

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 41542 of 2017

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed assailing the order dated 14.11.2017 in Complaint No. 3036/2017/B2 passed by the Upa-Lokayukta, whereby the 1st respondent directed the District Prohibition and Excise Officer, Nalgonda to forthwith stop functioning of Sri Sai Wine Shop belonging to the petitioner and submit compliance report by 20.11.2017.

This Court, by order dated 13.12.2017, granted interim suspension and the same has been continued till date.

It is averred in the writ affidavit that the petitioner, who is granted licence for the period from 01.10.2017 to 30.09.2019 by the 3rd respondent - District Prohibition and Excise Officer, is running a wine shop. The 2nd respondent – S.Vijaya Bhaskar Reddy filed a Complaint No.3036/2017/B2 against the petitioner alleging that he is illegally running wine shop, and the petitioner's grievance is that the 1st respondent, without having jurisdiction, passed the impugned order directing the 3rd respondent to stop the petitioner from running his wine shop.

The powers of A.P. Lokayukta or Upa-Lokayukta are defined under Section 7 of the A.P. Lokayukta and

Upa-Lokayukta Act, 1983 (for brevity “the Act”) which read as under:

“7. Matters which may be investigated by Lokayukta or Upa-Lokayukta:- (1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by, or with the general or specific approval of, or at the behest of,

- i) a Minister or a Secretary; or
- ii) a Member of either House of the State Legislature; or
- iii) a Mayor of the Municipal Corporation constituted by or under the relevant law for the time being in force; or
- iv) any other public servant, belonging to such class or section of public servants, as may be notified by the Government in this behalf after consultation with the Lokayukta, in any case, where a complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Lokayukta, the subject of an allegation.

(2) Subject to the provisions of this Act, the Upa-Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant, other than those referred to in sub-section (1), in any case where a complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Upa-Lokayukta, the subject of an allegation.

(3) Notwithstanding anything in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any allegation in respect of an action which may be investigated by the Upa-Lokayukta under that sub-section, whether or not complaint has been made to the Lokayukta in respect of such action.

(4) Whether two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by the Upa-Lokayukta under this Act and no action taken or thing done

by him in respect of such investigation shall be called in question on the ground only that such investigation relates to a matter which is not assigned to him by such order.”

It is not in dispute that the petitioner was not made a party before the 1st respondent and the petitioner has been granted licence by the 3rd respondent for the period from 01.10.2017 to 30.09.2019. If the 2nd respondent had any grievance against the petitioner in the matter of running the wine shop, he should have approached the 3rd respondent for appropriate remedies who is the only competent authority to take action. Moreover, in the absence of any specific provision contemplated under the Act, the 1st respondent – Office of Lokayukta cannot exercise its power in directing the 3rd respondent to take action against the petitioner’s business which is purely a private entity. Hence, the impugned order is liable to be set aside.

For the foregoing reasons, the writ petition is allowed setting aside the order dated 14.11.2017 in Complaint No. 3036/ 2017/ B2 passed by the Upa-Lokayukta. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

01.02.2018

SURESH KUMAR KAIT, J

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ABHINAND KUMAR SHAVILI, J