HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 43139 of 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the order of the 4th respondent in R.C.No.207/2018-B-dated 20.11.2018 as illegal and arbitrary.

2) The averments made in the affidavit filed in support of the Writ Petition show that the petitioner made an application for grant of licence in respect of the shop notified in Gazette Sl.No.AT/14 and in the drawal of lots, he was granted licence. Ever since the date of grant of licence he was running the business in the name and style of M/s.PR Wines at Anantapuramu. While things stood thus, the Prohibition and Excise Superintendent, Anahtapuramu, basing on the report of the 5th respondent herein issued the impugned order on the ground that when the shop of the petitioner was inspected, they found loose liquor bottles in a cartoon box and on interrogation it is alleged that the Nowkarnama holder has confessed that he is conducting the sale of liquor in loose on the instructions of the licensee. The Prohibition and Excise Inspector sealed the stock, took samples for chemical analysis and basing on the same, came to the conclusion that the petitioner has violated the conditions of licence. On the same day i.e., on 20.011.2018, a show cause ;notice came to be

issued for cancellation of licence and on the very same day without even waiting for the reply from the petitioner, passed an order suspending the licence of the petitioner pending enquiry. Challenging the same, the present Writ Petition came to be filed.

3) Learned counsel for the petitioner mainly submits that under Section 31 of the A.P. Excise Act, no licence or permit shall be cancelled or suspended unless the holder there of is given an opportunity of making a representation against the proposed action. In the absence of any opportunity being given to the petitioner to submit an explanation before passing of order of suspension, the counsel would contend that the order is exfacie illegal in view of the judgment of the Full Bench reported in **Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar**[1]. Apart from that he also pleads that the Nowkarnamaholder was responsible for the alleged act and that the petitioner is noway responsible for the same. In any event, he would contend that the alleged act cannot be said to be so grave, which warrants suspension without any notice.

4) On the other hand, the learned Government Pleader for Excise placed on record the instructions received from office of the Prohibition and Excise Superintendent, Ananthapuramu. Relying upon Rule 44(4) of the A.P. Excise (Lease of Right of Selling by shop and

[1] 1984(2) APLJ, page 1

conditions of licences) Rules, 2012, he would contend that the owner of the shop is liable for every act of the authorized agent or servant. Since the nowkarnamaholder violated the conditions OF licence, the action of the authorities cannot be found fault with. He further submits that on 25.11.2018 the petitioner herein made a compounding application, which is pending consideration. In view of the voluntary acknowledgment by the licencee, about violation of conditions of licence, he would plead that the order warrants no interference.

5) As seen from the record, the allegation against the petitioner is that the nowkar was selling loose liquor bottles in the cartoon boxes and the same were found in the shop. The samples taken indicated that all the above loose liquor bottles were sealed. Pursuant thereto, a crime was registered and the nowkarnamaholder was arrested. The incident of seizing the loose liquor is said to have taken place on 13.11.2018. Thereafter, on 20.11.2018, a show cause notice was issued to the petitioner asking him to explain within a period of 7 days from the date of receipt of the notice as to why the licence of the petitioner should not be cancelled. Though the said notice states that the explanation, if any, should reach the office within 7 days from the date of receipt of notice, but impugned order suspending the licence came to be passed on 20.11.2018 itself, without waiting for the reply, to be given by the petitioner. It may be true that under Rule 44(4) of the A.P. Excise Rules, the act of

authorized agent or servant in A-4shop shall be deemed to be an act of the licencee, but Section 31 of the Act postulates that before a licence is suspended or cancelled, an opportunity of making a representation against the proposed action should be given to the licence holder. In the instant case, the same was not done. The Full Bench judgment of this Court in **Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar**[2], categorically held that 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. The licensing authority is bound to exercise the discretion reasonably, bonafide and without negligence, considering the circumstances of the case when such interim suspension is necessary.

6) As observed by me earlier, the instant case refers to selling of loose liquor, which was in sealed cartoons. It is not the case of the respondents that what was sold was adulterated liquor and that no material was there before the authorities as to the contents of the said liquor at the time of passing the impugned order. Further, though the show cause notice categorically gives seven days time to the petitioner to submit his explanation, but without waiting for the same, the impugned order suspending the licence came to be passed on the very same day of issuance of show cause notice,.

[2] 1984(2) APLJ, page 1

7) Having regard to the circumstances referred to above and taking into consideration the provisions of the Act and the judgment of the Full Bench, this Court is of the view that the authorities ought to have taken into consideration the explanation which is to be submitted within seven days before passing the impugned order. Hence, the order under challenge is set-aside and the matter is remanded back to the Prohibition and Excise Superintendent to take into consideration the explanation submitted by the petitioner to the show cause notice dated 20.11.2018 and then pass orders at the earliest. If no explanation is submitted till date, the petitioner shall submit his explanation within a period of four days from today, in which event the authorities shall deal with the same in accordance with law and pass orders. Meanwhile, the compounding application, if any is pending, may also be dealt with in accordance with law.

8) With the above direction, the Writ Petition is disposed of. Miscellaneous petitions, pending if any, shall stand closed. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

Dt:04.12.2018
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