

(2000) 07 AP CK 0063
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8044 of 2000

M. Janaki Ramulu

APPELLANT

Vs

Prohibition and Excise Superintendent, Mahabubnagar and
others

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 —
Rule 28(1)

Citation : AIR 2000 AP 465 : (2000) 5 ALD 95 : (2000) 5 ALT 89

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. M.P. Chandramouli, for the Appellant; Government Pleader, for Prohibition and Excise and Mr. R. Subhash Reddy, for the Respondent

Judgement

1. Having heard Sri M.P. Chandramouli, learned Counsel for the petitioner, learned Government Pleader for Prohibition and Excise and Sri R. Subhash Reddy, learned Counsel for caveator-Respondents 2 to 6, the writ petition is taken up for hearing and disposed of at the stage of admission.

2. By the proceedings dated 22-4-2000 (impugned herein) the 1st respondent in purported exercise of the powers u/s 32(7)(a) of the A.P. Co-operative Societies Act, 1964 (for short, "the Act") appointed respondents 2 to 6 as "Persons Committee" to the Toddy Tappers Co-operative Society Ltd., Gadwal, for a period of six months or till the elections are held, whichever is earlier.

3. Under the aegis of the petitioner as the Chief Promoter the Toddy Tappers Co-operative Society Gadwal was accorded provisional registration under the provisions of the Act on 19-2-1999. The petitioner was appointed as the Chief promoter and was the President of the committee appointed to conduct the affairs of the society in terms of the first proviso of Section 3 I(IXa) of the Act. The tenure of such committee is for a period of one year, which expired by 18-2-2000, no extension having been accorded to the committee by the

competent authority in terms of the first proviso to Section 31(1) (a) of the Act. The petitioner contends that the 1st respondent has accorded 8 licences for the establishment of 8 toddy shops in Gadwal in the name of the petitioner as the Chief Promoter which are valid up to 30-9-2003 and that a Depot licence was also issued on 24-3-2000. The petitioner alleges that pursuant to the malicious influence of the local MLA, the 1st respondent has issued the impugned proceedings appointing five members of the society who are followers of the MLA, as persons committee u/s 32(7)(a) of the Act.

4. Challenge to the impugned proceedings is asserted principally on two grounds:

(1) That in respect of the committee constituted under the first proviso to Section 31(1)(a) of the Act no persons committee could be appointed under the provisions of Section 32(7)(a) of the Act. It is contended that the second proviso to Section 31(1)(a) obligates the Registrar to nominate exclusively all or any of the members of the committee constituted under the first proviso, for such period as may be specified and that this express provision excludes the exercise of the powers available u/s 32(7)(a);

(2) Alternatively, that there being no allegations against the committee whose term has come to an end by 18-2-2000, of which the petitioner is a member and Chief Promoter, even assuming a persons committee could be nominated u/s 32(7)(a), the pre-existing committee ought to have been nominated as the persons-in-charge committee and the 1st respondent erred in superseding the claims of such committee and nominating respondents 2 to 6.

5. The first proviso to Section 31(1)(a) of the Act specifies that in the case of a society registered after commencement of the Act, persons who have signed the application for registration of the society may appoint a committee to conduct the affairs of the society, for a period of one year from the date of provisional registration or for such further period ordinarily not exceeding six months, as the Registrar may consider necessary; but the committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws.

6. The first committee of the society has been constituted on 19-2-1999. Its term has not been extended further by the Registrar and the petitioner asserts no grievance on this aspect. The period of the committee has thus come to an end by 18-2-2000.

7. The second proviso to Section 31(1)(a) of the Act states that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the Committee for such period as may be specified therein. In terms these legislative presents enable the Government or the Registrar to nominate all or any of the members of the committee where the bye-laws of the society so provide. The petitioner has neither filed a copy of the byelaws of the society nor produced them for perusal of the Court. It is also not pleaded either expressly or by any necessary implication that the bye-laws of the Toddy Tappers Co-

operative Society, Gadwal to provide for the nomination of all or any of the members of the committee within the meaning of second proviso to Section 31(1) (a) of the Act. There is thus, from the language of the above proviso, no linear duty cast on the 1st respondent to nominate the members of the previous committee. In any view of the matter the second proviso merely grants a discretion to the Government or the Registrar and it is neither pleaded nor demonstrated by the petitioners that the discretion has been abused or improperly exercised.

8. Section 32(7)(a) of the Act enables the appropriate authority - the Government or the Registrar, as the case may be, to appoint a person or persons to manage the affairs of the society for the period specified therein, if there is no committee or in the opinion of the Government or the Registrar it is not possible to call a general meeting for the purpose of conducting elections of members of the Committee. There is nothing in the language of the first and second provisos to Section 31(1)(a) which diminutive the plenitude of power available to the Government or the Registrar to appoint a persons committee u/s 32(7)(a). While provisions of Section 31, referred to above, enable the constitution of the first committee for a period of one year extendable by a further period normally of six months, and the appointment of any or all of the members of the committee if the bye-laws so warrant, the provisions of Section 32 operate in circumstances where there is no committee. Both the provisions co-exist and there is no repugnance between them.

9. The provisions of Section 31 do not per se exclude the operation of Section 32. This contention of the petitioner is thus misconceived, untenable and is accordingly rejected.

10. The 1st respondent has filed a counter affidavit. It is specifically asserted that the existing committee and members had failed to function properly, that the petitioner was not remitting the rentals regularly and has defaulted in payment of rentals for November, 1999, that a show-cause notice dated 13-12-1999 was issued under Rule 28(1) of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1959, which the petitioner has refused to receive, that for default of payment of rentals show-cause notice were issued for the months of December, 1999, January, February and March, 2000, which were also refused by the petitioner and thus had to be communicated by affixture on the toddy shops and that despite the notices rentals were not paid. Consequently the licences were cancelled by proceedings dated 1-4-2000. Even receipt of the cancellation orders is stated to have been refused. It is also stated that some of the members of the society remitted the rentals for March, 2000. The counter also categorically states that the petitioner failed to produce the records of the society when called upon by the Co-operative Senior Inspector, who by notification dated 27-3-2000 sought verification and inspection of records. Keeping in view the improper functioning of the petitioner and the other committee members under his Chairmanship, the appointment of Persons

Committee is stated to have been made by the impugned order in exercise of powers u/s 32(7)(a). It is also stated that as the term of the existing committee expired by 18-2-2000 and as elections could not be held due to Municipal elections, there was no valid committee in existence and Persons Committee had to be appointed.

11. In the light of the aforesaid averments in the counter affidavit it must be held that the petitioner has not made out any case for appointing the petitioner as Persons committee u/s 32(7)(a) of the Act.

12. Both the contentions of the petitioner are accordingly without substance or force. The writ petition is thus without merit and is accordingly dismissed. No order as to costs.