HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 44676 of 2018

ORDER:

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the order of the 4th respondent passed in R.C.No.284/2017/A3, dated 03.12.2018 as illegal, arbitrary and without jurisdiction.

2. Heard the counsel for the petitioner and learned Government Pleader for Excise.

3. As seen from the impugned order, on 01.12.2018 the Station House Officer, Jaggaiahpeta inspected the shop of the petitioner and on verification of the stock with reference to R.2 register, he noticed variation in number of bottles. As per the entry in the register, there should be 4702 bottles of whisky, but the actual stock found in the premises was 3820 bottles i.e. a difference of 882 bottles. In view of the said difference, a case in Crime No.162 of 2018 came to be registered for the offence under Section 36(1)(b&c) of A.P. Excise Act, 1968. Thereafter, the 4th respondent passed the impugned order suspending the licence of the petitioner, for violation of licence conditions, with immediate effect for a period of four weeks. Challenging the same, the present writ petition is filed.

4. Relying upon a Full Bench judgment of this Court in **Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar**[1], the learned counsel for the petitioner would contend that the circumstances in this case do not warrant

[1] 1984(2) APLJ, page 1

suspension of license without issuance of show-cause notice and therefore, the impugned order is illegal and improper. It is contended that in view of the judgment of the Full Bench, referred to supra, as the offence allegedly committed by the petitioner is not grave in nature and does fall within the categories referred to by the Full Bench in the said decision, a show-cause notice ought to have been issued before passing the impugned order of suspending the licence of the petitioner.

5. On the other hand, the learned Government Pleader for Excise would contend that taking into consideration the nature of offence and to prevent the licensee from involving in the offence of this nature, the impugned order came to be passed. He further states that till date, no show-cause notice has been issued to the petitioner.

6. The issue with regard to the suspension of licence without giving a show-cause notice came up for consideration before Full Bench of this Court in **Tappers Cooperative Society, Maddur**, wherein it has been held 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. It was 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. In the case on hand, a perusal of the material on record does not indicate that the situation warrants the authorities in passing the impugned order 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. Having regard to the above facts and circumstances, the order under challenge is set aside and the respondent-authorities are at liberty to proceed against the petitioner in accordance with law.

9. 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

13.12.2018
Tsr