

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.28811 of 2018

ORDER:

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

2. Petitioner herein is the A4 licensee of the liquor shop situated at D.No.4-181, Arugolanu Village, Tadepalligudem Mandal, West Godavari District and running the said business in the name and style of M/s.Lakshmi Wines.

3. On the basis of a complaint said to have been made by the unofficial respondent and after calling for the reports from the Station House Officer, Prohibition and Excise Station, Tadepalligudem and the Divisional Cooperative Officer, Eluru, West Godavari District, the Prohibition and Excise Superintendent passed an order vide File No.718616/A4/2017, dated 09.08.2018, suspending A.4 shop license of the petitioner herein, pending further enquiry.

4. According to the learned counsel for the petitioner, the impugned action on the part of the fourth respondent in suspending the A.4 license of the petitioner herein is highly illegal, arbitrary and unreasonable and without jurisdiction and violative of Article 14 of the Constitution of India. In elaboration, it is further submitted by the learned counsel that the impugned order cannot be justified under the provisions of Section 31 (1) (b) read with Rules 8 and 10 of The Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 notified vide G.O.Ms.No.391, Revenue (Ex-II) Department, dated 18.06.2012.

5. On the other hand, it is submitted by the learned Government Pleader 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 order is not amenable for any judicial review under Article 226 of the Constitution of India. It is also the submission of the learned Government Pleader that as per Chapter V (e) of Service Conditions of the employees of the Primary Agricultural Cooperative Society no employee shall engage directly or indirectly in any trade business or undertake any other employment. It is further submitted that in contravention of the said service condition and by suppressing the same, petitioner herein has applied for A.4 licence and obtained the same, as such, the impugned action cannot be faulted. It is also the submission of the learned Government Pleader that the impugned action is only a suspension pending enquiry and it is open for the petitioner herein to submit an explanation for consideration by the respondent Prohibition and Excise Superintendent and final orders would be passed thereafter.

6. There is absolutely no dispute with regard to the reality that the petitioner herein is the Secretary of Ravipadu Primary Agricultural Cooperative Credit Society Limited, West Godavari District and is governed by the service conditions of the society. The case of the petitioner herein is that even before he applied for the A.4 shop licence, petitioner herein made application before the Managing Committee of the Society and the Managing Committee passed a resolution on 06.03.2017 vide Resolution No.75, resolving to grant permission for the petitioner to apply for liquor shop licence and thereafter the matter was placed before the General Body of the Society and the General Body also passed a resolution on 24.03.2017 vide Resolution No.2 to apply for the liquor shop license on his name. It is further submitted by the learned counsel that only thereafter the petitioner herein

applied for the same and obtained the same and it cannot be said that the petitioner herein suppressed his employment.

7. In order to resolve the present issue on hand, it would be appropriate to refer to Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 notified vide G.O.Ms.No.391, Revenue (Ex-II) Department, dated 18.06.2012. Rule 8 of the said Rules deals with the persons who are not eligible to participate in the process of selection and Rule 10 deals with the disqualifications. The said provision of law read as under:

“8. Persons not eligible to participate in the process of selection of applicants: The following persons shall not be eligible to participate in the selection process, namely:-

- (a) A person who is below the age of 21 years.
- (b) A person who has been convicted of any offences specified in clause (d) of sub-section (1) of Section 31 of the Act in respect of which he has been penalised or convicted within the preceding three years:
- (c) A person who has been convicted or whose licence has been cancelled for breach of any of the conditions of licence granted under Section 31 of the Act within the preceding three years;
- (d) A person who has been held guilty either in a departmental proceeding or in a Court, of an offence under Section 37 of the Act for adulteration of toddy by mixing any article injurious to public health or otherwise within the preceding three years.
- (e) A person who is suffering from any contagious disease:
- (f) A person who is a defaulter of excise revenue; or
- (g) A person who is adjudged as an insolvent by a competent Court.

10. Disqualifications:- (1) No licence shall be granted to a person who is found ineligible under Rule 8 and who does not comply with the conditions prescribed under Rule 6.

(2) If any person, who is disqualified under this rule, is found to be holding a licence, the licence shall be withdrawn in accordance

with Section 32 of the Act and the shop shall be re-notified/re-allotted for grant of fresh licence.

Provided that if such disqualification comes to the notice of the licensing authority before the licence is granted but after the selection process is completed, the selection authority shall conduct the selection process afresh after eliminating the disqualified applicant.”

8. It is very much obvious from a reading of the above provisions of law that the petitioner herein does not suffer from any disqualification as stipulated in the above provisions of law. In the instant case, the impugned order came to be passed under the provisions of section 31 (1) (b) of the A.P. Excise Act, 1968 and the said provisions of law reads as under:

“ Section 31 : Power to cancel or suspend licence etc.

(1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates.

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof.”

9. In the instant case, the lapses said to have been committed by the petitioner herein, as pointed out in the impugned order, do not obviously fall under the above provisions of law also. If there is any contravention of any service conditions of the Cooperative Societies, it is up to the concerned authorities to take action against the petitioner herein, in accordance with law. It is very much evident from the above provisions of law that the impugned action of keeping the A-4 licence under suspension cannot be justified under any one of the provisions as mentioned supra. In the absence of any provision of law, which debars the petitioner herein from applying for A-4 licence, the said contingency cannot be the foundation for the respondents herein to pass the impugned order of suspension. It is also

significant to note that the impugned action is not traceable to any of the provisions of law. In view of the same, this Court does not find any scintilla of hesitation to hold that the impugned action is totally one without jurisdiction.

10. Accordingly, the writ petition is allowed, setting aside the order of the fourth respondent issued in e.File No.718616/A4/2017, dated 09.08.2018. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date:18.09.2018
grk

A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.28811 of 2018

Dated 18.09.2018

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