(2002) 07 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Appeal No''s. 1116 and 1117 of 2001

Toddy Tappers Coop. Society — APPELLANT

Vs

The Prohibition and Excise Superintendent Medak District at Sangareddy and Others — RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:
Andhra Pradesh Co-operative Societies Act, 1964 — Section 19, 3, 3(1), 3(2), 4
Andhra Pradesh Excise Act, 1968 — Section 3(1), 63

Citation : (2002) 07 AP CK 0055

Hon'ble Judges : S.R. Nayak, J;Dalava Subrahmanayam, J

Bench : Division Bench

Advocate : E. Manohar and P. Kamalakar, for the Appellant; G. Chandraiah, GP for Prohibition and Excise for respondent No. 1 to 3 and C.V. Nagarjuna Reddy, for the Respondent

Judgement

1. These two writ appeals by the Toddy Tappers Co-op. Society, Sadasivapet are directed against the common order of the learned single Judge dated 5.7.2001 made in W.P. Nos. 5684 and 10486 of 2001. W.P. No. 5684 of 2001 was filed by the appellant-Society calling in question the legality of the order of the Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad, the 3rd respondent herein dated 21.3.2001 directing the Prohibition and Excise Superintendent, Medak District, the 1st respondent herein, to form a new TCS for certain applicants represented by Mr. Prakash Goud, the 4th respondent herein, and take necessary action for allotment of ration, fixation of rental and grant of licence. In W.P. No. 10486 of 2001, Mr. Prakash Goud, the 4th respondent in the writ appeals, is the writ petitioner. He filed the above writ petition assailing the validity and correctness of the Memo No. 22911/Ex.II/2001 dated 17-4-2001 of the Government of Andhra Pradesh granting suspension of the order of the Commissioner of Prohibition and Excise dated 21.3.2001 impugned in W.P. No. 5684 of 2001.

2. The appellant, while assailing the order of the Commissioner of Prohibition and

Excise dated 21.3.2001 contended that the said order is one without authority of law and the Commissioner has no power either under the A.P. Cooperative Societies Act, 1961 (hereinafter referred to as Cooperative Societies Act, for brevity) and the A.P. Excise Act, 1968 (hereinafter referred to as ''Excise Act''). The appellant also questioned the impugned order of the Commissioner of Prohibition and Excise on merits too. There is no need for us to dilate the contentions raised by the appellant-petitioner on merits. W.P. No. 5684 of 2001 was opposed by the 4th respondent, Mr. Prakash Goud, by filing counter affidavit wherein he contended that the petitioner-society has no locus-standi to question the validity of the order of the Commissioner of Prohibition and Excise dated 21.3.2001 on the ground that none of the rights of the petitioner-society are affected or impaired by the impugned action of the Commissioner.

The learned single Judge on consideration of the rival contentions, upheld the contention of the 4th respondent that the appellant-petitioner has no locus-standi to maintain the writ petition. In view of that opinion, the learned single Judge dismissed W.P. No. 5684 of 2001 and consequently disposed of W.P. No. 10486 of 2001 filed by Mr. Prakash Goud as having become redundant by virtue of the order impugned in W.P. No. 5684 of 2001.Hence these writ appeals by the aggrieved appellant-Society.

3. We have heard Sri E. Manohar, learned Senior Counsel for the appellant, Sri C.V. Nagarjuna Reddy, learned counsel for 4th respondent and Mr. G. Chandraiah, learned G.P. for Excise and Prohibition, for official respondents 1 to 3.

4. Sri E. Manohar contended that formation of a TCS or grant of licence are matters fully covered by Cooperative Societies Act and Excise Act and, therefore, only the competent authorities under those Acts could exercise the power and not an extraneous authority, like the Commissioner of Prohibition and Excise. Elaborating that contention, Sri E. Manohar contended that as regards formation of a Cooperative Society under the Cooperative Societies Act, persons who seek membership of the Cooperative society should make applications u/s 19 of the Cooperative Societies Act and if for any reason, their applications are rejected by the management of the cooperative society, statutory appeal is provided against such rejection u/s 76(1) of the Cooperative Societies Act. Secondly, Sri E. Manohar contended that sections 4,6, and 7 of the Cooperative Societies Act deal with formation and registration of a cooperative society and the competent authority to permit formation of a cooperative society and register the same is the Registrar appointed u/s 3 of the Cooperative Societies Act. Sri E. Manohar pointed out contended that the Government has issued notification in G.O.Ms. No. 234 Food and Agriculture (Coop. IV) Department, dated 3.4.1979 u/s 3 of the Cooperative Societies Act conferring the powers of the Registrar of Cooperative Societies under certain provisions of the Cooperative Societies Act including the powers under sections 4,6,7 and 8 which deal with formation and registration of cooperative societies, on the jurisdictional Excise Superintendent and, therefore, only the jurisdictional Excise Superintendent can take steps to

register a cooperative society and not the Commissioner of Prohibition and Excise, because, the powers under sections 4,6,7, and 8 of the Cooperative Societies Act are not conferred upon him by the Government. Sri E. Manohar further contended that against an adverse order that may be made by the functional Registrar or the Excise Superintendent u/s 7 of the Cooperative Societies Act, appeal lies to the jurisdictional Deputy Commissioner of Excise u/s 76(1) of the Cooperative Societies Act. In other words, Sri E. Manohar would maintain that the Commissioner of Prohibition and Excise is totally an extraneous agency insofar as formation and registration of a cooperative society is concerned. Sri E. Manohar further contended that in that view of the matter, the impugned action should be held as nullity in the eye of law. Sri E. Manohar further contended that the Commissioner of Prohibition and Excise is not the authority to grant licences under the Excise Act and only the Excise Superintendent is the primary authority to grant licence, and if for any reason he rejects the application to grant new licence or renew the existing licence, two tiers of legal remedies by way of appeals are provided u/s 63 of the Excise Act, one to the jurisdictional Deputy Commissioner of Prohibition and Excise and the other to the Commissioner of Prohibition and Excise. Sri E. Manohar contended that the Commissioner, by directing the Excise Superintendent to grant licence, has usurped the statutory power conferred on the primary authority and, therefore, his action is ultra vires the Excise Act.

5. Sri C.V. Nagarjuna Reddy, learned counsel appearing for the 4th respondent in the writ appeals, we should say, fairly did not contest that the impugned order passed by the Commissioner of Prohibition and Excise is ultra vires the Cooperative Societies Act and Excise Act. But, Sri C.V. Nagarjuna Reddy contended that no case is made out by the appellant/writ petitioner for this Court to interfere with the impugned order of the Commissioner of Prohibition and Excise in exercise of the discretionary power conferred upon it under Article 226 of the Constitution, particularly having regard to the fact that the learned single Judge who heard the writ petitions declined to exercise the discretion in favour of the writ petitioner. The learned counsel contended that the appellant-Society could not be regarded as an aggrieved party and, therefore, it has no locus standi to maintain the writ petition and the view taken by the learned single Judge is fully justified in the facts and circumstances of the case. However, Sri G. Chandraiah, learned Government Pleader for Prohibition and Excise maintained that the Commissioner of Prohibition and Excise had power to pass the impugned order by virtue of the provisions of sub-section (1) of Section 3 of the Excise Act under which the Commissioner of Prohibition and Excise has general superintendence and controlling power in all matters connected with the administration of the Excise Act. The learned Government Pleader also contended that none of the legal rights of the appellant are impaired by the impugned order of the Commissioner of Excise and Prohibition and looking from that angle also, no ground is made out to interfere with the discretionary order of the learned single Judge.

6. The first principle of Administrative Law is that when a statutory authority exercises powers granted to it by the statute, it should exercise such power strictly within the parameters and limitations of the statute and it cannot out-step its power and jurisdiction. It is equally well settled that when an administrative authority acts in a particular way and when such action is challenged in a court of law, it should trace its power to a source granted by the law and if it fails to trace the power, his/its action is liable to be condemned as ultra vires the statute and/or violative of the Rule of Law. If we apply these two principles to the facts of the case, we have no hesitation in our mind to state that the impugned direction issued by the Commissioner of Prohibition and Excise on 21.3.2001 is ultra vires the Excise Act and, therefore, a nullity in the eye of law.

7. Sections 4 - 8 of the Cooperative Societies Act deal with formation and registration of a cooperative society. The donee of the power under these sections is the Registrar of Cooperative Societies. Section 3 of the Cooperative Societies Act provides that the State Government shall appoint Registrar of Cooperative Society or such other persons as Registrars in the State. Sub-section (2) of Section 3 of the Cooperative Societies Act provides that every other person appointed by the State Government as the Registrar of Cooperative Societies shall exercise the power of the Registrar. The cumulative effect of provisions of sub-sections (1) and (2) of Section 3 of the Cooperative Societies Act is that the State Government is empowered to authorize an officer or a person other than the Registrar of Cooperative Society appointed under sub-section (1) of Section 3 of the Cooperative Societies Act, to exercise the power of the Registrar. In exercise of this power vested in the State Government, the Governor of Andhra Pradesh has issued notification in G.O. Ms. No. 234 Food and Agriculture (Coop. IV) Department dated 3.4.1979 conferring certain powers of the Registrar of Cooperative societies on two functionaries of the Excise Department. The schedule of the notification reads as follows:-

8. As could be seen from the fourth column of the Schedule, the power of Registrar of Cooperative Societies under Sections 4,6,7 and 8 of the Cooperative Societies Act have been delegated to the Excise Superintendents. As already pointed out supra, the above Sections deal with formation and registration of a cooperative society under the Cooperative Societies Act. Further, the Deputy Commissioner of Prohibition and Excise is also conferred with appellate power of the Registrar of Cooperative Societies u/s 76 and 77 of the Cooperative Societies Act. By virtue of sub-section (2) of Section 3 of the Cooperative Societies Act read with the notification dated 3.4.1979, it is trite that the power conferred on the Registrar of Cooperative Societies to form and register a Cooperative Society under Sections 4,6,7 and 8 of the Cooperative Societies Act vests with the Excise Superintendent as a functional Registrar and not with the Registrar of Cooperative Societies. The power vested in the Excise Superintendent being a statutory power cannot be exercised by the Commissioner of Prohibition and Excise simply because he is a superior officer in the administrative echelon of the Excise Department. It is well settled that the power conferred upon a statutory

authority shall be exercised by that authority alone and that power cannot be exercised even by an authority superior to that authority in the administrative echelon. Further, an adverse order made by the functional Registrar u/s 7 of the Cooperative Societies Act could be appealed against before the Deputy Commissioner of Excise who is conferred with the appellate power of the Registrar of Cooperative Societies u/s 76 and 77 of the Cooperative Societies Act.

9. Similarly, the prescribed authority to grant TS-1 licence under the A.P. Excise (Tapping of Trees and Toddy shops - Special Conditions Licence) Rules, 1969 (hereinafter referred to as Toddy Tappers Licence Rules for brevity), is the jurisdictional Excise Superintendent and any adverse order that may be made by him is appealable in the first instance to the jurisdictional Deputy Commissioner of Prohibition and Excise under sub-section (1) of Section 63 of the Excise Act and further appeal to the Commissioner and Prohibition and Excise under sub-section (2) of Section 63 of the said Act. What we have stated above equally applies here also. The Commissioner of Prohibition and Excise cannot straightaway exercise the statutory power vested in the primary authority though he is the second appellate authority under sub-section (2) of section 63 of the Excise Act. He can exercise the appellate power only if an issue relating to grant of licence comes before him by means of a second appeal. Therefore, that part of the impugned order, which directs the Excise Superintendent to grant licence, should also be held as one without authority of law.

10. The submission made by the learned G.P. for Prohibition and Excise that the Commissioner had power to issue the impugned order is not well-founded. The basis of the argument is that sub-section (1) of Section 3 of the Excise Act grants such power. No doubt, sub-section (1) of Section 3 of the Excise Act provides that the Commissioner of Prohibition and Excise appointed by the Government will be the chief controlling authority in all matters connected with the administration of the Excise Act. It is true that grant of licence is also a matter which falls within the administration of the Excise Act. But, it needs to be noticed that the power granted to the Commissioner under sub-Section (1) of Section 3 of the Excise Act is general in nature. In other words, it is a general enactment. It is well settled that if a statute contains general and special enactments, the general enactment should yield to special enactment. In other words, if there is special enactment in the statute to deal with grant of licence and that power is specifically conferred upon certain specified authorities, the Commissioner, under the guise of general power of superintendence and control conferred upon him under sub-Section (1) of Section 3 of the Excise Act, cannot grab the power of the specified primary authority. Under sub-Section (1) of Section 3 of the Excise Act, the Commissioner has power only to issue administrative instructions consistent with the provisions of the statute to fill in the gaps in the implementation of, or working of the provisions of the Act and the Rules made thereunder. The Commissioner, by exercise of the power under sub-Section (1) of Section 3 of the Excise Act, cannot issue instructions or orders or directions to supplant the statutory provisions and the Rules made thereunder and he can

only supplement them. Further, the direction issued by the Excise Commissioner to the Excise Superintendent who is the functional Registrar to form and register a TCS under the said Act is ex facie without authority of law. Therefore, we are of the considered opinion that the impugned order issued by the Commissioner of Prohibition and Excise dated 21.3.2001, is one without authority of law and cannot be sustained.

11. This takes us to the maintainability argument urged before us. We do not think that this is a case where we should deliberate much on the issue relating to the locus of the appellant/writ petitioner to maintain the writ petition. Of course, Sri E. Manohar, placing reliance on the Judgment of the Supreme Court in M.S. Jayaraj v. Commissioner of Excise Kerala, I contended that even assuming that the appellant-society is not an aggrieved party, even then, the validity of an apparent illegal order passed by the Commissioner of Prohibition and Excise could be reviewed at the instance of the writ petitioner. If we go by the letters and spirit of the above judgment, the learned Senior Counsel appears to be right. From a careful reading of the observations of the Apex Court in para (10) of the judgment, it can be said that even in a case where the mover of the application cannot be regarded as an aggrieved party, but if the impugned action suffers from an apparent illegality being a breach of public law, the High Court can review such action to uphold the rule of law and statutory sanctity. Therefore, we do not think that the learned single Judge was justified in dismissing the writ petition on the ground of lack of locus standi. At the same time, we hasten to add that no party, including the applicant who moves the Court, can be permitted to derive some benefit or advantage to himself to which he is not entitled in law in the garb of public law litigation or otherwise. On hearing the merits of the matter, we are satisfied that the writ applicant cannot be regarded as an aggrieved party. We say this, because, it is quite clear by virtue of the revised Excise Policy of the State Government notified in G.O. Ms. No. 802 Revenue (Exc.II) Department 30.9.1996, the primary authority i.e., the Excise Superintendent should grant fresh licence or renew the existing licence in the municipalities or municipal corporations only in terms of municipal blocks/wards instead of earlier system of villages. There is no controversy that at the relevant point of time, Sadasivapet had become a municipality consisting of as many as 22 wards. It is trite that the State Government under the Excise Act is competent to evolve excise policy to be followed by the authorities under the Act and that those authorities are bound by those policy decisions which are not contrary to the provisions of the Excise Act. It is nobody''s case that the revised Excise Policy of the Government is contrary to any of the provisions of the Excise Act. In that view of the matter, the authorities under the Act are bound by those policy decisions. Therefore, the Excise Superintendent, after the new revised policy came into force should strictly adhere to the new policy and renew the licence only in terms of wards as regards the area coming within the territorial jurisdiction of Sadasivapet municipality and not in terms of village as such. Further, nothing is placed before us, except the self-serving statement of the writ

petitioner, to show that the entire revenue village of Sadasivapet was the area of operation of the appellant-society. However, Sri E. Manohar, learned Senior Counsel, drew our attention to the letter No.10/99 of the Sub Divisional Prohibition and Excise Officer, Sangareddy dated 28.11.2000 wherein he has stated that the area of operation of the appellant-society is Sadasivapet revenue village. The above statement made by the Sub Divisional Prohibition and Excise Officer has to be ignored having regard to the revised excise policy of the State Government and the sanctity that should be attached to that policy in terms of the statute. It is an admitted fact that if Mr. Prakash Goud, the 4th respondent, and his colleagues are permitted to form a society as proposed by the Excise Commissioner, the area of operation of that society would not overlap or encroach upon the area of operation of the appellant-society. Looking from that angle also, it cannot be said that if the 4th respondent and his colleagues are permitted to form with regard to other wards coming under Sadasivapet municipality, that would in any way prejudice the interests of the appellant-society.

12. In the result and for the foregoing reasons, we allow Writ Appeal No.1116 of 2001 and set aside the order of the learned single Judge made in W.P. No. 5684 of 2001 dated 5.7.2001 and allow the said writ petition and quash the impugned order of the Commissioner of Prohibition and Excise dated 21.3.2001. In view of this, W.A. No. 1117 of 2001 has become redundant and it is accordingly disposed of. However, we make it very clear that by virtue of this order, it is not permissible for the writ petitioner/appellant to extend or expand the area of operation beyond ward Nos. 1,5,6,10, 12 and 15 of Sadasivapet Municipality. It is open to the jurisdictional Excise Superintendent to consider the application of the 4th respondent, Mr. Prakash Goud and his colleagues, to form a TCS and registration of the same and grant licence strictly in accordance with the provisions of Cooperative Societies Act and Excise Act. In the circumstances, the parties shall bear their own costs.