

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21093 of 2017

ORDER:

In the present Writ Petition, challenge is to the Order of the 2nd respondent-Commissioner, Prohibition and Excise, Hyderabad, Telangana State, vide proceedings CR.No.616/2017/CPE/TS/D1, dated 27.04.2017, dismissing the appeal filed by the petitioner whereby confirming the Orders of confiscation passed by the Dy.Commissioner of Prohibition & Excise, Medak at Sangareddy-R.3 herein, vide proceedings Cr.No.C/40/2016/DCM, dated 31.12.2016.

2. Heard learned Counsel for the petitioner and the learned Government Pleader for Prohibition and Excise for the respondents.

3. Followed by a raid conducted on 23.02.2016 and registration of COR No.46/2016, dated 23.02.2016, under Section 34(a) of the A.P.Excise Act, 1968 read with Rule 4(a) of the A.P.Chloral Hydrate Rules, for alleged illegal possession of Chloral Hydrate, the respondent-authorities initiated the confiscation proceedings. Initially, on 03.06.2016, the 3rd respondent passed an Order of confiscation. Aggrieved by the said Order, the petitioner herein filed a statutory appeal before the 2nd respondent. The 2nd respondent herein passed an Order vide Cr.No.5133/2014/CPE/TS/D1, dated 12.12.2016, remanding the matter to the 3rd respondent for fresh disposal after giving due opportunity to the appellant, as per law and principles of natural justice. After such remand, the 3rd respondent vide proceedings Cr.No.C/40/2016/DCM, dated 31.12.2016, passed Orders of

confiscation of the contraband. As against the said Order of confiscation, passed by the 3rd respondent herein, the petitioner herein filed an appeal before the 2nd respondent herein. The 2nd respondent vide proceedings CR.No.616/2017/CPE/TS/D1, dated 27.04.2017, dismissed the appeal filed by the petitioner herein and confirmed the Orders of the 3rd respondent. This Writ Petition challenges the validity and legal sustainability of the said Orders passed by the primary and appellate authorities ordering confiscation.

4. According to the learned Counsel for the petitioner, the Orders impugned in the present Writ Petition are highly illegal, arbitrary and violative of the Article 14 of the Constitution of India, besides being opposed to the very spirit and object of the provisions of the A.P.Excise Act, 1968 and violative of the principles of natural justice. In elaboration, it is further contended by the learned Counsel for the petitioner that in view of the Orders passed by the 2nd respondent, vide proceedings Cr.No.1533/2014/CPE/TS/D1, dated 12.12.2016, the 3rd respondent ought to have started the enquiry afresh and ought to have conducted enquiry *de novo* after issuing show cause notice to the petitioner, calling for his explanation. It is the further submission of the learned Counsel that the appellate authority also in a mechanical and casual manner, dismissed the appeal without assigning any proper and valid reasons. It is also the further submission of the learned Counsel for the petitioner that by the time show cause notice was issued, the petitioner herein was under detention under the Preventive Detention Act and

pursuant to the Orders of this Court, in W.P.No.16329 of 2016, dated 09.11.2016, he was released.

5. On the contrary, it is strenuously contended by the learned Government Pleader, appearing for the respondents that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the impugned Orders are not amenable for any judicial review under Article 226 of the Constitution of India. It is the further submission of the learned Government Pleader that after the remand by the 2nd respondent, opportunity was given to the petitioner herein and only thereafter, the 3rd respondent passed the Order, dated 31.12.2016, ordering confiscation.

6. A perusal of the Order passed by the 2nd respondent vide proceedings Cr.No.5133/2014/CPE/TS/D1, dated 12.12.2016, clearly discloses that when the petitioner herein earlier approached the 2nd respondent by way of appeal against the Orders of confiscation, dated 03.06.2016, passed by the 3rd respondent, the 2nd respondent herein specifically directed the 3rd respondent to re-examine the case, keeping in mind the principles of *audi alteram partem* and principles of natural justice and to hear the plea of the party sufficiently and thereafter, dispose of the matter, as per law. The language of the said Order clearly makes it evident that the 2nd respondent after being satisfied with the Grounds of Appeal filed by the petitioner herein, directed re-examination of the issue, once again, and in view of the same, the 3rd respondent herein should have started the enquiry, afresh, after issuing show cause notice, calling for the explanation from the petitioner herein. But the 3rd respondent failed to follow the same and did not issue any show

cause notice to the petitioner herein so as to enable the petitioner to file explanation. On the other hand, the primary authority, in the impugned Order, dated 31.12.2016, makes an observation that the petitioner herein is not a person lacking resources or facilities. It is a settled and well established principle of law that when any action results in deprivation of civil rights of an individual, such individual shall be given complete opportunity of being heard before passing an Order. Therefore, the said ground and the reason assigned by the primary authority, in the impugned Order, cannot be sustained in the eye of law. As rightly pointed out by the learned Counsel for the petitioner that though the 2nd respondent ordered *de novo* enquiry vide Order, dated 12.12.2016, a perusal of the Order, dated 31.12.2016, discloses in clear terms that the primary authority was taken away by the earlier Order, dated 27.12.2016. Coming to the Order passed by the appellate authority, it is required to be noted that though the appellate authority referred to the grounds urged by the petitioner in the Grounds of Appeal, failed to make any endeavour to consider the validity or otherwise of the same. On that ground, the Order of the appellate Court cannot stand. In these circumstances, it can safely be concluded that the Orders, passed by the primary and appellate authorities, which are impugned in the present Writ Petition, cannot be sustained in the eye of law.

7. Accordingly, the Writ Petition is allowed, setting aside the Orders passed by the Dy.Commissioner of Prohibition and Excise, Medat at Sangareddy/R.3 herein vide proceedings Cr.No.C/40/2016/DCM, dated 31.12.2016, as confirmed by the Commissioner of Prohibition and Excise, Hyderabad, Telangana

State/2nd respondent herein vide CR.No.616/2017,CPE/TS/D1, dated 27.04.2017. However, it is open for the respondent-authorities to issue a show cause notice, afresh, to the petitioner herein and to proceed further, strictly in accordance with law.

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

JUSTICE A.V.SESHA SAI

Date: 04.10.2018
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