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Court : Andhra Pradesh

Decided On : Jul-14-1997

Reported in : 1997(4)ALT636

Judge : B. Sudershan Reddy, J.

Acts : Andhra Pradesh Excise Act, 1968 - Sections 31; Andhra Pradesh Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 - Rules 12 and 19

Appeal No. : Writ Petition No. 14611 of 1997

Appellant : Sunil

Respondent : The Assistant Commissioner of Prohibition and Excise/Excise Superintendent and anr.

Advocate for Def. : G.P.

Advocate for Pet/Ap. : B. Sai Ram Goud, Adv.

Judgement :

ORDER

B. Sudershan Reddy, J.

1. The Writ Petitioner, in this instant Writ Petition, assails the order passed by the 1st respondent in Cr. No. D2/2830/97/P&Ex.; dated 4-7-1997 keeping the licence of IML Shop, Langer House No. 1 under suspension pending further enquiry. The said impugned order is obviously passed by the 1st respondent in exercise of the power conferred Under Section 31 of the A.P. Excise Act, 1968. The licence is kept under suspension mainly on the ground that one D. Ramesh was found selling I.M.L. and beer at an open place opposite to the licenced shop and during interrogation of the said person, he is stated to have revealed that he got the stock from Langer House No. 1 with the consent of the licensee to sell on a dry day i.e., 1-7-1997. The enquiry further revealed that the liquor seized on 1-7-1997 from the possession of the said D. Ramesh was actually supplied to the petitioner's wine shop on 4-6-1997 and 25-6-1997 by the Andhra Pradesh Beverage Corporation Limited, Hyderabad, to be sold by the petitioner through the said wine shop for which licence has already been granted. The respondent herein came to the prima facie conclusion that the petitioner had violated the terms and conditions of the licence and Rule 19 of I.L. & F.L. Retail Sale Conditions of Licence Rules, 1993 and also Rule 12 of the said Rules. Having regard to all such facts and circumstances, the licence of the shop-Langer House No. 1 was kept under suspension.

2. The impugned order is mainly attacked by the petitioner stating that the confessional statement made by the said D. Ramesh could not have been taken into consideration by the respondent for passing the impugned suspension order. The petitioner is no way connected with the said D. Ramesh as he is neither a partner in the petitioner's business nor any nowkarnama nor any authorisation is executed in his favour by the petitioner. It is urged that the petitioner is entitled to sell the stock to any person on payment of money and the licensee has no business or right to question any purchase as to what purpose the purchaser is buying the liquor from the shop. It is the case of the petitioner that the said D. Ramesh may have purchased the said liquor from the petitioner's wine shop and may have sold it by himself on dry day. The petitioner cannot be held responsible for the same. The sale, admittedly, was not conducted in the licenced premises on any dry day. For all the aforesaid reasons, according to the petitioner, the respondent could not have passed the impugned order suspending the licence of

the petitioner. It is further urged that the licence of the petitioner could not have been suspended without issuing a prior notice and an opportunity of hearing.

3. The contentions and issues raised in the Writ Petition are to be appreciated by keeping in view the settled legal position regarding the nature of trade or business in any intoxicating liquors. It is settled law that no citizen of this country has any fundamental right to trade in intoxicating liquors. The trade or business in liquor can be completely prohibited. Dealing in intoxicating liquors is considered to be *res extra commercium* because of its vicious and pernicious nature. Therefore, the manner and extent of regulation of trade and business of manufacture, production, consumption and sale rest in the discretion of the governing authority. The licensee has to conduct his business and trade subject to such terms and conditions as may be prescribed by the statute, rules and the licencing conditions. The licensee has no other right or privilege except that is specifically granted to him by the authority. This legal position has to be borne in mind by this Court in considering the validity of any order passed by the competent authority in purported exercise of power conferred by the A.P. Excise Act, 1968 and the Rules made thereunder.

4. This Court as early as in the year 1984 took the view that 'the power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with greater force when we notice that we are concerned with the liquor licences in which the citizen has no right guaranteed under Article 19(1)(g) of the Constitution of India but only a privilege. No doubt once a licence is granted, valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction the proviso cannot have a larger affect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence or permit '(see 1984 (2) APLJ page 1 (FB)). The impugned order in this case itself says that the licence of the petitioner is kept under suspension pending enquiry. It is not a final order. Enquiry is yet to be commenced and a final decision has to be taken. It is true that the

petitioner is required to be given an opportunity of making his representation before taking a final decision in the matter. The statute does not require issuance of any notice or opportunity for keeping the licence under suspension pending enquiry. The requirement of notice and opportunity is only in cases of final decision of suspension or cancellation of the licence as the case may be. Therefore, the impugned order cannot be declared as ultra vires the provisions of the Act or the Rules. The principles of natural justice have no application as the rights of the petitioner to hold the licence till the end of the period for which it is granted is yet to be decided. The order of suspension pending enquiry is an interim measure taken by the authority in public-interest.

5. The learned Counsel for the petitioner, however, relied upon a decision rendered by this Court in *Satyanna Goud v. Excise Superintendent*, : 1994(2)ALT270 in support of his submission that the petitioner's licence could not have been kept under suspension by merely depending upon the confessional statement of one D. Ramesh, who has no concern whatsoever with the petitioner's business. It is true there is a reference to the confessional statement of the said D. Ramesh that he is selling the liquor with the consent of the petitioner on a dry day i.e., on 1-7-1997. But, it is required to notice that on verification it was found that the liquor seized on 1-7-1997 from the possession of the said D. Ramesh was supplied to the petitioner's shop on 4-6-1997 and 25-6-1997 by the Andhra Pradesh State Beverage Corporation Limited for the purpose of selling the same in retail by the licensee. In *Satyanna Goud*, the Court observed that there is no material whatsoever except the alleged oral statement of the person from whom the toddy was seized. In such view of the matter, the Court came to the conclusion that there was no basis whatsoever for keeping the licence under suspension. Such is not the case on hand. The suspension order passed by the respondent is not only based upon the confessional statement of the said D. Ramesh but also based upon the further material available on record that what was being sold by D. Ramesh was the same liquor supplied by the Beverage Corporation to the petitioner for the purpose of retail sale through the licenced shop. It cannot be said that there is no prima facie case for keeping the licence under suspension pending enquiry. The observations of the Court are made only for the purpose of considering the submission made by the learned Counsel for the petitioner. No

opinion as such is expressed on the merits of the case and the observations shall have no bearing whatsoever on the enquiry to be made by the respondents for taking further appropriate action in accordance with law. The decision in *M/s. Madhavi Wines, Mancheri v. Excise Superintendent, Adilabad*, 1994 (3) ALT 17 (NRC) has no application, whatsoever, to the instant case. It was a case where the licence was suspended as a substantive punishment and not an interim measure pending enquiry of the charges levelled against the licensee. It was a case where final order of suspension was passed without giving any opportunity to the licensee to represent his case. The Division Bench came to the conclusion that such a final orders suspending the licence without giving a reasonable opportunity to the licensee is ultra vires Section 31 (1) (b) of the A.P. Excise Act, 1968. Here is a case of suspension pending enquiry and not a final order. The decision relied upon by the learned Counsel for the petitioner in *Sree Devi Wines v. Dy. Commissioner of Excise, Kakinada and Ors.* 1995 (1) ALD 164 = 1995 (1) ALT 1 (NRQ) also has no application. It was a case where the impugned order of suspension was construed and viewed as final order of suspension as the authority passing the order has already concluded about the violations of the condition by expressing final opinion that the licensee has wilfully violated the licence conditions and rules and indulged in malpractices Under Section 36 (b) of the A.P. Excise Act, 1968. No such final opinion is expressed by the authority in this case. Therefore, the present impugned order is an order which is pure and simple order of suspension of the licence of the petitioner pending enquiry.

6. It is settled law that this Court in a judicial review proceeding under Article 226 of the Constitution does not act as a Court of appeal against the orders passed by the statutory authorities. The Court is more concerned with the decision making process. Court is not required to express any opinion on the merits of the case while considering the validity of an order of suspension pending enquiry. Rights of the licensee are yet to be adjudicated. In such cases, a very limited judicial review is available. The Court would interfere only in a case where the impugned order is passed without jurisdiction or which could be said to be so perverse that no reasonable person could have taken such a decision in the facts and circumstances of the case. Such is not the case on hand.

7. In the similar circumstances, this Court declined to interfere and disposed of a Writ Petition at the admission stage with a direction to the authority to dispose of the enquiry pending before him within a period of four weeks from the date of receipt of a copy of the order after affording an opportunity of being heard to the licensee (See the order dated 8-7-1997 in W.P. No. 14393 of 1997). I feel that similar directions in this case would meet the ends of justice.

8. I do not see any reason whatsoever to interfere in the matter and set aside the impugned order.

9. The Writ Petition is accordingly disposed Of with a direction to the 1st respondent i.e., the Assistant Commissioner of Prohibition & Excise/Excise Superintendent, Twin Cities of Hyderabad at Narayanaguda, Hyderabad District, to dispose of the enquiry pending before him within a period of four weeks from the date of receipt of a copy of this order after affording an opportunity of being heard to the petitioner. No costs.

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