

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.43683 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 15.12.2017, of the 4th respondent/ Prohibition & Excise Superintendent, Nandyal, in Rc.No.B1/ 216/ 2017, as illegal, arbitrary and in violation of principles of natural justice.

I have heard the submissions of Sri C. Prakash Reddy, learned 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:

The petitioner was granted A4 licence by the 4th respondent to sell IMFL and FL by shop. The validity period of the licence is from 01.07.2017 to 30.06.2019. The petitioner is running the said business by adhering to the licence conditions. While so, the Station House Officer, P & E Station, Nandikotkur, that is, 5th respondent submitted a report, dated 14.10.2017, to the 4th respondent stating as follows: - 'On 12.10.2017, the P & E Sub-Inspector, Enforcement Wing, Kurnool, has detected a case involving one person-K. Rajasekhar, in possession of 42 tetra packets of Bangalore Malt Whisky of 180 ml each and ten bottles of Director Special Fine Whisky of 180 ml each without seals; on interrogation the said accused person revealed that he purchased the liquor bottles from the petitioner's shop; the said property was seized and a case in Crime No.332 of 2017 was registered for the offence punishable under Section 34(a) of A.P. Excise Act, 1968.' He further reported as follows: - 'On 13.10.2017, P & E Inspector, Enforcement wing, Kurnool,

inspected the shop of the petitioner and noticed 15 seals removed from bottles on the floor near the sales counter of the shop and that the nowkar was conducting sales without scanning in HPF system and that on interrogation the said nowkar did not give proper explanation and as such a case in crime no.334 of 2017 was registered for the offence punishable under Section 31(1)(b) of the said Act read with Rule 40 of A.P Excise (Lease of Right of selling by shop and conditions of licence) Rules, 2012.' He further reported that he inspected the petitioner's shop and enquired the nowkarnama holder regarding supply of liquor to the accused person in Crime NO.332 of 2017 and verified sales on 12.10.2017 and also the seals seized in case in Crime No.334 of 2017 through 'verit' app and that on such investigation he came to the conclusion that the said liquor bottles seized in the first mentioned crime were supplied to the accused after removing the seals and that the said nowkar was arraigned as A2 in the case. Thereafter, the 4th respondent issued a show cause notice, dated 24.10.2017. The said notice was served on the petitioner on 15.11.2017. The petitioner submitted his explanation on 18.11.2017. The 5th respondent made enquiries on the explanation of the petitioner and offered specific remarks; and, based on the explanation and specific remarks of the 5th respondent, the impugned order was passed even without putting the contents of the said report with specific remarks to the petitioner. The petitioner has nothing to do with the persons from whose possession the property was seized. Except the confessional statements, there is no other material before the 4th respondent. It is impossible to find out from 'verit' app, the batch numbers and the shop to which the stock was supplied. The detailed explanation that was given by the petitioner was not adverted to and the order was passed in a mechanical manner. The order passed is illegal and arbitrary. Hence, the writ petition is filed.

Learned counsel for the petitioner submitted as follows: - 'After the petitioner submitted the explanation, on 18.11.2017, to the show cause notice, dated 24.10.2017, the report with specific remarks, was obtained from the 5th respondent by the 4th respondent; further, without putting the contents of the same to the petitioner, the impugned order was passed, on 15.12.2017, 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 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 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, the 4th respondent directed the 5th respondent to submit specific investigation remarks on the explanation of the petitioner; and, as such, the said SHO, P & E Station, Nandikotkur/ 5th respondent submitted his specific 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 with specific remarks 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 report with specific remarks 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 report with specific remarks called for from the 5th respondent. Such a procedure which was followed is impermissible. 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

