

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 44936 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.572/2018/A4, dated 05.12.2018 as illegal, arbitrary and without jurisdiction.

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

3. As seen from the record, pursuant to the show-cause notice dated 24.11.2018 issued by the 4th respondent alleging certain violations of licence conditions, the petitioner submitted his explanation on 29.11.2018. However, by the impugned order, the 4th respondent suspended the licence issued in favour of the petitioner until further orders. 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 having considered the explanation of the petitioner pursuant to the show-cause notice, the question of suspending the licence of the petitioner until further orders, is not warranted in the circumstances of the case. Since the impugned order is passed as a measure of punishment for the alleged violation of licence conditions, the period of suspension of licence

¹ 1984(2) APLJ, page 1

can only be imposed for a limited period, but not for an indefinite period.

5. On the other hand, the learned Government Pleader for Prohibition & Excise would contend that taking into consideration the nature of offence, to prevent the licensee from committing the offence of this nature, the impugned order came to be passed. He submits that in the circumstances of the case, if this Court is inclined to set aside the impugned order, a direction may be given to the respondents-authorities to pass an order, by specifying the period of suspension of licence of the petitioner.

6. Any order passed by the authorities should be in accordance with law. As seen from the impugned proceedings, pursuant to the show-cause notice dated 24.11.2018, petitioner submitted his explanation. After considering the explanation of the petitioner, the impugned order is passed by the 4th respondent, as a measure of punishment. When such an order is passed duly considering the explanation of the petitioner, no further proceedings would be pending before the authorities.

7. Further, it would be useful to extract the relevant portion of the Full Bench judgment of this Court in **Tappers Cooperative Society, Maddur**, 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, bona fide 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 long 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.”

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. Accordingly, the writ petition is allowed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

13.12.2018
Tsr

JUSTICE C. PRAVEEN KUMAR

