(1996) 04 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29860 of 1995

Toddy Tappers Co-operative Society — APPELLANT

Vs

Prohibition and Excise Superintendent and Another — RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

- Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 — Rule 28
- Andhra Pradesh Excise (Lease of Right to sell Liquor in Retail) Rules, 1969 — Rule 18(3)

Citation : (1996) 3 ALD 1103 : (1996) 2 ALT 127 : (1996) 2 APLJ 126 : (1996) 1 APLJ 126

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : V. Eswaraiah and T.A. Goud, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—Petitioner seeks a mandamus declaring that Clause-4 of the Circular contemplating payment of annual rentals in 9 monthly instalments for the excise year 1995-96 is contrary to Rule 28 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 and Rule 18(3) of the A.P. Excise (Lease of Right to sell Liquor in Retail) Rules, 1969 and further seeks a direction to the respondent to accept the payment of annual rentals in 12 monthly instalments for the excise year 1995-96 which period commenced from first October, 1995 to 30-9-1996.

2. Petitioner-a Toddy Tappers Co-operative Society has filed this writ petition assailing the legality of clause 4 of the circular issued by the second respondent for the excise year 1995-96 contemplating payment of annual rentals in 9 monthly instalments instead of 12 monthly instalments as provided in the above said rules.

3. It is stated that the Excise Year 1995-96 commenced from 1st October, 1995 and comes to an end by 30-9-1996. It is further averred that as per Rule 28 of the Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 and Rule 18(3) of Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 provides for payment of annual rentals in 12 monthly instalments. However, the second respondent by virtue of the circular contemplating to pay the annual rentals in 9 instalments through clause 4 is improper inasmuch as it is contrary to the rules provided in this behalf and therefore, it is contended that the said Clause 4 of the circular has to be set aside.

4. On the contrary, the learned Government Pleader for Excise contended that in the rules, as contended by the Counsel, nowhere it is provided for making payments of rentals in 12 monthly instalments. What is indicated in these rules, according to the counsel is that the parties are ordinarily obliged to deposit rentals in monthly instalments. According to the learned Government Pleader, the word "ordinarily" used in the rules cannot be construed to say that the parties are entitled to deposit annual rentals in monthly instalments. It is further contended that the second respondent is competent to fix instalments for payment of the annual rentals and therefore, through the circular, the second respondent has provided for deposit of monthly rentals in 9 instalments which is within his competence and as such the power of the authority cannot be questioned.

5. Heard both the counsel at length.

6. The entire excise policy and rules there under are governed by statutory provisions contemplated under the Excise Act, 1968. The payment of monthly rentals is provided under Rule 28 of the Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 and Rule 18(3) of Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969, which rules are extracted hereunder:

Rule 28 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969:

28. Payment of rental; (1) Rental of the shop shall be remitted by the licensee into the Government Treasury of the Mandal/District in which the shop is situated and the receipted challan submitted to the Excise Sub-Inspector concerned soon after the remittance. Payment of monthly rental shall ordinarily start from the month of October of every excise year. The monthly rental shall be remitted in two equal instalments. The first instalment shall be remitted by 20th of the month and the second instalment by the 30th of the same month except for the month of February when the second instalment shall be remitted by 28th of that month. Where the due date or the next date of the instalment happens to be a holiday, the instalment shall be remitted on the next working day. In case the first or second instalment of the monthly rental is not remitted by the due date(s) the licence shall be liable for suspension or cancellation after giving an opportunity to the holder thereof of making his representation within seven days

against the auction proposed.

(2) Notwithstanding the suspension or cancellation of a licence arrears of rental shall bear interest at the rate prescribed in the Andhra Pradesh Excise (Levy of Interest on Government Dues) Rules, 1982 from the date on which the rental becomes due upto the period for which it remains unpaid.

(3) In the case of a licence granted for tapping an excise tree or drawing toddy from any such tree, if the licensee fails to remit tree tax and tree owner''s rent immediately after the trees are booked for infraction, his licence is liable for suspension or cancellation.

(4) In the event of failure to pay in time of any dues by the holder of licence, without prejudice to the suspension of the licence and to the re-auction of the lease, the Excise Superintendent shall be competent to stop issue of arrack or release of trees for tapping or drawing toddy there from in favour of the licensee, after giving an opportunity "of making his representation against the action proposed.

Where a licence has more than one shop, in the event of failure to pay rental, tree tax, tree owner''s rent or any other dues in time in respect of any of one shops, his licence for all or any one of the shops, shall be liable for cancellation or suspension irrespective of the fact there is no default in remittance of rentals, tree tax, tree owner''s rent or other dues in respect of other shops."

Rule 18(3) of Excise (Lease of Right to sell Liquor in Retail) Rules, 1969, is as follows:

Rule 18: Other requirements: (1) xxxxx

(2) xxxxxx

(3) Where a shop is assigned to a Tappers Co-operative Society or Tribal Arrack Co-operative Society or under Tree for Tapper Scheme or is withdrawn from auction and allotted to Tappers Co-operative Society or Tribal Arrack Co-operative Society, the Society need not deposit one month''s rental. It shall however pay the annual rentals in equal monthly instalments commencing from October.

(4) xxxx

7. A reading of these two rules do indicate that the annual rentals are to be paid in twelve (12) monthly instalments. The said rules further provide depositing of the monthly rentals in two instalments also, viz., one is on 20th and the other is on 30th of each month. If the 30th of a month happens to be a holiday, the monthly rental could be paid on the next working day. As indicated above, the rules are very clear in this regard as to the payment of annual rentals. In view of the above rules, I do not think there is any ambiguity in seeking deposit of annual rentals which categorically says that the annual rentals could be paid in 12 monthly instalments.

8. The second respondent through circular for the Excise Year 1995-96, seeking a party to deposit annual rentals in 9 monthly instalments which is evident from clause 4 of the circular, is the subject matter of controversy in this writ petition. It is settled law that when Statute provides for certain rules and regulations as to the modalities, any executive instructions cannot have a over riding effect either on the Statute or the Rules provided in the Statute. Admittedly, the provisions contemplated under Rule 28 and Rule 18(3) of the above said rules are not disputed by the respondents. It is also not disputed that these two rules are not (?) in force for the Excise Year 1995-96. That being the situation, I am inclined to say that the second respondent through Clause 4 of the Circular cannot insist depositing of annual rentals in 9 monthly instalments instead of 12 monthly instalments as provided in the rules. Therefore, the circular, in my view, in the light of the provisions contemplated in the Rules as indicated above, has a over-riding effect on the Statute and such power is not available to the second respondent who has to function under the Statute. Accordingly, I hold that Clause4 of the circular issued by the second respondent contemplating payment of annual rentals in 9 monthly instalments for the Excise Year 1995-96 is contrary to the Rules and the same is held to be void.

9. Consequently, I hold the petitioner is entitled for payment of annual rentals in 12 monthly instalments for the Excise Year 1995-96 which commenced from 1-10-1995 to 31-9-1996.

10. The writ petition is allowed in the above terms. Consequently, the respondents are directed to receive the annual rental for Excise Year 1995-96 in 12 monthly instalments. No costs.