
(1979) 06 AP CK 0012
In the Andhra Pradesh High Court
Case No : W.A. No. 197 of 1975

D. Shiv Kumar

APPELLANT

Vs

The Deputy Commissioner of Excise, A.P. Hyderabad and
another

RESPONDENT

Date of Decision : 28-06-1979

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 31(1), 37
Constitution of India, 1950 — Article 133

Citation : (1979) 06 AP CK 0012

Hon'ble Judges : C. Kondaiah, C.J;P.A. Choudary, J

Bench : Division Bench

Advocate : M.V. Bharathi, for the Appellant;

Final Decision : Dismissed

Judgement

C. Kondaiah, C.J.—This writ appeal by the petitioner, a toddy contractor, is directed against the order of our learned brother Chennakesav Reddy, J., dismissing his writ petition to quash the order of the Superintendent of Excise, Rangareddy District dated 7-2-1979 whereunder his licence for the toddy shop for the remaining lease period has been cancelled. On 29 11-1978 the appellant shop was raided by the Sub-Inspector of Excise, Gandipeta range and sample of toddy drawn from his shop in his presence was/sent for chemical analysis to the Chemical Examiner. The report of the Chemical Examiner or analysis indicates that the sample sent from the petitioner's shop was fermented toddy mixed with chloral Hydrate. Hence a show cause notice as to why the petitioner's licence for sale of toddy should not be cancelled for the rest of the period for violating Sec. 37 of the Andhra Pradesh Excises Act read with Rule 5 of the Andhra Pradesh (Tapping of Trees and Toddy shop Special condition of Lincences) Rules, 1969, was issued on 16-1-1979 to the appellant by the 2nd respondent, herein. The notice was served on the appellant on 24-1-1979. He was called upon to make his representation within seven days from the date of receipt of the show cause notice. The time for sending explanation expired by 31-1-1979. It was only on

2-2-1979 the appellant made a request to the Superintendent of Excise (2nd respondent) to extension of time for submitting his explanation by another fifteen days on the ground that he was unwell. The Excise Superintendent did not accede to the request of the appellant and passed the impugned order on 7-2-1979. The impugned order indicates that the application for extension of time was rejected and the licence of the toddy shop, Lingampally granted to the appellant was cancelled under Sec. 31 (1) of the A.P. Excise Act, 1968 for the rest of the lease period as the licensee has contravened the provisions of sec. 37 of the A.P. Excise Act by adulterating toddy with chloral hydrate.

2. An appeal was preferred by the appellant to the Deputy Commissioner of Excise, Andhra Pradesh (1st respondent) on 16-2-1979 and he also prayed for stay of operation of the order of the Superintendent of Excise cancelling his licence. The appellate authority rejected the stay petition. Thereafter on February 21, 1979 the present writ petition has been filed to quash the order of the Excise Superintendent and for a direction to send the sample kept in the appellant's shop by the Sub-Inspector, Gandipeta range on 29-11-1978 for chemical analysis to the Chemical Examiner.

3. The writ petition was contested by the respondents by filing a counter. In the counter it is stated that the appeal also was finally rejected by the appellate authority.

4. The learned single Judge rejected the writ petition holding that it cannot be said that any reasonable opportunity to submit his explanation before the impugned order was passed on 7-2-1979 was not given. The learned judge also did not agree with the request of the appellant to send the sample, which was in his shop for chemical examination as no useful purpose would be served in sending the sample of toddy for analysis after such a long lapse of time. Hence this appeal.

5. Mr. Bharathi, learned counsel for the appellant strenuously contends that the impugned order of the Excise Superintendent is violative of the principles of natural justice. According to him his client did not have an opportunity to represent his case as he expected extension of time for a period of two weeks from 2-2-1979.

6. We have perused the records. We are unable to agree with the appellant that he was not afforded a reasonable opportunity to make his representation. Admittedly the show cause notice issued on 16-1-1979 by the 2nd respondent was served on the appellant on 24-1-1979. He was given time till 31-1-1979 to submit his explanation. Even assuming, without admitting, that he was unwell at that relevant time, he could have sent his explanation to the 2nd respondent through any authorised representative or a counsel. In any event, he could have prayed for farther time within 31-1-1979. Nothing prevented him from making such a request within the time permissible under the show cause notice. No satisfactory explanation is forthcoming in this regard. The request for further

time was made only on 2-2-1979 i.e., after the expiry of the seven days time granted to show cause as to why his licence should not be cancelled. The explanation of the appellant for this inaction cannot be accepted.

7. The appellant had ample opportunity before the appellate authority to convince it on merits if he had really a good case. He had approached this court on 21-2-1979 as the appellate authority refused to grant him stay on operation of the order of cancellation of the licence by the 2nd respondent. Nothing prevented the appellant from taking appropriate steps to agitate his rights in the regular appeal before the appellate authority which appears to have rejected to stay the order as seen from the counter affidavit filed by the respondents in the writ petition. We are, therefore, unable to agree with the appellant that the impugned order is violative of the principles of natural justice.

8. This brings us to examine the next question as to why the sample, which was kept with the appellant on 29-11-78, should be sent to the analyst. In support of this claim the appellant relies on Rule 24 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules 1969 which reads thus;

Any excise officer not below the rank of a Excise Sub-Inspector shall be competent at any time to take samples of arrack or toddy in the possession of the licensee for the purposes of analysis. Three samples shall be taken by the excise officer personally in the presence of the licensee or authorised agent under a panchanama. One of the samples shall be delivered to the licensee or his agent under acknowledgement, the second shall be sent to the court and the third shall be sent for chemical examination wherever necessary.

Rule 24 requires the excise officer to take three samples of arrack or toddy in the possession of the licensee for the purpose of analysis. He should do so personally in the presence of the licensee or his authorised agent under a panchanama. Rule 24 requires one of the samples to be delivered to the licensee or his agent under acknowledgement, the second to be sent to the court and the third to be sent for chemical examination wherever necessary. The object and intendment of keeping with the licensee or his agent under acknowledgement one of the three samples taken by the excise officer is to protect the interests of the licensee in case of any dispute or vague result from the chemical examiner. The expression "Wherever necessary" governs the latter part of the last sentence pertaining to the third sample to be sent for chemical examination. The expression used is not "Whenever necessary" but "wherever necessary". Wherever the Excise officer, in the circumstances of the case, thinks just and proper to have the chemical examination of the sample, the third sample must be sent keeping one with the court and the other with the licensee or his agent. Sending of any sample for chemical examination can be made with regard to the sample of arrack or toddy within a reasonable time limit. Thereafter, the sample may not be fit for chemical examination due to de-composition. Therefore, we are unable to agree with the appellant's counsel that the learned judge should have ordered to send the sample now with the licensee for chemical examination after more than six

months. The sample could not have been in a fit condition for analysis. We therefore reject this plea of the appellant.

9. The appellant, if at all aggrieved by the report of the chemical analyst that the sample of toddy sent to him for chemical examination was adulterated with chloral-hydrate, should have immediately requested the concerned authority to send the sample with him or with the court for proper or second opinion of the chemical examiner. If such request was made immediately after his knowledge about the adulteration of the toddy as found from the report of the chemical examiner, it would have been just, proper and necessary for the concerned authority to accede to his prayer with the sole object of finding out the truth of adulteration and also to safeguard the interests of the licensee in cases where he bonafide feels some foul play or error or mistake in the examination of the sample sent to the chemical examiner. As pointed out earlier, this is one of the purposes and objects of making three samples and depositing one with the licensee and another with the court, so that there could be no tampering with such samples or mistaken impression about the opinion on the analyst in case of dispute by the licensee. In the present case, admittedly the appellant did not make any such request to the Excise Superintendent (2nd respondent), who passed the impugned order either in the reply to the show cause notice or before the passing of the impugned order. The writ appeal, therefore, fails and is dismissed.

Immediately after the pronouncement of the order, the appellant's counsel Sri M.V. Bharathi made an oral application for leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance which, in our opinion, requires to be decided by the Supreme Court within the meaning of Article 133 (1) of the Constitution of India. Hence the oral application is rejected.