
(2021) 11 TEL CK 0028
In the Telangana High Court
Case No : Writ Petition No. 18454 Of 2021

Potu Bhaskar Rao

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

T.S. Excise (Lease Of Right Of Selling By Shop And Conditions Of License) Rules, 2012
— Rule 42

Telangana Excise Act, 1968 — Section 31(1)(b), 34(a), 36(1)(c), 41, 46(c)

Citation : (2021) 11 TEL CK 0028

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This Writ Petition is filed seeking to declare the action of the 5th respondent in issuing the show cause notice for suspension of License vide proceedings in Cr.No.166/2021/P&Ex/B6, dated 07.06.2021, the show cause notice for cancellation of License vide proceedings in Cr.No.166/2021/P&E/B6, dated 13.07.2021 and the cancellation proceedings in Cr.No.166/2021/P&Ex/B6, dated 31.07.2021 cancelling the License vide Lic.No.KHM084/2019-2021, dated 02.11.2019 of the petitioner in respect of the shop No.A4 (for short 'the subject shop') of the petitioner-M/s. Kanakadurga Wines, Karepally, issued by the 5th respondent, as illegal and to set aside the same.

2. Heard Sri Shaik Madar, learned counsel, representing Mr. Shaik Laiq Pasha, learned counsel for the petitioner, and learned Government Pleader for Prohibition and Excise, appearing for respondents and perused the record.

3. FACTS OF THE CASE

i) The petitioner is the License holder of the Shop-A.4 with G.SI.No.84 under the name and style of M/s Kanaka Durga Wines in Karepally Village of Singareni Mandal, Khammam District.

- ii) It is the Shop No.2 in the said village.
- iii) The said License is for a period of two years with effect from 01-11-2019 to 31-10-2021.
- iv) The License fee was fixed at Rs.1,10,00,000/-.
- v) The petitioner is authorized to sell Indian Made Foreign Liquor (IMFL) as well as Foreign Liquor at his shop and has been conducting his business strictly as per the conditions of the License.
- vi) There are two more shops in the same village namely M/s New Kanakadurga Wines and M/s Bhavani Wines and also belt shops.
- vii) The 5th respondent suspended the petitioner's License on the ground that he was selling the liquor in excess of the Maximum Retail Price (MRP).
- viii) The petitioner filed a Writ Petition vide W.P.No 22872 of 2020 before this Court challenging the proceedings of suspension of his License issued by the 5th respondent in Cr.No.582/2020/P&Ex/B6-1, dated 28.11.2020 and this Court dismissed the same vide common order, dated 21.12.2020 passed in W.P No.22872 of 2020, W.P.No.22865 of 2020 and W.P.No.22970 of 2020 holding that the cause of action did not survive in the said writ petitions, on considering the proceedings dated 15.12.2020 withdrawing orders of suspension of the License, dated 28.11.2020.
- ix) Thereafter, the 5th respondent has demanded the petitioner to pay an amount of Rs.2,50,000/- towards the compound fee.
- x) Therefore, the petitioner has filed a writ Petition vide W.P.No.24372 of 2020. This Court vide order dated 04.01.2021, granted interim suspension in the said writ petition.
- xi) Thereafter, the 5th respondent vide proceedings dated 15.04.2021 suspended the License of the petitioner on the ground that the petitioner sold liquor bottles in bulk to one Shoban Babu of Perupalli Village, in violation of Election Code.
- xii) The petitioner herein has filed writ petition vide W.P No.10465 of 2021 challenging the said proceedings dated 15.04.2021 issued by the 5th respondent.
- xiii) This Court vide order dated 28.04.2021 granted interim suspension of the said proceedings dated 15.04.2021.
- xiv) The 5th respondent violated the said order and therefore, the petitioner herein has filed a Contempt Case.
- xv) Thereafter, the 5th respondent had issued show cause notice, dated 07-06-2021 to the petitioner for suspension of his License, requesting the petitioner to submit his explanation within 7 days on the ground that the petitioner herein broke open locks of the subject Shop and sold liquor unauthorizedly which is the subject matter of the case in COR No.41/2021 of

Excise Station, Singareni.

xvi) The petitioner submitted his explanation in part on 14.06.2021 and requested the 5th respondent to furnish the copies of panchanama and statements etc., if any, in COR No.41 of 2021 for furnishing further explanation to the said show cause notice. But without considering his request, the 5th respondent hastily issued a show cause notice for cancellation of his License vide proceedings in Cr.No.166/ 2021/P&Ex/B6, dated 06.07.2021 calling for his explanation within 15 days.

xvii) The petitioner has also filed another writ petition vide W.P. No.14702 of 2021 challenging the show cause notice issued by the 5th respondent for cancellation of his License.

xviii) This Court in I.A.No.1 of 2021 in W.P.No.14702 of 2021 directed the 5th respondent to furnish the copies as requested by the petitioner by 07-07-2021 and also granted liberty to the petitioner to submit his explanation.

xix) Thereafter, in compliance of the said orders, the petitioner submitted his further explanation dated 22.07.2021.

xx) According to the petitioner, the 5th respondent, without considering the said explanation dated 22.07.2021, issued the impugned proceedings, dated 31.07.2021 cancelling the License of the petitioner.

xxi) Therefore, challenging the said impugned proceedings, dated 31.07.2021, the petitioner filed the present writ petition.

4. CONTENTIONS OF THE RESPONDENT No.5

i) Earlier a case was registered in COR No.103 of 2020 under Rule 42 of T.S. Excise (Lease of Right of Selling by Shop and Conditions of License) Rules 2012(for short, 'the Rules') read with Section 31(1) (b) of the Telangana Excise Act, 1968 (for short, 'the Act') against the petitioner on the allegation of the petitioner selling the liquor bottles for excess of Rs.10/- than the Maximum Retail Price (MRP) in M/s. Kanaka Durga Wines and therefore the License was also suspended on 28.11.2020.

ii) The petitioner and others approached this Court by way of filing the above said three writ petitions.

iii) On 19.02.2021, a team of the District Task Force, Khammam rushed to the house of one Azmeera Shoban Babu, s/o Manju, R/o.Cheemalapadu Village, Singareni Mandal and searched the house and seized the liquor bottles.

iv) On interrogation, the said Azmeera Shoban Babu confessed that he has purchased the said wines from M/s. Kanaka Durga Wines of the petitioner herein.

v) The raid party collected samples and handed over the case papers along with the seized property to the Station House Officer, Prohibition and Excise Station, Singareni.

vi) On receipt of the same, the Station House Officer, registered a case in COR No.17/2021, 19.02.2021 under Sections 31 (1) (b), 34 (a), 36 (1) (c) and 41 of the Act, against the petitioner herein.

vii) The petitioner has violated the Model Code of Conduct during the MLC Elections of Graduate Constituency in Nalgonda, Warangal and Khammam Districts by conducting bulk sales and License Condition No. 1 in Form A-4.

viii) Vide proceedings, dated 15.04.2021, the 5th respondent has suspended the License of the petitioner on the ground that he broke open the lock and sold the liquor in violation of Election Code.

ix) The 5th respondent has furnished copies of panchanama and statements in COR No.41/2021 in compliance of the orders passed by this Court and thereafter, a show cause notice for suspension of License dated 07.06.2021 was served on the petitioner, who in turn, submitted his explanation dated 14.07.2021.

x) Thereafter, a show cause notice dated 06.07.2021 for cancellation of the petitioner's License was served on the petitioner. The petitioner herein had filed writ petition vide W.P.No.14702 of 2021 and this Court directed the 5th respondent to furnish copies in COR No.41 of 2021.

xi) In compliance of the said orders, the 5th respondent has furnished copies of the same and 10 days time was extended to submit explanation by the petitioner herein.

xii) The petitioner herein has submitted explanation on 22.07.2021 with the same contents.

xiii) The 5th respondent issued a show cause notice for cancellation on 24.06.2021 but the petitioner failed to produce the relevant documents.

xiv) After examination of the records and material available on record, the 5th respondent passed the impugned order on 31.07.2021.

xv) The petitioner, though having an alternative remedy to file an appeal before the appellate authority under the Act, he failed to avail the same. However the 5th respondent gave him an opportunity.

xvi) There is no violation of principles of natural justice or any right as alleged by the petitioner.

xvii) With the said submissions, the 5th respondent sought to dismiss the present writ petition.

CONSIDERATION OF THE COURT

5. The above stated facts would reveal that it is not in dispute that the petitioner herein is License holder of Shop No.A.4 under the name and style of M/s Kanaka Durga Wines in Karepally Village. The License period was for a period of two years with effect from 01-11-2019 to 31-10-2021. The License fee was fixed at

Rs.1,10,00,000/-. The 5th respondent has issued show cause notice of suspension of License to the petitioner herein on the allegation that the petitioner herein sold liquor bottles in bulk to one Azmeera Shoban Babu in violation of Election Code. The petitioner herein has filed a writ petition vide W.P.No.10461 of 2021 challenging the said proceedings and this Court has granted interim suspension of the said proceedings vide order dated 28.04.2021 on the ground that the suspension cannot be for unlimited period. The said writ petition is pending and the said interim orders are subsisting. The petitioner herein has also filed a contempt case complaining the violation of the said orders.

6. While so, 5th respondent had issued a show cause notice for suspension of License of the petitioner dated 07.06.2021 on the very same ground and also on the ground that a case in COR No.41 of 2021 was registered on the same allegations. The 5th respondent has directed the petitioner to submit explanation within 7 days. The petitioner herein had requested the 5th respondent to furnish copies panchanama and statements etc., if any, in the said COR No.41 of 2021 of Excise Police Station, Singareni, to enable him to submit explanation effectively but without considering the said request, the 5th respondent had issued show cause notice for cancellation of License dated 06.07.2021. In the said show cause notice, the 5th respondent has requested the petitioner to submit explanation within 15 days. The petitioner herein had filed a writ petition vide W.P.No.14702 of 2021 challenging the said notice for cancellation. This Court vide order dated 05.07.2021 in W.P.No.14702 of 2021 directed the 5th respondent to furnish copies of panchanama and statements in COR No.41 of 2021 and other related material to the petitioner, who in turn, shall submit reply to the said show cause notice, dated 24.06.2021. In compliance of the said order, dated 05.07.2021, the 5th respondent has furnished the said copies to the petitioner with a request to submit his explanation within ten days. Thus, the petitioner herein had submitted explanation dated 22.07.2021. Thereafter, according to the petitioner, the 5th respondent without considering the said explanation vide impugned proceedings dated 31.07.2021 cancelled the License granted in his favour.

7. The allegation against the petitioner herein is that on 19.02.2021, the District Task Force, Khammam Team has rushed to the house of Azmeeri Shoban Babu and searched his house and seized the following material:-

SI.No.

Seized Property (IML/Beer)

HEAL & Batch No.

Quantity

1

Old Admiral VSOP Brandy HEAL & Batch No.78, (180 ml) bottles

HEAL & Batch No.78, Dt.31.01.2021

(91) Nips

2

Good Day Prestige Whisky (180 ml) bottles

Batch No.282, dt:05.02.2021

(48) Nips

3

Kingfisher Strong Premium Beer(650ml) bottles

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(22) Beers

On interrogation, the said Shoban Babu had confessed that he had purchased the said liquor from M/s. Kanaka Durga Wines of the petitioner herein. Thus, according to the 5th respondent, the petitioner herein sold the said liquor in violation of the Model Code of Conduct during MLC Elections to Graduate Constituency in Nalgonda, Warangal and Khammam Districts and License Condition No.1 in Form A-4 by conducting bulk sales. Thereafter, according to the 5th respondent, he has issued the impugned proceedings dated 31.07.2021 cancelling the License of the petitioner by following the due procedure laid down under law.

8. As stated above, vide proceedings dated 15.04.2021, the 5th respondent had suspended the License of the petitioner herein. This Court vide order dated 28.04.2021 in I.A.No.2 of 2021 in W.P.No.10465 of 2021 suspended the said proceedings dated 15.04.2021 on the ground that the suspension cannot be for unlimited period. The said writ petition is pending and the said interim order is subsisting. During the subsistence of the said order, the 5th respondent had issued show cause notice, dated 07.06.2021 for suspension of License of the petitioner herein on the very same allegation of the sale of liquor violating Model Code of Conduct and directed the petitioner to submit explanation within 7 days. In the said show cause notice, the 5th respondent has also mentioned registration of a case in COR No.41 of 2021 for the aforesaid offences against the petitioner herein.

9. Since the 5th respondent has not furnished copies of panchanama and statements etc., in the said COR No.41 of 2021, the petitioner herein has requested the 5th respondent to furnish copies of the same. The said request was not considered by the 5th respondent and the said act forced the petitioner herein to file a writ petition vide W.P.No.14702 of 2021. This Court vide order dated 05.07.2021 directed the 5th respondent to furnish copies of the same by 07.07.2021 and liberty was also granted to the petitioner to submit his explanation on receipt of the said copies. Accordingly, the 5th respondent has

furnished copies of the same vide his letter dated 07.07.2021 and granted ten days time to the petitioner to submit explanation. Thereafter, the 5th respondent had issued show cause notice for cancellation dated 13.07.2021 served on the petitioner on the very same allegations with a request to submit explanation within ten days from the date of receipt of the same. Thereafter, the petitioner herein has submitted explanation dated 22.07.2021. A perusal of the said explanation consisting of 5 pages would reveal that the same is a detailed explanation of the facts.

10. It is relevant to note that in the said explanation, the petitioner herein specifically mentioned that the said Azmeeri Shoban Babu is owner of the belt shop and he is having professional rivalry with the petitioner herein. It is further stated that as per the panchanama, the locks of the subject shop were broke open and liquor bottles were sold unauthorizedly on 17.04.2021 and on the next day, the Station House Officer, Excise Station along with staff, came to his shop conducted panchanama in the presence of the panch witnesses and his employees, is false and baseless. The said allegation is created and concocted by the 5th respondent. Thereafter, the 5th respondent has directed the petitioner to pay an amount of Rs.2,50,000/- towards compounding fee. The petitioner herein has filed a writ petition vide W.P.No.24372 of 2020 and this Court vide order dated 04.01.2021 granted interim suspension to the extent of imposing compounding fee. The said order is subsisting. The said writ petition is pending.

11. The petitioner herein also specifically mentioned in the said explanation dated 22.07.2021 that the Station House Officer, Excise Station, Singareni had registered the said COR No.31 of 2021 with ante-date and ante-time, after preparing panchanama and statements in the Excise Station which is contrary to the Rules due to personal grudge and vengeance of the petitioner herein.

12. In view of the COVID-19, Lockdown was imposed in the entire State in the year 2020 during which period the petitioner sustained heavy loss in the liquor business like other Licensees. Thus, by mentioning entire facts, the petitioner herein requested the 5th respondent to withdraw the said show cause notice, date 13.07.2021 for cancellation of the License of the petitioner. Though the petitioner submitted detailed explanation consisting of 5 pages, the 5th respondent without considering the same, vide impugned order dated 31.07.2021 cancelled the License of the petitioner stating that on examination, the explanation of the Licensees is not satisfactory and incomplete. The allegations on department are baseless and false and misleading the Court and therefore, not considered the explanation of the Licensee and thereby rejected. The 5th respondent has not considered the said explanation at all. Thus, the impugned order is not a reasoned order and there is no consideration of the explanation submitted by the petitioner herein. There is no consideration of the above said orders granted by this Court suspending the proceedings dated 15.04.2021 issued by the 5th respondent suspending the License of the petitioner with unlimited period and also compound fee of Rs.2,50,000/-.

According to this Court, the said impugned cancellation proceedings, dated 31.07.2021 are without reasons and without consideration of the detailed explanation submitted by the petitioner herein. The allegations leveled against the petitioner herein are one and the same. It is relevant to note that it is the specific case of the petitioner that the said Azmeeri Shoban Babu is owner of the belt shop and he is having professional rivalry with the petitioner herein. But the said fact was not even considered by the 5th respondent.

13. It is also relevant to note that the validity of the License was for a period of two years with effect from 01-11-2019 to 31-10-2021. The petitioner herein has paid the entire License fee of Rs.1,10,00,000/-. According to the petitioner, the said period was extended by one month i.e. upto 30.11.2021. Due to the COVID-19 situation and also restrictions of Lockdown imposed by both the Central and State Governments and also due to seizure of the Shop, the petitioner has sustained heavy loss. Therefore, the petitioner herein has filed the above said writ petition. Thus, the 5th respondent drove the petitioner to file series of writ petitions by his above said acts.

14. Learned counsel for the petitioner, referring to the principle laid down by this Court in R.Venkaeswarulu Vs. State of Andhra Pradesh, Excise-II Revenue Department 2020 3 ALT 53 AP and also N.Malla Reddy Vs. State of A.P. 2013 5 ALT 713, would submit that the 5th respondent herein has not given 15 days time to the petitioner herein to submit explanation. Whereas, the learned Govt.Pleader for Prohibition & Excise, referring to the principle laid down by this Court in K.Bhaya Reddy Vs. Prohibition and Excise Superintendent, Kadapa 2009 (4) ALD 253 and also Full Bench decision of the then High Court of Andhra Pradesh in Tappers Co-operative Society, Maddur Vs. Superintendent of Excise, Mahabubnagar 1984 2 APLJ 1 would submit that there is no need of granting 15 days time. However as stated above, the 5th respondent has given 15 days time. Therefore, the said contention of the petitioner herein is not sustainable.

15. Learned Govt. Pleader for Prohibition and Excise, would further submit that the petitioner is having alternative remedy of filing an appeal under Section 46© of the T.S.Excise Act,1968, whereas, the petitioner herein instead of availing that remedy, filed the present writ petition. He would also submit that there are no exceptions to bypass the said alternative remedy of filing an appeal, to entertain the present writ petition. In support of the above submission, he has also placed reliance on the decision of the Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai (1998) 8 SCC and the Assistant Commissioner of State Tax Vs. M/s Commercial Steel Limited Civil Appeal No.5121 of 2021 arising out of SLP(C) No.13639 of 2021 @ D.No.11555 of 2020.

16. As stated above, there is no consideration of the explanation submitted by the petitioner herein, by the 5th respondent, in passing the impugned cancellation proceedings, dated 31.07.2021. Any order without reason is an order without application of mind. Therefore, according to this Court, the principle laid down in the above said two decision relied on by the 5th

respondent is not applicable to the facts of the present case. Therefore, the present writ petition is not maintainable.

17. Thus viewed from any angle, the action of the 5th respondent in canceling the License of the petitioner vide impugned proceedings dated 31.07.2021 is illegal, arbitrary and without reasons. Therefore, the said impugned proceedings, dated 31.07.2021 are liable to be set aside.

18. In the result, the writ petition is allowed as follows:-

i) The impugned cancellation proceedings in Cr.No.166/2021/P&Ex/B6, dated 31.07.2021 cancelling the License of the petitioner vide Lic.No.KHM084/2019-21, dated 2. 11.2019 in respect of the Shop No.A4 of the Petitioner-M/s Kanakadurga Wines, Karepally, issued by the 5th respondent are hereby set aside.

ii) The respondent Nos.5 to 7 are directed to unseal the shop of the Petitioner within two days from the date of receipt of a copy of this order.

iii) The respondent Nos.2 to 7 are directed to permit the Petitioner to continue his business upto 30.11.2021.

iv) However, liberty is granted to the petitioner to claim remission of License fee for closure of the Shop due to COVID-19, restrictions of Lockdown and other reasons.

v) There is no order as to costs.

19. As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.