

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+W.P.No.2103 of 2019

% 05.02.2019

Toddy Tappers Co-operative Society, Chikkadpally, Group represented by its Adhoc President Palle Lingam Goud, s/o.Narayana Goud, Aged about 64 years, R/o.1-1-261/13/1, Chikkadpally, Hyderabad, Telangana State and others.

.....Petitioners.

AND

The State of Telangana, represented by its Principal Secretary, Revenue (Ex.II) Department, Secretariat Buildings, Secretariat, Hyderabad, Telangana State and others.

.....Respondents.

**! Counsel for the petitioners: SRI Y.V.Ravi Prasad, for
Sri V. Ramachander Goud**

**^ Counsel for the respondents: Government Pleader for
Prohibition and Excise.**

< Gist:

> Head Note:

? Cases referred:

-NIL-

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**W.P.No.2103 of 2019****ORDER**

Questioning the orders dated 27.12.2018 and 31.01.2019 passed by the 3rd respondent, cancelling the licence of the 1st petitioner's society, this writ petition is filed seeking a mandamus.

2. Heard learned senior counsel Sri Y.V.Ravi Prasad for the petitioners and learned Government Pleader for Prohibition and Excise for the respondents.

3. The learned senior counsel for the petitioners would contend that though the 3rd respondent has extended the benefit of Rule 39 of the Telangana Excise (Grant of License to Sell Toddy, Conditions of License and Tapping of Excise Trees) Rules, 2007 (for short "the Rules") in the notice dated 31.01.2019, he ought not to have cancelled the licence of the 1st petitioner's society vide order dated 31.01.2019. In support of his contention, he has drawn the attention of this Court to the orders of the Division Bench of this Court in W.A.Nos.1014 of 2010 and batch dated 03.04.2012, wherein Rule 39 of the Rules were considered. He would further contend that passing of two orders on 31.01.2019 is unsustainable as one being termed as 'notice' and other as 'order'. He would also submit that to avail the benefit of the first proviso to Rule 39 of the Rules, the society, as a matter of fact, had passed a resolution on 01.02.2019 removing the erstwhile Managing Committee and

selecting a new Managing Committee and the same was communicated to the 3rd respondent, who may pass orders restoring the licence in favour of the society as large number of toddy tappers are dependant on the society for their livelihood.

4. Learned Government Pleader for Prohibition and Excise opposes the writ petition contending that as against the cancellation of licence, an alternative remedy of appeal is provided to the Commissioner and at any rate, the offence committed by the petitioners by selling toddy adulterated with Alprazolam, which is injurious and danger to the lives of the toddy-consuming public, is serious one.

5. A perusal of the order dated 31.01.2019 would show that on earlier occasion, one K. Ramesh Goud s/o. Rajamallu Goud, erstwhile President of TTCS Chikkadapally, was arrayed as A2, on account of which, the function of the shop was devolved upon the Vice-President, by name, R. Ramulu Goud s/o. R. Rangaiah Goud and the licence was renewed in his favour to run the shop. The order further shows that said R. Ramulu Goud, Vice President, has again committed the second offence and therefore, his licence was suspended pending enquiry. Thus, the society is not entitled to the benefit of the first proviso to Rule 39 of the Rules. At any rate, as submitted by the learned Government Pleader, in the light of the involvement of the society with adulteration of the toddy, the

petitioners may be directed to avail the remedy of Appeal under the Rules.

6. Having regard to the respective submissions, at the outset, it is noted that the argument of the learned senior counsel for the petitioners that two orders were passed on 31.01.2019, is liable to be rejected. A close scrutiny of the order dated 31.01.2019, under the caption 'notice', discloses that it was passed by the 3rd respondent in compliance with the orders of this Court in W.P.No.1038 of 2019, dated 23.01.2019. It is further noted that W.P.No.1038 of 2019 was filed challenging the order of suspension dated 27.12.2018 pending enquiry, and while disposing of the said writ petition, this Court, after taking into consideration the submissions made by the petitioners at the bar, directed the 2nd respondent to pass appropriate orders in accordance with law after considering the explanation submitted by the petitioners.

7. In the above fact situation, the order dated 31.01.2019, under the caption 'notice', is in relation to the suspension pending enquiry. While disposing of such suspension pending enquiry, the 3rd respondent has considered the explanation submitted by the society and treated the adulteration as first offence and directed the society to avail Rule 39 of the Rules for revival of the society. Whereas the order dated 31.01.2019, under the caption 'order', was passed dealing with the explanation submitted by the petitioners on 24.01.2019 to the show cause notice dated 18.01.2019 issued

proposing to cancel the licence. In this context, the argument of the learned senior counsel for the petitioners that inasmuch as the 3rd respondent having directed the 1st petitioner's society to avail Rule 39 of the Rules, ought not to have cancelled the licence, does not merit consideration in view of the language of the first proviso to Rule 39 of the Rules, which requires that an act to be done and a step to be taken by the society in the event of a finding recorded that the society had indulged in or involved in an offence falling within the definition of 'adulteration'. To take that step, the society is required to convene a general body meeting and thereafter, in place of the existing Managing Committee, a new Managing Committee is required to be elected and that new Managing Committee has to make an Application seeking to extend the benefit of Rule 39 of the Rules to the society.

8. Viewed from that angle, the cancellation order passed by the 3rd respondent invoking Rule 39 of the Rules cannot be found fault as the benefit of the first proviso to Rule 39 of the Rules can be given to the society only after compliance of the mandatory conditions of making an Application after taking the step as required under the first proviso to Rule 39 of the Rules. Inasmuch as in the present writ petition, it is asserted by the petitioners that such step has already been taken by passing a resolution on 01.02.2019 and the same has been submitted to the Commissioner of Prohibition and Excise, Nampally, the 2nd respondent herein, along with the reply dated 01.02.2019, the benefit of first proviso to Rule 39 of the

Rules would be extended to the 1st petitioner society as opined by the 3rd respondent in the order dated 31.01.2019, under the caption 'notice'.

9. Subject to the above observation, the Writ Petition is closed, with a direction to the 2nd respondent to pass appropriate orders on the reply filed by the petitioners dated 01.02.2019, within a period of two weeks from the date of receipt of a copy of this order. No order as to costs. Miscellaneous Petitions, if any pending in this Writ Petition, shall stand closed.

CHALLA KODANDA RAM, J

5th February, 2019

sj