HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 45487 of 2018

ORDER:

1) Challenging the action of the 3rd 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 would show that the prohibition and excise staff conducted decoy operation for MRP violations in the A4 licensed shop of the petitioner and found the person who was present at the counter selling HD Heavens Door Whisky 180 ml. bottle for Rs.60/- instead of MRP Rs.50/- which is excess of Rs.10/-. On verification they also noticed loose liquor bottles of 1)Royal Stag blended whisky 180 ml. bodttle containing 90 ml. loose liquor without heal, 2)Mc.Dowel No.1 premium Gold Brandy 180 ml. bottle containing 90 ml. loose liquor without heal and 3)HD Heavens Door whisky 180 ml. bottle containing 90 ml. loose liquor without heal. On questioning, the accused-Vutla Vamsi Krishna informed that he is not having any nowkarnama to work in the shop. Basing on the same, a case in Cr.No.38 of 2018 of Vinukonda Prohibition and Excise Station came to be registered for the offences punishable under the provisions of the Excise Act. Since the petitioner, who is the licensee of M/s.Sudharsan Wines

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 Rama Rao Kochiri, 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 case is based on the material alleged to have been furnished by the person who was present in the shop of the petitioner, 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 the licensee has violated the licensing conditions by selling liquor for more than MRP printed on its labels and also in possession of loose liquor bottles in the counter, so as to make a wrongful gain which 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:-

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[1] 1984(2) APLJ, page 1

"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 the 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, 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 liquor was being sold for more than price printed on its labels and that loose liquor bottles were found in the counter. It can be said that the petitioner must have made monitory gain by selling the liquor for higher rate than the MRP printed on it and also loose liquor, 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, 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.

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JUSTICE C. PRAVEEN KUMAR

Dt:15.12.2018
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