HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 42388 of 2018

ORDER:

1) Challenging the action of the 4th respondent in suspending the A4 licence granted to the petitioner without issuing any show cause notice, the present Writ Petition came to be filed.

2) A perusal of the suspension order shows that the prohibition and excise staff visited the A4 licensed shop of the petitioner and when they questioned the nowkarnama as to why the seals are removed, he seems to have stated that water came to be mixed in the liquor bottles and then sold to the consumers. Basing on the same, a case in Cr.No.69 of 2018 came to be registered for the offences punishable under the provisions of the Excise Act. Since the petitioner contravened the rules and the license conditions with a view to get wrongful gain by violating the rules, the license was suspended under Section 31 of the A.P. Excise Act pending enquiry.

3) Relying upon a Full Bench judgment of this Court in **Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar**[1], Sri O.Manohar Reddy, learned counsel for the petitioner would contend that the circumstances in this case do not warrant suspension of license without issuing any notice. Since the

[1] 1984(2) APLJ, page 1

case is based on the material alleged to have been furnished by the Nowkarnama, the owner of the premises should be given an opportunity to explain his stand.

4) On the other hand, the learned Government Pleader for Excise would contend that since water came to be filled by opening the seals of the Whisky bottles, so as to make a wrongful gain and as the offence is grave in nature, issuing of show cause notice is unwarranted.

5) Before proceeding further, it would be useful to extract the relevant portion in the Full Bench judgment of this Court, which is as under:-

"However we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion the reasonably, bonafide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity as the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry. Further, the suspension pending the enquiry should not be allowed to continue for an unduly jong period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether eth suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided, and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension."

6) A perusal of the above would indicate that the power to suspend the licence without an enquiry is an incidental power conferred on the licencing authority, which cannot be exercised in a routine way or as a matter of course. The court held that the said discretion has to be exercised reasonably, bonafidely and without negligence, considering the circumstances of the case. The Court further held that the licencing authority is bound to afford an opportunity before taking such drastic step, as the power of suspension, pending enquiry, should not be exercised as an invariable rule or mode of making an enquiry.

7) Having regard to the above, it is to be noted whether the licencing authority was justified in suspending the licence without issuing a show cause notice. It is not the case of the respondents that the situation is such, which do not warrant issuance of show cause notice, before taking the drastic step of suspending the licence. The authority had every opportunity of giving a notice to the licence holder before passing the order. It cannot also be said that if the licence is not suspended immediately the situation would lead to an irreparable damage causing wide spread danger to public health.

8) On the other hand, the allegation against the petitioner is that diluted liquor bottles were found in the premises. It can be said that the petitioner must have made monitory gain by adulterating the liquor with water for which such a drastic step of

suspending the licence without notice, in my view is unwarranted. Moreover, this is the first offence against the petitioner.

9) Having regard to the above facts and circumstances, the order under challenge is set-aside and the authorities are at liberty to issue a show cause notice to the petitioner, calling for an explanation and then pass orders in accordance with law.

10) With the above observation, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:27.11.2018
GM