HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO. 21950 OF 2020

Between:

Kasipuram Narayana Goud, S/o. late Sri Kumara Swamy Goud, aged 36 years, Occ: Toddy Tapper, R/o. H.No. 8-5-290, Sai Anurag Colony, Bachupalli, Medchal - Malkajgiri District.

...PETITIONER

AND

1. State of Telangana, Rep. by its Principal Secretary, Prohibition and Excise Department, Secretariat, Hyderabad.
2. The Commissioner of Prohibition and Excise, Government of Telangana, Hyderabad.
3. The Deputy Commissioner of Proh. and Excise, Sangareddy, Sangareddy District.
4. The District Prohibition and Excise Officer, Medchal Malkajgiri District.
5. The District Prohibition and Excise Officer, Sangareddy District at Sangareddy.
6. The Prohibition and Excise Inspector/Station House Officer, Prohibition and Excise Station, Quthbullapur, Medchal-Malkajgiri District.
7. Sri Gopagani Ganesh Goud, S/o. and age not known, District Prohibition and Excise Officer, Medchal-Malkajgiri District.
8. Sri Gaddam Venkatesh, S/o. and age not known, Station House Officer, Proh. and Excise Station, Quthbullapur, Medchal-Malkajgiri District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any appropriate Writ, Order or direction more in the nature of Writ of Mandamus declaring the Notice/Proceedings No.Cr.No.E2/872/2020 dated 01.10.2020 issued by the Respondent No.4 i.e. District Prohibition and Excise Officer, Medchal, Medchal - Malkajgiri District rejecting the application of the petitioner dated 15.9.2020 for grant of TFT Licence at TFT Centre, Bachupalli village and Mandal, Medchal-Malkajgiri District for extraneous reasons which has been issued quite contrary to the true intent of Telangana (Grant of Licence to Sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules, 2007 (issued vide G.O.Ms.No. 1228, Revenue (Ex.II) Department dated 9-9-2007 Published in AP Gazette (RS) Part-II Extraordinary No.7 dated 20.9.2007) and also contrary to the instructions issued by the Commissioner of Prohibition and Excise, Telangana State, Hyderabad vide Cr.No. 3454/2015/CPE/E1

dated 21.7.2015 as illegal, arbitrary, malafide exercise of power, unjustified and violative of Articles 14 and 21 of Constitution India and contrary to the provisions of Telangana Excise Act, 1968 and the Telangana (Grant of Licence to Sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules, 2007 and set aside the same.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.5 i.e. District Prohibition and Excise Officer, Sangareddy, Sangareddy District to conduct Tapping demonstration Test afresh to the petitioner and submit a report to this Hon'ble Court as per the provisions of the Excise Act and the Rules/circulars/instructions made there under pass such further or other orders as the Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: SRI V. RAVI KIRAN RAO

Counsel for the Respondent Nos. 1 to 6: AGP FOR PROHIBITION AND EXCISE

Counsel for the Respondent No.7 & 8: NONE APPEARED

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.21950 of 2020

ORDER :

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Prohibition and Excise.

2. This writ petition is filed challenging the notice dated 01.10.2020 issued by the District Prohibition and Excise Officer (D.P&E.O), Medchal, fourth respondent herein informing petitioner that his application to secure TFT licence cannot be granted, as he failed in tapping demonstration test at all levels.

3. This order in the form of notice is challenged primarily on two grounds. Firstly, reasons assigned are not supported by record available with the officer concerned and there is no truth in the allegation that petitioner failed in successfully completing tapping demonstration test; and secondly the officers in Medchal-Malkajgiri District were biased against petitioner and hell bent on declaring the petitioner as unfit to be a toddy tapper. Learned counsel for petitioner also submits that after receiving the notice, though petitioner applied to supply copy of report of Station House Officer, Qutbullapur under Right to Information Act, copy is not supplied. In the absence of copy of report, petitioner is not aware of the reasons forming part of the report, based on which impugned notice is issued to the petitioner and therefore, he cannot prefer appeal raising all the grounds available to him.

4. Having regard to the allegation that copy of the report is not supplied and to the understanding of the petitioner that report is not against the petitioner, learned Assistant Government Pleader

was directed to secure record and to produce copy of the report of the Station House Officer dated 01.10.2020 referred to in impugned notice. Learned Assistant Government Pleader produced several documents including the report of Station House Officer. However, it is seen from the record that report of the Station House Officer dated 26.09.2020 was acknowledged by the office of the District Prohibition and Excise Officer on 29.09.2020. In this report, the Station House Officer informs the District Prohibition and Excise Officer that petitioner failed in Tapping Demonstration Test at all levels and certain objections were also raised by the others stating that petitioner is not resident of Bachupally.

5. While this report is dated 26.09.2020 acknowledged by D.P&E.O on 29.09.2020, what was referred to in the impugned notice is a report dated 01.10.2020. No such report is placed before this Court. This aspect creates enough doubts on the manner of dealing with the matter by the D.P&E.O.

6. Persons belonging to the 'Gowda' community are entitled to pursue toddy tapping as their avocation. However certain norms are prescribed to enable persons to carry on avocation of toddy tapping. A person has to show his skill to climb tree, fix pot and to draw the toddy. Therefore, tapping demonstration test is conducted under the supervision of the Station House Officer. After the test is conducted, the Station House Officer submits report to the D.P&E.O. In turn, the D.P&E.O takes decision based on such report. From the report of Station House Officer, it is seen that though petitioner attended to the tapping demonstration test, he did not complete all the levels of tapping test i.e. making smooth face, rough face and tie up the pot to the tree, except

climbing tree. In other words, the Station House Officer seems to be reporting that except climbing tree, petitioner did not complete all the other parameters.

7. The photographs enclosed to the material papers set discloses that petitioner was seen climbing the tree, but he was not carrying the pot. It is not known how the petitioner was permitted to climb the tree without carrying the pot. There is no discussion on this aspect in the report of Station House Officer. It is also strange to notice that Section 63 of the Telangana Excise Act provides remedy of appeal against the decision of District Prohibition and Excise Officer and under this provision, the aggrieved person has 45 days time to prefer the appeal. Strangely, the D.P&E.O fixes only two weeks time to prefer appeal. Can it be assumed that D.P&E.O was not aware of the statutory provision or he was deliberately fixing the lesser time, contrary to the statutory mandate, only to harass and create confusion in the mind of the petitioner. This observation is made having regard to the allegations levelled in the affidavit filed in support of the writ petition that at the instance of local politicians, proper test was not conducted and infact, petitioner was repeatedly advised to meet politicians to get his test cleared.

8. Having regard to the deficiencies noticed in the proceedings impugned and the manner in which test was conducted, this is a fit case to direct the respondents to conduct fresh tapping demonstration test.

9. Respondent Nos 7 and 8 are working as District Prohibition and Excise Officer, Medchal-Malkajgiri District and Station House

Officer, Prohibition and Excise Station, Quthbullapur, Medchal-Malkajgiri District respectively. Certain allegations are made against them in the writ petition. As writ petition is disposed of at the admission stage, no opinion is expressed on the said allegations and it is always open to respondent Nos 7 and 8 to raise objections on the allegations levelled, if in future petitioner comes out with any petition against them before this Court or before higher authorities in the Department. However, as petitioner expresses apprehension on them in conducting the toddy tapping test objectively, they should not involve in conducting fresh test.

10. The writ petition is allowed. The impugned proceedings are set aside and the matter is remanded with the following directions:

(1) The Deputy Commissioner of Prohibition and Excise, Ranga Reddy is directed to nominate Station House Officer working in any other District to conduct tapping demonstration test on the petitioner.

(2) On securing the report of the Station House Officer, he shall consider the same and pass orders on the eligibility of the petitioner to become a toddy tapper.

(3) The Station House Officer who is nominated to conduct the test shall indicate the date and time of test in advance to the petitioner.

(4) The petitioner shall appear on the said date. The Station House Officer concerned shall video record the proceedings and submit said video recording proceedings to the Deputy Commissioner of Prohibition and Excise, Ranga

Reddy along with his report. Petitioner shall bear the costs of vide recording.

(5) The Station House Officer shall conduct the toddy tapping test un-influenced by the allegations levelled against respondent Nos 7 and 8 in the writ petition and afford fair opportunity to the petitioner to participate in the toddy tapping test.

Pending miscellaneous petitions, if any, shall stand closed.

SD/-M.MANJULA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Prohibition and Excise Department, State of Telangana, Secretariat, Hyderabad.
2. The Commissioner of Prohibition and Excise, Government of Telangana, Hyderabad.
3. The Deputy Commissioner of Proh. and Excise, Sangareddy, Sangareddy District.
4. The District Prohibition and Excise Officer, Medchal Malkajgiri District.
5. The District Prohibition and Excise Officer, Sangareddy District at Sangareddy.
6. The Prohibition and Excise Inspector/Station House Officer, Prohibition and Excise Station, Quthbullapur, Medchal-Malkajgiri District.
7. One CC to Sri V. Ravi Kiran Rao, Advocate [OPUC]
8. Two CCs to GP for Prohibition and Excise, High Court for the State of Telangana. [OUT]
9. Two CD Copies.

MP

HIGH COURT

DATED:14/12/2020



ORDER

WP.No.21950 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

11 SV
11 copies
Dt 29/12/2020