



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTIETH DAY OF NOVEMBER
TWO THOUSAND AND NINETEEN

PRSENT

HONOURABLE THE CHIEF JUSTICE J K MAHESHWARI
THE HONOURABLE SRI JUSTICE G. SHYAM PRASAD
WRIT APPEAL NO: 413 OF 2019

Between:

1. Kode Ravindra Babu, S/o. Appa. Rao,
Aged about 44 years, Occ- Business,
Nowkarnama of M/ s.Vigneswara Restaurant and Bar,
Chilakaluri Peta, Guntur District.

...PETITIONER(S)

AND:

1. State of Andhra Pradesh, (Excise-II) Revenue Department,
Secretariat, Velagapudi, Amaravathi, Guntur District.
Rep. by its Principal Secretary.
2. The Commissioner of Prohibition and Excise, Government of Andhra
Pradesh, Vijayawada, Krishna District.
3. The Deputy Commissioner of Prohibition, and Excise, Guntur, Guntur
District.
4. The Prohibition and Excise Superintendent, Narasaraopet, Guntur
District.
5. Station House Officer, Prohibition and Excise Station,, Chilakaluripet,
Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): O MANOHER REDDY

Counsel for the Respondents: GP FOR PROHIBITION EXCISE (AP)

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**CHIEF JUSTICE J.K. MAHESHWARI
&
JUSTICE G. SHYAM PRASAD**

W.A.Nos.413, 415, 417 & 418 OF 2019

W.A.No.413 of 2019

Kode Ravindra Babu ..Appellant.

Versus

1. State of A.P. (Excise-II), Revenue Department,
Secretariat, Velagapudi, Amaravathi, Guntur District,
rep., by its principal Secretary and four others. ..Respondents.

W.A.No.415 of 2019

Chalapalli Ravi Chand Chowdary ..Appellant.

Versus

1. State of A.P. (Excise-II), Revenue Department,
Secretariat, Velagapudi, Amaravathi, Guntur District,
rep., by its principal Secretary and four others ..Respondents.

W.A.No.417 of 2019

Pasupuleti Srinivasa Rao ..Appellant.

Versus

1. State of A.P. (Excise-II), Revenue Department,
Secretariat, Velagapudi, Amaravathi, Guntur District,
rep., by its principal Secretary and four others .. Respondents.

W.A.No.418 of 2019

Adusumalli Mohan Rao ..Appellant.

Versus

1. State of A.P. (Excise-II), Revenue Department,
Secretariat, Velagapudi, Amaravathi, Guntur District,
rep., by its principal Secretary and four others .. Respondents.

Sri O. Manohar Reddy, Counsel for the appellants.

Government Pleader for Prohibition & Excise for the respondents.

COMMON JUDGMENT (ORAL)

Dt:20.11.2019

(Per J.K. Maheshwari, CJ)

1. This order shall govern disposal of all the aforesaid appeals arising out of the common order passed by the learned single Judge in W.P.Nos.11560, 17756, 11557 and 11555 of 2019



respectively, dismissing the writ petitions filed by the appellants-writ petitioners challenging the orders of suspension of their licences. Therefore, all the aforesaid appeals are being disposed of by this common order.

2. The relevant issue for consideration in the present cases is that the Deputy Commissioner of Prohibition and Excise, Guntur has rightly exercised the power under Section 31(1)(b) of the A.P. Excise Act, 1968 (hereinafter referred to as 'Excise Act') suspending the licences of the appellants, vide orders dated 9.8.2019, 6.11.2019, 13.8.2019 and 9.8.2019 respectively. In the said orders, it was mentioned that the licensee having licence of Bar sold one whisky bottle, which was not used, and taken out from the bar premises, although after purchase it ought to be utilized within the premises, however bringing the bottle from the licensed premises would amount to violation of the condition of the licence that "No liquor shall be sold for removal from the licensed premises", to which in exercise of power under Section 31(1)(b) of the Excise Act, the bar licenses of the writ petitioners are suspended with immediate effect.

3. Learned Counsel for the appellants has referred to the provisions of Section 31(1)(b) of the Excise Act, which is relevant for the purpose of this case. Therefore, the same is reproduced as thus:

"31. Power to cancel or suspend licence etc. - (1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act, may cancel or suspend it irrespective of the period to which the licence or permit relates.



- (a) if any duty or fee payable by the holder thereof is not duly paid; or
- (b) in the event of any breach by the holder thereof or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or
- (c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act, or
- (d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Narcotics Drugs and Psychotropic Substances Act 1985 (Central Act 61 of 1985) or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958 or under Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489 of the Indian Penal Code or any offence punishable under Section 112, or Section 114 of the Customs Act, 1962, irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or
- (e) if the conditions of the licence or permit provide for such cancellation or suspension at will:

Provided that no such licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed."

4. On perusal of the aforesaid, it is luculent that subject to such restrictions as may be prescribed, the authority, who may grant licence under the Act, may cancel or suspend it irrespective of the period to which the licence or permit relates, in case of breach of any of the terms and conditions of the licence by the holder thereof or by any of his servants or by anyone acting on his behalf with his express or implied permission. The proviso makes it clear that no such licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed. Primarily, on perusal of the aforesaid provision, it gives an impression that for the purpose of passing an order of cancellation or suspension, reasonable opportunity of being heard ought to be afforded by the licensing authority, who proposes to pass the order of suspension.



Learned single Judge while passing the order has referred to the judgment of Full Bench of the erstwhile High Court of Andhra Pradesh delivered in the case of "**Tappers Co-operative Society, Maddur V. Superintendent of Excise, Mahaboobnagar**", reported in 1984 (2) APLJ (HC) 1. The Court relying on it held that the issue involved in the present cases is squarely covered by the said judgment, therefore, there is no illegality in passing the order of suspension.

5. In view of the foregoing facts, it is required to be examined in the present cases as to whether the learned single Judge has rightly observed the interpretation of the proviso of Section 31(1)(b) of the Excise Act in view of the observations made by the Full Bench, or otherwise, the order of the learned single Judge warrants interference looking to the facts of the case.

6. In the Full Bench judgment in **Tappers Co-operative Society's** case supra, the question, which was referred to answer, was "whether the licencing authority under the A.P. Excise Act got power to suspend the licence or permit pending enquiry, without giving an opportunity to the holder thereof, in view of the proviso of the specific provision under Section 31(1) of the Excise Act. While answering the said question, the Full Bench observed in paragraph No.44 that "the power of suspension, which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to



be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with greater force when we notice that we are concerned with the liquor licences in which the citizen has no right guaranteed under Art.19(1) (g) of the Constitution of India, but only a privilege.” It is further observed that “once a licence is granted valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction, the proviso cannot have a larger affect than it intended to govern the final disciplinary proceedings of suspension or cancellation of licence or permit.” The Full Bench further specifying Rule 18 of Andhra Pradesh Rectified Spirit Rules, 1971, examined the issue as to whether the said rule would lend support to the petitioner, and answered in the negative. Thereafter, it is also observed that if the proviso to Section 31(1) is self sufficient, and specifies that the authorities are bound to issue the notice even for suspension pending enquiry; Sub Rule (2) with its proviso of the rules, is unnecessary as the law presumes such power pending enquiry. The rule specifically provided an opportunity even for suspension pending enquiry. However, the Court opined that the licencing authority can suspend or cancel licence or permit, pending final orders.

7. Paragraph No.45 of the aforesaid Full Bench Judgment, is relevant for the purpose of these appeals, therefore, it is reproduced as under:

“However, we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise



the discretion reasonably, bonafide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity and the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry. Further, the suspension pending the enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.”

8. On perusal of the aforesaid, it is to be noted that the Full Bench while answering the question observed that the licensing authority while exercising discretion is bound to exercise it reasonably, bonafide and without negligence considering the circumstances of the case, when such interim suspension is necessary. In case, the opportunity may be possibly given to him prior to taking such drastic step, the said authority is bound to afford an opportunity. It has been made clear by the Court that the power of suspension pending enquiry should not be exercised as an invariable rule or mode for making enquiry. Further, the suspension pending the enquiry should not be allowed to continue for an unduly long period. Otherwise, it would constitute abuse of power, which may be liable to be set aside. The Full Bench further observed that opportunity must be based



on various factors such as (a) degree of urgency involved (b) duration of suspension (c) the nature of the breach (d) the Public danger to be avoided and other similar circumstances which warrant immediate action, where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.

9. In view of the aforesaid observations of the Full Bench, it is required to be examined in the facts of the present case as to whether any such contingency, to pass the order of suspension, was available in the present case. In this regard, if we see the orders of the Deputy Commissioner, Prohibition and Excise, dated 9.8.2019, 6.11.2019, 13.8.2019, it is apparent that one person of a police party, who was sent to the licensee for purchase of liquor, purchased the bottle of liquor and came out from the licensing premises and reached to a place where the raid party was standing, and on account of the said purchase, the raid party found it a violation of the term of the licence i.e., "no liquor shall be sold for removal from the licensed premises", therefore, the order of suspension of the license was passed. If the said reason has been tested with a touch stone of the findings as recorded by the Full Bench in the judgment cited supra, then such an act does not fall within the purview of the urgency involved. The nature of the said breach is not likely to cause any injury to anyone and it is not a case in which it may amount to cause a public danger, in which event, the authority was not in a position to afford an opportunity of hearing to the petitioners-appellants while passing



the order of suspension in non-observance of the proviso of section 31(1)(b) of the Excise Act.

10. In view of the foregoing discussion, if we see the findings recorded by the learned single Judge, it can aptly be observed that, true spirit of the judgment of the Full Bench of the erstwhile High Court of Andhra Pradesh has not been duly considered, while dismissing the writ petitions. Therefore, the order passed by the learned single Judge deserves to be set aside.

11. Accordingly, the Writ Appeals succeed and are allowed. Thus, orders passed by the learned single Judge in the aforesaid writ petitions stand set aside. However, the orders of suspension as passed by the authority without affording the opportunity in absence of ingredients specified in the judgment of the Full Bench in paragraph No.45, are hereby set aside. The parties do bear their own costs. As a sequel, all the pending miscellaneous applications shall stand closed.

J.K. MAHESHWARI, CJ

G. SHYAM PRASAD J

Note:
Approved for reporting.
B/o
Nn.



**THE CHIEF JUSTICE J.K. MAHESHWARI
&
JUSTICE G. SHYAM PRASAD**

W.A.Nos.413, 415, 416,417 & 418 OF 2019

(Per J.K. Maheshwari, CJ)

Dt: 20.11.2019

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