

HIGH COURT FOR THE STATE OF TELANGANA

* * *

WRIT PETITION No.7497 of 2019

Between:

1. R. Mallesh Goud

... Petitioner

AND

1. The State of Telangana, and 4 others

... Respondents

Date of Judgment pronounced on : 15.04.2019

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAMWRIT PETITION No.7497 of 2019

% 15.04.2019

1. R. Mallesh Goud

... Petitioner

Versus

\$ 1. The State of Telangana, and 4 others

... Respondents

< GIST:

> HEAD NOTE:

! Counsel for the Petitioner : Mrs. S. Nanda

^ Counsel for the Respondents : G.P. for Prohibition & Excise
G.P. for Home

? CASES REFERRED:

¹ 2018 SCC OnLine Hyd 529

² 1994 SCC OnLine AP 287 : (1995) 1 ALD 164

³ 2004 SCC OnLine AP 537 : (2004) 4 ALD 681

⁴ 2014 (3) ALD 645

⁵ 1984 (2) APLJ 1 (FB)

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAMWRIT PETITION No.7497 of 2019ORDER:

The petitioner challenges the Notice issued vide CR.No.E3/914/2018 dated 05.01.2019 whereby his license to run toddy business was suspended, pending enquiry, on the ground that he is selling adulterated toddy.

Learned counsel for the petitioner, placing reliance on the judgment of this Court in D. Ramakrishna v. State of Andhra Pradesh¹, M/s Sree Devi Wines v. The Deputy Commissioner of Excise, Kakinada and Ors², and also in Venkateshwara Wines, Jannepally Village, Navipet Mandal, Nizamabad v. Superintendent of Prohibition and Excise, Nizamabad District and others³, would submit that though the order impugned is termed as 'suspension pending enquiry', it is, in fact, a final order passed in violation of Section 31 of the Telangana Excise Act, as the statutory mandate of issuance of notice before suspending or cancelling the petitioner's licence has not been complied with, thereby depriving the petitioner of the opportunity of being heard, the same is unsustainable in law. It is also the specific contention of the learned counsel that though the impugned order was dated 05.01.2019, the same was served on the petitioner only on 04.04.2019, and inasmuch as four months have passed, the impugned order is liable to be set aside by declaring it as violative of the petitioner's rights under Articles 14 and 19(1) of the Constitution of the India.

Learned Government Pleader for Prohibition & Excise, on instructions, would assert that a case was registered against the petitioner under the provisions of the Narcotic Drugs and Psychotropic Substances (NDPS) Act and the petitioner was absconding, apparently trying to obtain anticipatory bail, he

¹ 2018 SCC OnLine Hyd 529

² 1994 SCC OnLine AP 287 : (1995) 1 ALD 164

³ 2004 SCC OnLine AP 537 : (2004) 4 ALD 681

was wilfully unavailable for serving notice on him. The learned Government Pleader further asserts that though the petitioner received the notice on 04.04.2019, he has not approached the 4th respondent and offered his explanation. He also asserts that the impugned order is only a suspension, during pendency of enquiry for his involvement in a large scale sale of toddy by adulterating it with 'Alprazolam' which is injurious to health. The learned Government Pleader, placing reliance on the judgment of this Court in *G.Bheemaiah v. Prohibition and Excise Superintendent, Mahaboobnagar*⁴ submits that suspension pending enquiry need not necessarily be preceded by a notice and in a given case, suspension can be effected, pending enquiry, depending on the facts of the case and the magnitude of likelihood of injury to public. He, however, submits that the petitioner would be at liberty to submit his explanation and the same would be considered and necessary orders would be passed by the competent authority.

Having considered the respective submissions, this Court is satisfied that suspension pending enquiry need not be preceded by a notice or an opportunity of being heard. A careful perusal of the judgment of the learned single Judge in *M/ s Sree Devi Wines (2 supra)*, wherein reference has been made to the judgment of the Full Bench of this Court in *Tappers Co-operative Society, Maddur v. Superintendent of Excise, Mahaboobnagar*⁵, would show that it does not lay down, as a proposition, that no suspension pending enquiry can be resorted to without issuance of prior notice. On the contrary, the judgment would lend support to the submission made by the learned Government Pleader that, in a given case, an order of suspension, pending enquiry, can always be made without notice depending on the injury that is to be prevented.

⁴ 2014 (3) ALD 645

⁵ 1984 (2) APLJ 1 (FB)

In the present case, the allegation is that the petitioner is involved in selling adulterated toddy which is injurious to health, and in the facts and circumstances of the case, if prior notice is to be issued affording an opportunity of being heard, it would virtually amount to allowing the petitioner to continue his adulterated toddy business endangering public health, and that would definitely not be in the interest of public health. In those circumstances, the argument of the learned counsel for the petitioner that the impugned order is contravening the provisions of Section 31 of the Telangana Excise Act, does not command acceptance.

Having said so, as the notice is dated 05.01.2019, and considering the allegation of the petitioner that the notice came to be served on him on 04.04.2019, interest of justice would be served if an opportunity is given to the petitioner to submit his explanation to the 2nd respondent, who shall consider the same and pass appropriate orders.

Accordingly, the writ petition is disposed of by giving liberty to the petitioner to submit his explanation to the 2nd respondent with respect to the notice dated 05.01.2019 and also seek raising of the suspension. As and when the petitioner submits his explanation, the 2nd respondent shall consider the same and pass orders thereon, in accordance with law, within two weeks thereafter. No costs. Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE CHALLA KODANDA RAM

15th April, 2019

KSM

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM



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KSM