

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.43761 of 2017

ORDER:

In this writ petition, under Article 226 of the Constitution of India, seeking a writ of mandamus, the challenge is to the order, dated 16.12.2017, of the 4th respondent/ Prohibition & Excise Superintendent, Nandyal, in Rc.No.B2/ 48/ 2017, as illegal, arbitrary and in violation of principles of natural justice.

I have heard the submissions of Sri O. Manohar Reddy, learned senior counsel appearing for the petitioner, and of learned Government Pleader for Prohibition & Excise, appearing for the respondents.

The case of the petitioner, in brief, is this:

Petitioner applied for grant of licence to sell liquor by shop on the invitation for applications, on 24.03.2017, by the 4th respondent. After he was declared successful in drawl of lots in respect of the shop notified at Gazette serial No.KU/ 179, the petitioner was granted licence and was running the above shop. While so, the Station House Officer, P & E Station, Atmakoor, that is, 5th respondent submitted a report, dated 06.12.2017, to the 4th respondent stating as follows: - 'On 04.12.2017, as per instructions of Director of Enforcement, P & E Inspector, STF, Vijayawada, he conducted raid along with staff at Pamulapadu Bus-stand. They found one female person in possession of white plastic bag containing 23 nips of liquor without seals. She confessed that the said liquor bottles were purchased from the shop of the petitioner. On her such statement, he registered a case in Crime No.376 of 2017.' Thereafter, the 4th respondent issued a show cause notice on the same day at about 03:30 PM on the basis of the above report. In the said show cause notice it was

further stated as follows: - 'The 5th respondent and his staff along with mediators raided a place at Erraguduru village and found one person in possession of white plastic bag containing 27 nips of liquor and that the said person confessed that he is running a belt shop at that village. Basing on the said statement, a case in crime No.377 of 2017 was registered against the petitioner and the said accused person for the offence punishable under Section 34(a) of A.P. Excise Act.' The 4th respondent came to the conclusion that the petitioner *prima facie* failed to comply with the licence conditions and, therefore, issued the show cause notice calling upon the petitioner to show cause as to why the licence should not be suspended on failure to show cause within seven days of receipt of the notice. The petitioner submitted an explanation, dated 10.12.2017, by *inter alia* pleading that the petitioner has not violated any conditions of the licence and that he is strictly complying with the licence conditions and that he has nothing to do with the persons who are found in possession of the liquor, which was allegedly seized, and that the said liquor does not belong to the petitioner's shop. Thereafter, the 4th respondent directed the 5th respondent to submit specific investigation remarks in that regard and accordingly 5th respondent submitted his report. Based on the explanation submitted by the petitioner and the specific remarks of the 5th respondent in his report, the 4th respondent concluded that the petitioner violated condition no.1 of A4 licence and indulged in sale of liquor bottles at more quantities than prescribed and that the sales of liquor bottles to the said accused persons are for illegal sale through belt shops and accordingly by the impugned orders, dated 16.12.2017, suspended the licence of the petitioner for a period of three months from the date of the impugned order. While passing the impugned order, the report with the specific remarks of the 5th respondent was called for and was also considered by the 4th respondent after the

explanation was submitted by the petitioner even without putting the contents of the said report to the petitioner. Hence, the writ petition is filed.

Learned senior counsel for the petitioner submitted as follows: - 'After the petitioner submitted the explanation, the report, dated 15.12.2017, was obtained from the 5th respondent by the 4th respondent and that without putting the contents of the same to the petitioner, the impugned order was passed, on 16.12.2017, in violation of principles of natural justice. Except the confessional statements of the persons apprehended/ accused, there is no other material for passing the impugned order. The said accused persons never stated that they purchased the liquor in one single transaction. No reasons are assigned in the impugned order by the 4th respondent though he was required to give reasons in his said order. The petitioner paid licence fee of Rs.10,00,000/- and permit room registration charges of Rs.5,00,000/- and permit room licence fee of Rs.10,000/- and paid huge advance to the owner of the shop premises. On account of the illegal suspension orders the petitioner is suffering irreparable loss. The order impugned is not legal and is arbitrary.'

Learned Government Pleader while supporting the impugned order would contend that a show cause notice was issued after the illegal sales of liquor in violation of licence conditions was detected and that an explanation was called for from the petitioner and then the specific remarks of the Station House officer were also called for before passing the impugned order and that in the facts and circumstances of the case, the order is sustainable. He also submitted that there is an alternative efficacious remedy available to the petitioner and hence, the writ petition is not maintainable.

Admittedly, after the show cause notice, the petitioner submitted the explanation. Thereafter, by his office proceedings, dated 14.12.2017, the 4th respondent directed the 5th respondent to submit specific investigation remarks

and the said SHO, P & E Station, Atmakoor/ 5th respondent submitted his remarks. The 4th respondent adverted to and considered the specific remarks offered by the 5th respondent while passing the impugned order, however, without putting the contents of the same to the petitioner and without giving an opportunity to the petitioner to give his explanation, if any, to the contents of the report called for from the 5th respondent by the 4th respondent. The admitted fact that such a report was called for after receiving the explanation of the petitioner and the same was considered even without putting the contents of the same to the petitioner clearly indicates that the impugned order was not passed by the 4th respondent on a consideration of the material before the said authority and that the said impugned order was based on the specific remarks in the report of the 5th respondent, which is an extraneous material, which was not put to the petitioner before it was taken into consideration as a basis of the impugned order. In that view of the matter, this Court finds that the 4th respondent, who is exercising quasi-judicial powers, ought to have decided the matter on a consideration of the material before the said authority instead of passing the order on the basis and on consideration of specific remarks called for from the 5th respondent. Such a procedure which was followed is impermissible and hence, the impugned order is illegal and is one passed in violation of rules of natural justice and is, therefore, liable to be quashed on this ground alone. Hence, there is no need to deal with the other contentions raised by the petitioner at this stage.

Before parting, it is to be noted that the existence of a statutory remedy, in the facts and circumstances of the present case, does not affect the jurisdiction of this Court to issue the writ order prayed for as the impugned order has been made in violation of principles of natural justice.

Accordingly, the Writ Petition is allowed as prayed for. However, liberty is reserved to the 4th respondent, if he so desires, to serve a copy of specific

remarks/ report of the 5th respondent on the petitioner and give an opportunity to submit the explanation, if any, of the petitioner and then pass orders afresh in the matter, after affording an opportunity of being heard to the petitioner. In the event the 4th respondent considers so to do, he shall complete the said exercise as expeditiously as possible and preferably within three (03) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

02.01.2018
Vjl

M. SEETHARAMA MURTI, J

