(1994) 04 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2728 of 1994

Satyanna Goud and Others — APPELLANT

Vs

The Excise Superintendent and Others — RESPONDENT

Date of Decision : 21-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 2 ALT 270

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : T. Amarnath Goud and L. Prabhakar Reddy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Parvatha Rao, J.—The petitioners in these four Writ Petitions question the order bearing Rc.No. B2/7501 /93 dated 16-2-1994 of the 1st respondent herein i.e., the Excise Superintendent, Mahabubnagar, whereunder the T.F.T. licences of the petitioners among others have been suspended.

2. As the facts and questions arising are more or less common, these Writ Petitions are being disposed of by a common order.

3. The three petitioners (1, 2 and 3) in Writ Petition No. 2728 of 1994 are T.F.T. licence holders for Counters Nos. 15, 16 and 17 respectively in respect of Kishtareddipet village toddy shop which is under T.F.T. Scheme and their licences are for a period of 5 years from 1-10-1992 to 30-9-1997.

4. In the counter-affidavit filed by the 1st respondent, these facts are admitted. But it is further stated that one Masanna Goud son of Chandraiah holds T.F.T. licence in respect of Counter No. 14 of the said T.F.T. shop - he is not before this Court in any of the Writ Petitions.

5. The two petitioners (1 and 2) in Writ Petition No. 2973 of 1994 are the T.F.T.

licence holders in respect of Counter Nos. 7 and 9 of Rangapur village toddy shop which is also under the T.F.T. scheme. Though in the affidavit of Madhusudan Goud, the 2nd petitioner in the Writ Petition it is stated that the licence of the petitioners have been granted for a period of 5 years from 1-10-1991 to 30-9-1996, in the counter-affidavit filed by the 1st respondent, it is stated that only the 1st petitioner in respect of his Counter No. 7 has been granted licence from 1-10-1991 to 30-9-1996 and that the 2nd petitioner''s licence in respect of counter No. 9 was granted on 8-10-1993 upto 30-9-1994.

6. The petitioners in Writ Petitions Nos. 3692 and 4021 of 1994 are respectively the T.F.T. licence holders in respect of Counters Nos. 8 and 6 of Rangapur village toddy shop. The licence of the petitioner in Writ Petition No. 3692 of 1994 is for the period 30-9-92 to 30-9-1997 and this is accepted by the 1st respondent in his counter-affidavit. Though the petitioner in Writ Petition No. 4021 of 1994 claims that his licence is for the period 30-9-1992 to 30-9-1997, in the counter-affidavit of the 1st respondent, it is stated that his licence is for the period 1-10-1992 to 30-9-1995.

7. It is the case of the petitioners that the petitioners in Writ Petition No. 2728 of 1994 complained to the Deputy Commissioner of Excise at Mahabubnagar (impleaded as the 3rd respondent in that Writ Petition by order dated 31-3-1994 in W.P.M.P.No. 7068 of 1994) that there were several irregularities being committed by certain persons regarding illegal toddy sales and that thereupon he ordered for an immediate and necessary action and that the said complaint was also forwarded on the same day to the Office of the 1st respondent and that a copy of the said complaint was also filed before the 1st respondent. A copy of the said complaint is filed along with Writ Petition No. 2728 of 1994 and it shows that it was submitted by the three petitioners in that Writ Petition. The allegations therein are as follows:-

"But October 1993 some of the existing TFT Licence holders (cancelled due to adulteration in 1991-92) like Devanna Goud, Mohan Goud, Hanumanthu Goud, China Krishnaiah Goud, Ksanna Goud, Kishtaiah Goud (Ex-Patel) and some others are selling toddy mixed with chloral hydrate while bringing the toddy from Chelemilla tope. In Chelimella tope the above persons are tapping (200) Sendhi trees illegally without paying any Tree Tax and to Tree owners and also they are doing all irregularities without any licence at Kishtareddipet Toddy shop.

We represented above facts to the Excise Sub-Inspector, Pebbair and Excise Inspector, Alampur to stop illegal sales of toddy mixed with chloral hydrate and illegal tapping of Sendhi trees. But the E.S.I, nor E.I. are not taken any action against the illegal sales and illegal tapping of Sendhi trees.

So, we request the Deputy Commissioner, Mahabubnagar division to kindly take immediate action and stop the illegal sales of Toddy and illegal Tapping of Sendhi trees in Chelemilla tope. And also we request the Deputy Commissioner to do justice to our poor tappers of our livelihood otherwise we will put to heavy loss."

8. Thereafter, the petitioners in these Writ Petitions received the order in proceedings of the 1st respondent dated 16-2-1994 impugned in these Writ Petitions suspending their licences. It is stated therein that the 2nd respondent herein raided the illegal toddy depot at Kistareddipet on 23-12-1993 at 8-00 A.M. and that a Panchanama was recorded. A person by name chinnaiah, son of Naganna, resident of Sawaigudem, was found at the said depot. He could not produce any licence for the said toddy depot. He stated that he was working in the depot on daily wages under one Thulsigoud son of Paramesh Goud of Gadwal and that Thulsigoud has taken the toddy shops on sub-lease and had been running the toddy depot at Kishtareddipet and supplying the toddy shops at Rangapur, Sawaigudem and Kistareddipet. It is also stated in the show-cause notice that about stock of 1000 liters was found in the said toddy shop and after testing before the panchas, it was found that the said toddy was adulterated with chloral hydrate. Hence a case in C.O.R.No. 33/93-94 dated 23-12-1993 of Range Pebbair was registered and three samples of the said toddy were drawn under cover of panchanama and deposited in the Judicial First Class Magistrate Court at Wanaparthy. One of the samples was sent to the Chemical Examiner for Excise, Hyderabad for analysis and the Chemical Examiner opined that the sampel of toddy was mixed with chloral hydrate. It is stated therein that in view of this the licences of the petitioners in these Writ Petitions and other licensees under the T.F.T. schemes for the three villages have been suspended.

9. The petitioners state that they had nothing to do with the illegal toddy depot at Kishtareddipet which was raided on 23-12-1993 by the 2nd respondent. They also state that they have nothing to do with the persons who reowning the premises in which the unlicenced and illegal toddy depot was (sic). They state that on the other hand, complaints were made against (sic) said depot to the authorities and that it was upon their complaint the raid (sic) place. They further submit that there is no justification whatsoever in suspending their licences or initiating proceedings against them on the basis of the statement of the said Chainaiah found at the unauthorised toddy depot at the time of the raid. They also state that the panchas of the panchanama recorded at that time are the subordinates of the 2nd respondent i.e., his own jeep driver and a home guard. They deny the allegations against them in the panchanama. They also submit that the registration of cases against them merely on the basis of the statement of the said Chinnaiah who is admittedly involved in the running of the unauthorised and illegal toddy depot is manifestly unfair and vindictive. They also state that the said complaint against them was made without inspecting their toddy shops and Counters and without taking any samples from the toddy sold at their Counters. There was no basis whatsoever for connecting their toddy shops and Counters and the toddy being sold by them with the said unauthorised depot and the toddy in the said depot found adulterated with chloral hydrate. They also further categorically state that after the said inspection on 23-12-1993 by the 2nd respondent, upto 16-2-1994 the Officials of the Excise Department had not taken any action though the Chemical Examiner''s report dated 1-1-1994

opined that the toddy found at the said depot was adulterated with chloral hydrate confiming the spot test conducted on 23-12-1993. It is also stated by them that in the panchanama though another village by name Kainbalapuram was '' mentioned along with Rangapur, Sawaigudem and Kishtareddipet as the villages to which supplies were being made from the said unauthorised depot, toddy shops and counters of Kainbalapuram village were not included for any action. The petitioners also state that in the complaint dated 22-12-1993 made to the Deputy Commissioner of Excise at Mahabubnagar, the names of the persons indulging in running the unauthorised toddy depot were mentioned and that the depot was existing from a long period. They complain that it was inexplicable how the Officials concerned failed to notice the unauthorised toddy depot run openly all these days when especially the persons behind the illegal toddy depots are the previous T.F.T. licensees whose licences were cancelled for adulteration. They further complain as follows:-

"All this draws an inference that the officials are hand in glove with those persons and for obvious reasons petitioners are made scape goats. It is un-understandable as to how a local range Excise Official can perform his day to day duty without knowing about the establishments of illegal toddy depot, that too in an Ex-TFT licencees land" i.e., of Mohan Goud.

10. In the counter-affidavit filed by the 1st respondent i.e., the Excise Superintendent, Mahabubnagar, it is denied that the petitioners in Writ Petition No. 2728 of 1994 brought certain irregularities to the notice of local Excise Officials. It is stated that no complaint petition was filed by them in the Office of the Excise Superintendent and the 2nd respondent booked the case on his own against toddy depot at Kishtareddipet. It is stated that after the raid of the illegal toddy depot at Kishtareddipet on 23-12-1993, a criminal case was booked by lodging FIR in Crime No. 33/93-94 and that the petitioners are absconding. It is also stated that the inspection party destroyed 2000 litres of adulterated toddy and the petitioners are playing with the lives of the consumers by indulging in illegal activities and keeping huge quantity of illegal toddy and that in view of the statement made by Chinnaiah, the licences of the petitioners in these Writ Petitions have been suspended and show-cause notices for cancellation of their licences also have been issued. It is also denied that the cases booked against the petitioners are false and baseless.

11. It is significant that the 1st respondent has not stated in his counter-affidavit that any inspection or raid was made in respect of the toddy shops/ Counters of the petitioners at Kishtareddipet or at Rangapur on 23-12-1993 or at any time thereafter before passing the impugned order of suspension of the licences of the petitioners or before issuing show-cause notices for cancellation of their licences. Apart from the statement of the said Chinnaiah, there was nothing whatsoever connecting the illegal toddy depot at Kishtareddipet which was raided on 23-12-1993 and the toddy shops/Counters of the petitioners either at Kishtareddipet or at Rangapur. It is not stated anywhere that any samples of

toddy from the petitioners'' counters were taken at any time.

12. The learned Government Pleader for Excise produced the record of the 1st respondent. A xerox copy of the panchanama found in that record, dated 23-12-1993 has given the boundaries of the illegal toddy depot raided on that day by the 2nd respondent apart from stating that the said toddy depot was situated within the land of Mohan Goud. The boundaries are given as follows:-

"East: Road into the village.

West: Open land of V. Krishnaiah.

North: Open land of Narayana Goud.

South: House of Mohan Goud"

It is also stated in the panchanama that the said Chinnaiah found at the depot was neither having any depot licence nor Now karnama. The said record does not contain anything to show that any inspection was conducted in respect of the toddy shops/Counters of the petitioners at Kishtareddipet and Rangapur. The said record also contains an application of S. Mohan Goud, S. Balaram Goud and Sugreeva Goud made to the 1st respondent and received in his Office on 24-12-1994 stating that on 23-12-1993 a case in respect of an illegal depot in their village of Kishtareddipet was registered and that therefore the second sample should be sent - obviously for chemical examination. The said application bears Rs. 2/- Court fee stamp and demand draft dated 24-12-1993 for Rs. 50/- was also enclosed along with the said application. The record also contains letter No. 36/P/93-94 dated 9-2-1994 of the 2nd respondent addressed to the 1st respondent stating inter alia as follows:-

".......I am to submit that during investigations, I found that the following licencees of Kistareddipet (1) Buchanna Goud, (2) Sathenna Goud, son of Bala Swamy Goud, (3) Pedda Kistanna Goud S/o. Buchanna Goud and Savaiguda T.F.T. Member Bala Swamy Goud have accepted that they are supplying toddy from the illegal depotestablished at Kistareddipet which is illegal. As per the Chemical Examiner''s Report No. 3364/93 dt. 1-1-94, the toddy was mixed with chloral hydrate, which is proved that toddy was adulterated with chloral hydrate.

Hence it is requested that the licences of aforesaid may be cancelled."

Though this letter of the 2nd respondent is dated 9-2-1994 and it bears the initials of the 1st respondent dated 10-2-1994, no reference was made to this letter in the impugned proceedings of the 1st respondent dated 16-2-1994. Even in the said letter dated 9-2-1994, no reference was made to any statements taken up from the persons referred to therein. The 2nd respondent has not filed any separate counter-affidavit coming out with any investigation made by him connecting the petitioners in these Writ Petitions with the said illegal depot in any manner.

13. No counter-affidavit has been filed by the deputy Commissioner of Excise,

Mahabubnagar though he has been impleaded as 3rd respondent in Writ Petition No. 2728 of 1994 and he is the 3rd respondent in Writ Petition No. 2973 of 1994. However, the relevant record of the Deputy Commissioner of Excise, Mahabubnagar is produced. It contains the complaint of the three petitioners in Writ Petition No. 2728 of 1994 on which the Deputy Commissioner endorsed "E.S. to send Dist. Striking Force and report" under No. B2/1703/93 dated 22-12-1993. It also contains a letter Cr.No. 1703/93 dated 22-12-1993 of the Deputy Commissioner to the 1st respondent stating as follows:-

"A copy of the complaint petition received through the ref. cited is enclosed herein. The Excise Superintendent, M. Nagar is requested to send Dist. Striking force, M. Nagar and conduct raid at Kistareddipet village and also inspect the tope Chelemilla to book cases of adulteration of toddy and I.T. if any and submit raid report immediately."

The stamp on the said letter shows that it was despatched on 22-12-1993 itself. There were reminders dated 19-2-1994 and 24-3-1994 to the 1st respondent requesting him to submit his resport immediately.

14. It is interesting to note that though the record shows that the reminder dated 24-3-1994 of the Deputy Commissioner of Excise was received by the 1st respondent on 25-3-1994, the record of the 1st respondent placed before medoes not contain the reminder of 19-2-1994 and the letter of 22-12-1993 of the Deputy Commissioner of Excise. On the other hand, the correspondence addressed by the 1st respondent to the Deputy Commissioner discloses - letter No. B2/1878/ 93 dated 28-3-1994 with reference to the said reminder dated 28-3-1994, stating this:-

"The DC, MNR has called for raid report conducted at Kistareddypet. But the DC MNR original ref. B2/1703/93 dt. 22-12-93 is not traced in my section. If agreed DC MNR may be requested to furnish the original ref. for further action."

It does not bear any stamp of despatch. There was also another letter Rc.No. B2 / 1878/93 dated 28-3-1994 addressed to the Deputy Commissioner wherein it is stated:

"Original reference of D.C''s Office Cr.No. B2/1703/93 dt. 24-3-1994 is not traceable in this office. Hence kindly arrange to communicate the same for taking further action in this matter."

The stamp on the said letter shows that it was despatched on 7-4-1994. But the record contains the letter dated 24-3-1994 and it contains the receipt stamp of 1st respondent''s Office dated 25-3-1994. These cover-up attempts seem to have been made in an effort to make out from the 1st respondent''s end that the 3rd respondent''s letter Cr.No. B2/1703/93 dated 22-12-1993 was not received. This speaks volumes about the unfortunate state of affairs in the 1st respondent''s Office. It is hard to believe that the 1st respondent did not receive the letter of the Deputy Commissioner of Excise in CR.No. B2/1703/93 dated 22-12-1993 which instructed the 1st respondent to send ''striking force'' and that the raid was not held on 23-12-1993 pursuant to this. If really even such a letter of the Deputy Commissioner of Excise, Mahabubnagar is not traceable in the Office of the 1st respondent and no raid was conducted pursuant to the same even after three months, the state of affairs in the Excise Department must be much worse than any one can imagine.

15. I am of the view that the record and the facts clearly disclose that the impugned orders of suspension of the petitioners'' licences have no basis which can be justified on reason. The record does not disclose that the Petitioners'' Counters at Kishtareddipet and Rangapur were raided or checked or that the toddy being sold by them was found to be adulterated. There is no material whatsoever except the alleged oral statement of the said Chinnaiah recorded by the said panchas that the toddy at the unauthorised depot in Mohan Goud''s land was being supplied to or received by the petitioners at their Counters. In the circumstances, the caution expressed by the majority opinion of the Full Bench in Tappers Co-op. Society, Maddur v. Supdt of Excise, 1984 (2) APLJ 1 is clearly attracted to the facts of the case. The majority opinion expressed:

"However, we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona fide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity and the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry".

16. For the reasons stated above, the suspension order of the 1st respondent in his proceedings in Rc.No. B2/7501/93 dated 16-2-1994 suspending the licences of the petitioners in Writ Petitions Nos. 2728, 2973, 3692 and 4021 of 1994 is set aside to the extent the petitioners are concerned. The show-cause notice Rc.No. Bl/7501/93 dated 16-2-1994 issued to the petitioners for cancellation of their licences merely repeats the same set of facts as in the said suspension order and therefore it is also liable to be quashed as arbitrary, unreasonable and without any justifiable basis. Proceedings for quashing of licences cannot be initiated on flimsy, unsubstantial and trumped up material and without any real and justifiable basis. In the light of the material disclosed, it amounts to harassment of the petitioners. It is accordingly quashed'' to the extent it relates to the petitioners in these Writ Petitions. Consequently, respondents are directed to permit forthwith the petitioners to run their respective Counters at the toddy shops pursuant to their licences and in accordance with law. The Writ Petitions are accordingly allowed with costs. Advocate''s fee Rs. 500/- in each.

