

(2003) 07 AP CK 0042
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5632 of 2003

P. Shivaji Reddy

APPELLANT

Vs

Commissioner of Prohibition and Excise and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 38, 4, 47
Constitution of India, 1950 — Article 226

Citation : (2003) 5 ALD 787

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Manohar, for Kavitha Gottipatti, for the Appellant; Government Pleader for Prohibition and Excise for Respondent Nos. 1 to 3 and P. Venugopal, for K.V. Subba Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner was granted IL-24 licence under the provisions of A.P. Excise Act (for short "Act") and the Rules made thereunder. He challenges the order dated 28.3.2003 passed by the first respondent, whereunder, he had set aside the order of the third respondent cancelling a similar licence granted to the fourth respondent.

2. The dispute between the petitioner and the fourth respondent constituted the subject-matter of several proceedings.

3. The fourth respondent established a retail IL - 24 liquor shop in the same village where the shop of the petitioner exists. The fourth respondent was issued a show-cause notice dated 8.9.2001 by the third respondent, alleging that he has resorted to selling the liquor in retail, contrary to the conditions of licence. The fourth respondent preferred a revision u/s 64 of the Act to the Government against the show-cause notice and obtained interim orders therein. The petitioner, being a rival trader, got himself impleaded in the revision. Since his plea for vacating the stay was not accepted, he filed W.P. 24681 of 2001 before

this Court. This Court suspended the interim orders granted by the Government in the revision. Fourth respondent filed Writ Appeal No. 1928 of 2001. By the time the writ appeal was taken up for hearing, the licence was suspended by third respondent. In that view of the matter, the writ appeal was dismissed on 19.12.2001.

4. Fourth respondent filed Writ Petition No. 26007 of 2001 challenging the order of suspension and obtained an order of interim suspension. Petitioner filed Writ Appeal No. 2013 of 2001 wherein the interim orders granted in the writ petition were suspended. Thereafter the fourth respondent withdrew the Writ Petition No. 26007 of 2001.

5. Subsequently, the third respondent cancelled the licence of the fourth respondent through proceedings dated 31.8.2002. The order of cancellation was upheld by the second respondent in the appeal preferred by the fourth respondent. A further appeal was preferred to the first respondent. Through orders dated 28.3.2003, the first respondent had set aside the order of cancellation and compounded the violation by levying a fee of Rs. 20,000/-. The first respondent also imposed a condition that the fourth respondent shall obtain IL-24B licence for the year 2003-04, Hence this writ petition.

6. Petitioner contends that though he has raised several grounds on questions of fact and law before the first respondent, the same were not taken into account on the ground that he has no locus standi. Petitioner points out that the fourth respondent had violated the provisions of Section 31(1) (a) of the Act. According to him, the violation committed by the fourth respondent was not compoundable, from the point of view of stage of the proceedings and the subject-matter. He also takes exception to the direction given by the first respondent requiring fourth respondent to obtain IL-24B licence.

7. In the counter-affidavit filed by fourth respondent, the various proceedings that have ensued till the impugned order came to be passed are referred to. According to him, the violation, which gave rise to these proceedings, was trivial in nature and being the apex authority of the Excise Department, it was competent for the first respondent to pass the impugned order.

8. Sri E. Manohar, learned Senior Counsel, appearing for petitioner submits that the exclusive power conferred on the first respondent compounding offences is only u/s 47A of the Act. According to him. Section 47A enables the first respondent to compound the offences falling u/s 38 of the Act, which relate to Chemists and Druggists and not a licensee of IL-24. He contends that Section 47 of the Act provides for compounding of offences by the Collector or any Prohibition and Excise Officer specially empowered in that behalf and this provision does not empower a second appellate authority to exercise the power of compounding. He further submits that even u/s 47 of the Act, compounding is permissible only at a stage prior to cancellation of the licence and not thereafter.

9. The learned Government Pleader for Excise and Sri P. Venugopal, learned

Counsel for the fourth respondent, on the other hand submit that the Commissioner of Excise being the apex and Controlling authority, u/s 4 of the Act, it is competent for him to compound the violation or offence of any kind, and at any stage, taking the totality of facts and circumstances into account. It is also their case that the petitioner has no locus standi to participate in the proceedings before the first respondent or to file this writ petition.

10. The fourth respondent is on IL-24 licensee. Proceedings were initiated against him by issuance of a show-cause notice 8.9.2001 on the ground that he has undertaken loose sale of liquor. Several proceedings before this Court and various authorities have ensued, be it at the instance of the fourth respondent or the petitioner. Ultimately, the licence came to be cancelled by the third respondent through his proceedings dated 28.12.2001. The order of cancellation was upheld by the second respondent through his orders dated 17.1.2003. The fourth respondent availed the remedy of further appeal u/s 63(2) of the Act. The petitioner herein participated in various proceedings and resisted grant of any relief to the fourth respondent. He filed objections before the first respondent also. Placing reliance upon the judgment of this Court reported in *Coaster Papers Ltd. v. Government of India* 1995 (1) ALD 328, and *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, , the first respondent refused to take the objections raised on behalf of the petitioner into account, on the ground that he has no focus standi. Having so observed, he switched over to discussion of merits of the case.

11. The subject-matter before the first respondent was not an inter se dispute between the petitioner on the one hand and the fourth respondent on the other. The endeavour of the petitioner throughout, was to ensure that the proceedings initiated against the fourth respondent are dealt with in accordance with the relevant provisions of law. It may be incidental that he also holds a similar licence as does the fourth respondent. In these days of expanded scope of locus standi it was not at all permissible for the first respondent to ignore the contentions raised by the petitioner that he does not have the locus standi. The very fact that in several proceedings that ensued ever since the issuance of show-cause notice to the fourth respondent, before the Government and before this Court in writ petitions and writ appeals, the writ petitioner figured either as petitioner or respondent and his contentions were taken into account in all these proceedings, was sufficient to require the 1st respondent to entertain and consider the objections raised by the petitioner. In *Coaster Papers Ltd.*'s case (supra) even the rival tradesman was conceded the right to challenge grant of interim permission to another, if the same is in violation of the statutory requirements, and was by an authority not competent to do so. The judgment in *Me Dowell and Company*'s case (supra) was in relation to the right of a citizen to carry on a trade in intoxicating liquors. In *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, the Supreme Court held as under:

"14. In the light of the expanded concept of the locus standi and also in view of

the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits."

12. Hence, the action of the first respondent in treating the petitioner not having any locus standi cannot be sustained.

13. Coming to the merits of the matter, the first respondent did not set aside the finding that the fourth respondent had violated the conditions of licence and the provisions of the Act and the Rules made thereunder. In a way he had upheld the findings recorded by the Respondent No. 3. The first respondent had compounded the violation committed by the fourth respondent by levying a compound fee of Rs. 20,000/-. No provision is referred to either for the exercise of power of compounding or for the method of compounding. On the other hand, the first respondent has devoted an entire paragraph to provide justification for loose sales of liquors and the philosophy underlying the grant of permissions of IL-24B licence. It reads as under:--

"A detailed examination of the connected records and the case against the appellant is the sale of liquor in loose instead of selling the sealed bottles. This has created public nuisance due to drinking in the roadside. The necessity for sale of liquor in loose has arisen on the ground of purchasing capacity of the poor consumers, who cannot afford to buy the 180 ml bottle, which costs around Rs. 25/-. Thus, in order to satisfy the need for such consumers as well as to promote his business, the IL 24 licensees are tempted to indulge in the sale of liquor in loose. In order to eliminate this public nuisance, the Government have been out with the facility of grant in public room license facility to all the IL 24 shop licensees located in, the area where population is 5000 and above. Hence, all the cases of sale of liquor in loose-booked are compounded by levying the heavy compounding fee.

In view of the above, the matter in appeal is hereby compounded with a compounding fee of Rs. 20,000/- (Rupees Twenty Thousand only) and subject to the condition that the licensee will take the IL24B licence for the year 2003-2004. Appeal is disposed of accordingly."

14. This Court only feels that a totally different kind of exercise of power and appreciation of the matter was expected from an authority heading the entire department. The subject-matter of the appeal was the cancellation of licence on the ground that the fourth respondent had violated the relevant provisions referred to in the order of cancellation. Acting as a second appellate authority, the first respondent was required to appreciate the entire set of facts and to

record his own findings, with reference to the facts and circumstances and provisions of law obtaining as on the date of alleged violation. Trying to justify the violation with reference to subsequent developments such as provision for grant of IL-24B licences is beyond the scope of appellate powers. Even for compounding of the violation and offence said to have been committed by the fourth respondent, the first respondent was required to refer to the relevant provisions for exercise of such a power.

15. The further question as to whether the fourth respondent made an application before the competent authority before cancellation of licence and whether any request was made by him even before the first respondent and whether it was permissible for accepting such a request, must have been reflected in the impugned order itself. This Court is of the view that all these would have been possible for the first respondent, if only he had taken into account the objections that have been raised by the writ petitioner. It should not be forgotten that the objections raised are not going to bind the authority either way. It is ultimately for the concerned authority to decide, taking the same into account. Hence, this Court is of the view that it is a fit case for setting aside the impugned order of the first respondent and for remanding the same for fresh consideration. The further discussion on merits is not undertaken for the reason that such discussion may influence the proceedings.

16. It has come on record that pursuant to the orders passed by the first respondent, a licence was issued to the fourth respondent and that he is carrying on the business. Strictly speaking, once the order of the first respondent is set aside, the very basis for the fourth respondent to continue the business disappears. The fact, however, remains that he has paid the licence fee for the entire year. Therefore, this Court is required to take these factors into account in ordering the state of affairs that are required to be maintained pending disposal of the matter by the first respondent after remand.

17. Relying upon the judgment of the Supreme Court in *State of Orissa v. Modan Gopal* 1952 SC 12, learned Senior Counsel for the petitioner submits that it is not at all competent for this Court to direct any interim measures once the impugned order is set aside. Learned Counsel for the fourth respondent, on the other hand, submits that it is always open for the Court to pass appropriate orders, taking the totality of the facts and circumstances into account. He relies upon the judgment of a Division Bench of this Court reported in *K.V.V. Satyanarayana Vs. District Level Committee, Eluru, West Godavari District and Others*, .

18. In *Modan Gopal's* case (surpa) the Hon'ble Supreme Court was dealing with a situation where the writ petition was dismissed leaving it open to the petitioner to workout his remedies by filing a civil suit. It found fault with the High Court when an order of status quo ante was granted, while dismissing the writ petition, for the purpose of facilitating the institution of the suit. Such a situation does not exist here. The matter is being remanded to the first respondent for fresh consideration. This Court has not finally pronounced upon the rights of the

parties. The order of the first respondent is set aside mostly on procedural aspects. In K. V. V. Satyanarayana 's case, the Division Bench of this Court has set aside the order of the District Panchayat Officer granting permission to use proclainer. The matter was directed to be considered afresh by the District Level Committee after taking into account the contentions on behalf of Labour Societies. Ultimately, the following direction came to be passed;

"The order of the District Panchayat Officer is, therefore, set aside and the matter is remitted to the District Level Committee, Eluru to decide the issue and resolve the dispute between the appellant and twenty seven labourers within two weeks from the date of receipt of a copy of this order. In the meanwhile, the appellant is permitted to carry quarrying operations and use the proclainer and also engage labourers, who are ready and willing to come and work in the quarry."

From this it is evident that it is competent for this Court to issue appropriate directions to protect the interests of the parties depending on the facts and circumstances of the case.

19. In that view of the matter, the writ petition is allowed with the following directions:

(a) the order of the first respondent dated 28.3.2003 is set aside and the matter is remanded to the first respondent for fresh consideration;

(b) the petitioner has the locus standi to participate in the proceedings and to put forward his contentions and the first respondent shall deal with the contentions of the fourth respondents on the one hand and the petitioner on the other hand, while deciding the matter;

(c) first respondent shall pass appropriate orders in the appeal, peremptorily within four weeks from the date of receipt of this order, duly issuing notices to the petitioner and fourth respondent and fixing dates of hearing; without granting any adjournments; and

(d) pending disposal of the appeal, the fourth respondent shall be entitled to continue the business.