

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 45439 of 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the order of respondent No.4 in R.C.No.192/ 2018/ A1, dated 07.12.2018 as illegal and arbitrary.

2) The averments made in the affidavit filed in support of the Writ Petition show that petitioner No.1 was granted licence vide letter No.CT/ 282/ 2017-19, dated 01.07.2017 and accordingly the petitioners were running A4 shop at D.No.5-344, D.N.Road near SBI Pakala, Chittoor district, without any complaint from any quarter. Petitioner No.2 is the nowkar as per the nowkarnama No.455/ 17-19 in form N1 submitted to the authorities and was permitted to sit in the shop. While things stood thus, the Prohibition and Excise Superintendent, Tirupathi, Chittoor District, basing on the report of respondent No.5 herein issued the impugned order, suspending the licence of the petitioner, pending investigation and also ordered for closure and seizure of the A4 shop on the ground that when the shop of petitioner No.1 was inspected, they found four liquor bottles below the table drawer. On interrogation one B.Tirupathaiah, who failed to produce nowkarnama, confessed certain irregularities being conducted in sale of liquor, 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 a conclusion that the petitioners have violated the conditions of licence. On 07.12.2018, without issuing a show cause notice, the impugned proceedings came to be issued suspending the licence

of petitioner No.1 pending enquiry. Challenging the same, the present Writ Petition came to be filed.

3) Learned counsel for the petitioners mainly submits that under Section 31 of the A.P. Excise Act, no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making a representation against the proposed action. In the absence of any opportunity being given to petitioner No.1 to submit an explanation before passing of order of suspension, the counsel would contend that the order is *ex facie* 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 petitioner No.1 is no way 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. Relying upon Rule 44(4) of the A.P. Excise (Lease of Right of Selling by shop and 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 to licence, the action of the authorities cannot be found fault with. In view of the voluntary acknowledgment by the licensee about violation of conditions of licence, he would plead that the order warrants no interference.

¹ 1984(2) APLJ, page 1

5) As seen from the record, the version of the first petitioner is that the nowkarnama is to be held responsible for selling loose liquor bottles as the same were found in the shop at the time of search. The samples taken indicated that all the above loose liquor bottles were sealed and affixed with identification slips. Pursuant thereto, a crime was registered and the nowkarnamaholder was arrested. The incident of seizing the loose liquor and registration of crime is said to have taken place on 06.12.2018. Thereafter, on 07.12.2018 the impugned order came to be passed suspending the licence of the shop, without giving an opportunity to the petitioners to explain the alleged violation. It may be true that under Rule 44(4) of the A.P. Excise Rules, the act of authorized agent or servant in A-shop shall be deemed to be an act of the licensee, 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.

6) The Full Bench judgment of this Court in Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar², categorically held that the licensing authority is bound to afford an opportunity and 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.

7) As observed by me earlier, the instant case relates to selling of loose liquor. It is not the case of the respondents that what was sold was an adulterated liquor and that no material was there before the authorities at

the time of passing an impugned order as to the contents of the said liquor. Further, soon after the registration of crime i.e., on 06.12.2018, the impugned order, suspending the licence came to be passed on 07.12.2018, without even issuing show cause notice and without following the principles of natural justice.

8) 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 issued show cause notice and after taking into consideration the explanation to be given by the petitioner to the show cause notice, the impugned order should have been passed.

9) Hence, the order under challenge is set-aside and the matter is remanded back to the Prohibition and Excise Superintendent directing him to give fresh notice to the petitioners, within a period of ten days from the date of receipt of a copy of this order, pursuant to which, the petitioners shall submit their explanation within a period of one week thereafter, in which event the authorities shall pass orders, in accordance with law, at the earliest.

10) 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:17.12.2018

Note:

Issue cc in two days.

B/ o.

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