(1990) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 598 of 1990

Toddy Tappers Co-operative Society APPELLANT

Vs

The Commissioner of Excise and others RESPONDENT

Date of Decision : 23-04-1990

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 63, 63(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1991 AP 40 : (1996) 2 ALD 691 : (1991) 1 AnWR 429

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : K. Pratap Reddy, for the Appellant; Govt. Pleader for Excise and Sai Ram Goud, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J. 1. The Toddy Tappers Cooperative Society, Mahabubabad, Warangal District (for short ''the Society''), the petitioner herein, challenges the proceedings Cr.No. 40949/89/Ex./84 Dt. 20-12-1989 of the Commissioner of Excise allowing the appeal filed against the order of the Deputy Commissioner of Excise, Warangal Dt. 23-6-1989 passed in Proceedings No. 1067/89/Ex.E.1 and the consequential proceedings No. 4703/ 88/Ex/ A7/T by the Excise Superintendent superseding the society on 6-1-1990.

2. The main contention of the petitioner is that against the order of the Deputy Commissioner of Excise, passed under Sec. 76(2) of the Co-operative Societies Act, no further appeal is provided under the said Act and that therefore the order of the Commissioner of Excise dated 20-12-1989 is without jurisdiction and the consequential orders of Excise Superintendent dt. 6-1-1990 is without any basis and illegal.

3. It may be appropriate to notice a few facts here. On an application made by respondents 4 to 12 for making them members of the society, it was felt that as they reside in Annaram and Thallapoosalapally villages, which are not included in the area of operation of the Society, the relevant bye-law should be suitably

amended to include those villages within the area of operation of the Society. As the petitioner-Society declined to amend the bye-laws, the Excise Superintendent amended bye-law No. 1 by his order dated 10-4-1989. Then the Society carried the matter in appeal before the Deputy Commissioner of Excise, Warangal division. Initially the appeal was filed before the Commissioner of Excise on 4-5-1989, which was forwarded to the Deputy Commissioner subsequently. In the meanwhile, the President of the Society filed another appeal-petition before the Deputy Commissioner of Excise on 22-6-1989. On 23-6-1989 the Deputy Commissioner of Excise allowed the appeal. That order was assailed before the Commissioner of Excise, as noted above, who oh 20-12-1989, allowed the appeal and set aside the order of the Deputy Commissioner dated 23-6-1989.

4. To appreciate the contention of the learned counsel for the petitioner, it would be appropriate to extract Sec. 76(4) of the A.P. Co-operative Societies Act.

"76(4). In disposing of an appeal under this section, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon as that authority may deem fit."

5. From a perusal of the provision extracted above, it is clear that only one appeal is provided against an order passed under Sec. 16(5) of the Co-operative Societies Act. That appeal was, heard and disposed of by the Deputy Commissioner of Excise on 23-6-1989. As no further appeal is provided under the Act, the Commissioner of Excise has no power to entertain the appeal filed against the order passed of the Deputy Commissioner of Excise.

6. Sri Sairam Goud, the learned counsel for respondents 4 to 12, contends that under Sec. 63(2) of the Excise Act an appeal lies to the Commissioner of Excise against the order of the Deputy Commissioner of Excise as such the impugned order of the Commissioner of Excise cannot be said to be without jurisdiction.

7. To appreciate the above contention of the learned counsel, we may read Sec, 63 of the Excise Act which is in the following terms:

"Appeals: (1) Any person aggrieved by an order passed by any officer, other than the Commissioner or Collector, under this Act, may, within forty-five days from he date of communication of such order, appeal to the Deputy Commissioner.

(2) Any person aggrieved by an order passed by the Deputy Commissioner or Collector under this Act, within sixty days from the date of communication of such order, appeal to the Commissioner."

8. A perusal of the above section shows that against an order passed by any officer, other than the Commissioner or Collector under the Excise Act, appeal is provided to the Deputy Commissioner and against an order passed by the Deputy Commissioner, a further appeal is provided to the Commissioner of Excise under the Excise Act. Further it is also clear that the order appealed against must have-been passed under the Excise Act. It is therefore, evident that the provisions of Sec. 63 can be invoked only when the subject matter of the appeals

is relatable to any of the provisions of the Excise Act. Merely because the order was passed by the Deputy Commissioner of Excise even though it was not under the Excise Act, S. 63 of the Excise Act cannot be invoked. The subject matter of the appeal before the Deputy Commissioner was an order passed under Sec. 16(5) of the A.P. Co-operative Societies Act but not under the Excise Act. The order was passed by the Deputy Commissioner in his capacity as Joint Registrar of Co-operative Societies under the Co-operative Societies Act. That order cannot be challenged before the Commissioner of Excise by invoking the power under S. 63 of the Excise Act, on the ground that the authority which passed the order appealed against is Deputy Commissioner of Excise though the order is not passed under the provisions of the Excise Act. It therefore follows that as admittedly the order dated 23-6-1989 was not passed by the Deputy Commissioner under the Excise Act, the appeal before the Commissioner of Excise was not maintainable. Therefore, the impugned order passed by the Commissioner of Excise on 20-12-1989 is without jurisdiction and it is accordingly quashed.

9. It has been noticed that the Deputy Commissioner, Warangal allowed the appeal on 23-6-1989 without issuing notice to respondents 4 to 12, the beneficiaries under the order of the Excise Superintendent. That order is, therefore, null and void in the eye of law The result of quashing the order of the Commissioner of Excise would be to restore a void order which cannot be done obviously. Therefore, the impugned order of the Commissioner of Excise as well as the order of the Deputy Commissioner, Warangal are quashed. Consequently the order passed by the Excise Superintendent, Warangal Dt. 6-1-1990 superseding the Co-operative Society on the ground of non-compliance of the order of the Commissioner of Excise dated 20-12-1989, is also quashed.

10. In the result, the matter is remitted to the Deputy Commissioner of Excise, Warangal Division, for disposal of the appeal in accordance with law after giving notice and reasonable opportunity for making their representations to all the parties concerned. Pending disposal of the appeal before the Deputy Commissioner, Warangal Division, the order of the Excise Superintendent dated 10-4-1989 shall stand suspended.

11. The writ petition is accordingly allowed. No costs. Advocate''s fee Rs. 200/-.

12. Petition allowed.

