HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 45727 of 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the order of respondent No.3 in R.C.No.318/2018/B1, dated 09.12.2018, as illegal and arbitrary.

2) The averments made in the affidavit filed in support of the Writ Petition show that petitioner is the licence holder of shop G.S.L.No.80/173 in the name and style of M/s.Revanth Wines, Hindupur. While things stood thus, the Prohibition and Excise Superintendent, Tirupathi, Chittoor District, basing on the report of respondent No.4 herein issued the impugned order, suspending the licence of the petitioner, with immediate effect on the ground that when the shop of petitioner was inspected, they found liquor bottles being sold at higher price. The Prohibition and Excise Inspector on coming to a conclusion that the petitioner has violated the conditions of licence and rules under Excise Act, without issuing a show cause notice, passed the impugned proceedings suspending the licence of the petitioner. Challenging the same, the present Writ Petition came to be filed.

3) Learned counsel for the petitioner mainly submits that under Section 31 of the A.P. Excise Act, no licence or permit shall be cancelled or suspended unless the holder there of is given an opportunity of making a representation against the proposed action.

In the absence of any opportunity being given to the petitioner to submit an explanation before passing of order of suspension, the counsel would contend that the order is exfacie illegal, in view of the judgment of the Full Bench reported in Tappers Cooperative Society, Maddur v. Superintendent of Excise, Mahabubnagar[1]. 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 would submit that since the petitioner has violated Rule 42 of A.P.Excise (Lease of Right of Selling by shop and conditions of licences) Rules, 2012, the impugned proceedings came to be issued and hence the order warrants no interference.

5) As seen from the record, the liquor was found to be sold at a higher price than the M.R.P. Pursuant thereto, a crime was registered. The incident of seizing the liquor and registration of crime is said to have taken place on 08.12.2018. Thereafter, on 09.12.2018 the impugned order came to be passed suspending the licence of the A4 shop, without hearing the petitioner. It is true that under Rule 42 of the A.P. Excise Rules, the lease holder shall sell Indian Made Foreign Liquor at prices not exceeding the MRP indicated on the labels of the bottles and issue bills to the customers accordingly, but Section 31 of the Act postulates that before a licence is suspended or cancelled, an opportunity of making a representation

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[1] 1984(2) *APLJ*, page 1

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, Mahabubnagar (supra), 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 liquor at higher price. It is not the case of the respondents that what was sold was an adulterated liquor and 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 registration of crime i.e., on 08.12.2018, the impugned order, suspending the licence came to be passed on 09.12.2018, without even issuing show cause notice thereby violating 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 before passing the impugned order.

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 petitioner, within a period of ten days from the date of receipt of a copy of this order, pursuant to which, the petitioner shall submit his 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:19.12.2018
vhb