(2001) 08 AP CK 0071

In the Andhra Pradesh High Court

Case No : WA No''s. 1013, 1023 and 1024 of 2001

Sree Wines and another — APPELLANT

Vs

State of A.P. and another — RESPONDENT

Date of Decision : 18-08-2001

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 2, 23, 26
Andhra Pradesh Excise (Lease of Right to Sell Indian Liquor, Foreign Liquor and Beer in Retail under IL-24 Licences) Rules, 1998 — Rule 2
Andhra Pradesh Excise Act, 1968 — Section 11, 12, 13, 14, 15

Citation : (2001) 5 ALD 399 : (2003) 5 ALT 610

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. L. Narasimha Reddy, for the Appellant; Government Pleader for Excise, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The question which arises for consideration in these appeals is as to whether the Excise Superintendent has the jurisdiction to issue a notification for auction of shops wherefore licences are required to be granted in Form IL 24.

2. The Excise year for 2001-2002 begins from the 1st April, 2001. Two notifications dated 2-5-2001 and 22-5-2001, however, had been issued by the Excise Superintendents of various districts notifying the date on which the shops shall be auctioned. Questioning his jurisdiction to do so, the appellants herein filed writ petitions before this Court. The learned single Judge has dismissed the said applications. Aggrieved thereby these appeals have been filed.

3. Mr. L. Narasimha Reddy and Mr. Sairam Goud, the learned Counsel appearing on behalf of the appellants would urge that having regard to the import of A.P. Excise Act, 1968 (hereinafter referred to as ''the Excise Act'') the Prohibition and Excise Superintendent who is merely a licensing authority has no jurisdiction to

issue notification for holding of auction. It was submitted that by reason of Section 3 to the said Act the Commissioner, subject of general or special orders of the Government, issued in this behalf, is the chief controlling authority in all matters connected with the administration of the Act. Section 4 authorises the Collector to exercise all powers and functions assigned by or under the Act subject to the general control of the Commissioner. It was contended that the Excise Superintendent and other officers who are appointed in terms of Section 5 thereof can be delegated with certain functions only in terms of Section 6 thereof.

4. Sub-section (2) of Section 15 of the Excise Act, however, provides thus:

A licence for sale or buying under subsection (1) shall be granted :--

(a) By the Prohibition and Excise Superintendent, if the sale or buying is within a district;

(b) By the Deputy Commissioner, if the sale or buying is in more than one district within his jurisdiction; and

(c) By the Commissioner, if the sale or buying is in an area within the jurisdiction of more than one Deputy Commissioner.

Provided that subject to such conditions as may be determined by the Commissioner, a licence for sale or buying granted under the excise law in force in any other part of India may be deemed to be a licence granted under this Act.

5. The State in exercise of power conferred upon it u/s 72 read with Sections 9, 11, 12, 13, 14, 15 and 28 of the Excise Act, made the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 (hereinafter referred to as ''1970 Rules''). Rule 2 of the said rules reads thus:

Application ;--These rules shall apply for the import, export, transport and sale of Indian Liquors and Foreign Liquors but not for their manufacture, production, compounding, blending, rectifying, flavouring, colouring, fortifying, diluting or bottling.

6. The Excise Act is regulatory in nature. It is not in dispute that licence in Form IL 24 is granted upon following the procedures prescribed therefore. Chapter n of the Excise Act provides for ''establishment and control'' and by reason of Section 3 which occurs in the said chapter the Commissioner is authorised to act as a controlling authority in all matters connected with the administration of the Act. The Commissioner, therefore, may issue directions from time to time. Although in terms of Section 4 the Collector is to exercise powers and perform the functions assigned by or under the Act subject to the general control of the Commissioner nothing has been pointed out before us to show that either by reason of the provisions of the said Act or the rules made thereunder, the Collector is the only person who is authorised to issue notification for holding of auctions of shops in relation whereto the licences are required to be granted. The auction notice dated 2-5-2001 reads thus:

Whereas the lease of Excise shops of IL and FL is to be granted during the lease year 2001-2002 and whereas the Government have approved and fixed the number of shops in the areas for the establishment of IL and FL Retails shops:

I, T.V. Rao, Prohibition and Excise Superintendent, Warangal District in exercise of the powers vested in me under Rule 2 of A.P Excise (Lease of Right to Sell Indian Liquor, Foreign Liquor and Beer in Retail under IL 24 Licence) Rules, 1998 issue the following gazette notification for information of the public and intending applicants who have to submit their applications within the schedule date and time notified by the licensing authority.

Applications are invited for grant of lease of right to sell Indian Liquor, Foreign Liquor and beer in retail as specified in the list appended to this notification during the lease year 2001-2002.

The date, place and time of the selection is as follows and in case of adjournment further date will be announced from time to time. The conditions for submission of applications and the procedure for selection of applicants are appended to this notification.

7. By reason of sub-section (2) of Section 15 of the Excise Act, the Prohibition and Excise Superintendent has been made the licensing authority. He, therefore, in absence of any other provisions to the contrary must be held to be vested with all powers and may exercise all functions which are connected with or incidental to his function as a licensing authority. The power of licensing authority cannot be exercised in vacuum. Section 28 occurring in Chapter VI provides that every permit issued or licence granted under the Act shall be subject to such restrictions and conditions and in such form and shall contain such particulars as may be prescribed. ''Form'' has been defined in Rule 2(d) of the 1970 Rules to mean "a form appended to the rules". Clause (xiii) of Rule 23 provides for grant of retail licences. The holders of such licences in Form IL 24 are permitted to sell Foreign Liquor and Indian liquor subject to the conditions as mentioned therein. Rule 26 provides that subject to the provisions of sub-sections (2) and (4) of Section 15 read with sub-section (2) of Section 14 of the Excise Act, the Prohibition and Excise Superintendent shall be competent to grant, subject to such directions which are provided for in sub-rule (iii) of Rule 26 of the 1970 Rules. Sub-rule (iv) provides that where a licence is granted by the Commissioner of Excise under sub-rule (iii), the Excise Superintendent shall issue the licence in the prescribed form. The Collector does not grant a licence. In terms of the 1970 Rules, therefore, licensing authorities are only the Excise Superintendent and the Commissioner. Form IL 24 is as follows:

Retail licence for the sale of all kinds of Indian liquor/Foreign liquor and Beer not to be consumed on the premises (off licence)

I, ...Excise Superintendent .....District .....in consideration of the payment of a fee of Rs. .....the receipt of which is hereby acknowledged, hereby licence you to sell all kinds of Indian Liquor/Foreign Liquor and beer on the premises bearing

No. .....the details of which are as follows:

.....

7. The licensee shall maintain and furnish to the Excise Superintendent statistics showing the consumption of all kinds of Indian Liquor separately.

8. Thus a bare perusal of the aforementioned form would clearly go to show that the licensing authority has to receive the amount of consideration and is entitled to obtain statistics showing the consumption of all kinds of Indian Liquor separately. The contextual interpretation of the provisions therefore leave no manner of doubt that by reason of the delegated authority granted to the Excise Superintendent in terms of 1970 Rules, he is entitled to take such actions which are required to be performed for the purpose of grant of such licence.

9. We are, therefore, of the opinion that the judgment and order passed by the learned single Judge is unassailable.

10. These writ appeals, for the reasons afore-mentioned, are dismissed. No costs.