

(2001) 02 AP CK 0111
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1339 of 2000

Toddy Co-op. Society

APPELLANT

Vs

Excise Superintendent (Excise and Prohibition) and Others

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 37, 47

Citation : (2001) 3 ALT 161

Hon'ble Judges : N.Y. Hanumanthappa, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : B. Sai Ram Goud, for the Appellant; G.P., for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the order of the learned Single Judge dated 13-10-2000 passed in W.P. No. 19382/2000 which was filed seeking a Writ of Mandamus directing the respondents to send the 2nd sample bottle to the independent laboratory and after receipt of the reports of the 1st and 2nd sample bottle take necessary action as per law. The petitioner also sought to declare (sic. suspend) the proceedings Cr.No. D3/395/ 2000/ESH , dated 29-7-2000 of the 1st respondent-Prohibition and Excise Superintendent as confirmed by the 3rd respondent Dy. Commissioner of Prohibition and Excise, suspending the licence of the writ petitioner.

2. For purpose of convenience the parties are referred to as arrayed in the writ petition.

3. The writ petitioner-Society consisting of 144 members was engaged in selling toddy under a licence granted by the Prohibition officials. The 1st respondent issued the impugned proceedings dated 29-7-2000 suspending the licence of the writ petitioner on the ground that on 27-07-2000 at 5.30 p.m. the Prohibition and Excise officials during cross (sic. crash) inspection programme, inspected the petitioner's shop and conducted a spot test of the toddy being sold and found

that the toddy was adulterated with Chloral Hydrate which is injurious to health. The officials drawn three samples of the toddy under the cover of panchanama and seized the same and a criminal case was also registered against the petitioner-Society. On the other hand, the case of the petitioner-Society is that the society never indulged in selling adulterated toddy. The excise officials fabricated a case against the petitioner-Society with no proof. According to the petitioner-Society, the 2nd respondent-Excise Inspector inspected the shop without the Chemical Examiner, who is the competent person to conduct the spot test. The 2nd respondent cannot decide whether the toddy is adulterated or not in the absence of the Chemical Examiner of the Excise Department. As such the opinion of the 2nd respondent is nothing but a presumption and an imaginary one without any basis. The respondents without the receipt of the 1st and 2nd respondents cannot straight away suspend the licence. The petitioner-Society requested the officials to send the 2nd sample to the independent lab named by it as he is entitled to seek such a relief under the provisions of the A.P.Excise Act. But the respondents instead of sending the 2nd sample to the independent laboratory, straightaway passed the impugned order which is contrary to the provisions of the said Act. Thus urging, the petitioner-Society sought the writ petition be allowed.

4. The learned Single Judge after hearing both sides passed the following order:

"In the facts and circumstances of the case, I consider it appropriate to direct the first respondent to send the second sample toddy to a independent laboratory i.e., Institute of Preventive Medicine, Public Health Food Laboratory, Food Administration, Hyderabad alias State Food Laboratory, Nacharam, Hyderabad for testing forthwith after obtaining necessary permission from the Court of Judicial First Class Magistrate, Hyderabad.

The writ petition is accordingly disposed of No costs"

5. Aggrieved by this order, the petitioner-Society filed this appeal for not granting the second limb (sic. limb) of the relief, namely suspension of the proceedings of the 1st respondent viz, Cr.No. D3/3855/2000/ESH , dated 20-7-2000 as confirmed by the 3rd respondent in his proceedings No. 10/2000/E1, dated 26-9-2000. The petitioner-Society attacked the order of the learned Single Judge contending that though the learned Single Judge is justified in directing the 1st respondent to send the second sample to the independent laboratory, the learned Judge committed a mistake in not suspending the impugned proceedings of the 1st and 3rd respondents, which were passed cancelling the licence of the petitioner-Society, as prayed for by the petitioner-Society.

6. During the pendency of the appeal, the President of petitioner-Society, namely B. Laxman Goud filed a notarized affidavit admitting his fault and requested this Court to take a lenient view against him and let the other members of the petitioner-Society who are poor and eking out their livelihood only on the tapping profession, not suffer for his fault. He has also given an undertaking that he will

not repeat any such mistake or crime in future and if any error is committed the officials can take severe action against him. He further stated that the licence of the petitioner-Society issued on 1-10-1996 is valid upto 30-9-2001. The authorities first suspended the license and later cancelled the same. Due to the cancellation of the licence by the respondents, the toddy shop remained closed from 29-7-2000 till this date. Thus tendering his unconditional apology to this Court, he prayed to direct the 1st respondent to restore the licence of the petitioner-Society and also direct him not to insist the rentals from 29-7-2000 till reopening of the shop by compounding the offence u/s 47 of the A.P. Excise Act, 1968.

7. Section 47 deals with certain compoundable offences. A perusal of the said section shows that the offence alleged to have been committed by the petitioner-society viz., Section 37(a) does (sic. does not) come under the purview of Section 47 as it is not a compoundable offence. However we are persuaded with the circumstances pleaded by the said Laxman Goud, President of the petitioner-Society in the affidavit filed in this appeal. Therefore, we are inclined to allow the writ appeal.

8. The writ appeal is accordingly allowed directing the 1st respondent to restore the licence of the petitioner-Society for the remaining licence period without insisting the petitioner-society for payment of rentals from 29-7-2000 till the reopening of the shop. No costs.

9. This order has been passed purely on humanitarian grounds keeping in view the hardship faced by the members of the Todday Tappers Society on account of the closure of the shops, and also keeping in view the fact that they have bona fide filed an affidavit stating that they will not resort to the thing of the nature depicted in the petition and would be more diligent in future.

10. It is made clear that this order has been passed purely on humanitarian grounds, and it shall not be treated as a precedent to be followed in other cases.