A.V.SESHA SAI

Date :07.08.2018
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