

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

WRIT PETITION NO: 9947 OF 2020

Between:

1. C.Sayanna S/o. China Linganna, aged about 50 years, Occ Business, r/o.
H.No. 5-169,
Byluppala village, Gonegandla mandal, Kurnool Dist.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, represented by Its Principal Secretary,
Excise Department, Secretariat Buildings, Velagapudi, Amaravati, Guntur
District.
2. The Deputy Commissioner of Prohibition and Excise , Kurnool.
3. The Station House Officer, Aspari
Police Station, Aspari, Kurnool District.

...RESPONDENTS

Counsel for the Petitioner(s): PILLIX LAW FIRM

Counsel for the Respondents: GP FOR PROHIBITION EXCISE

The Court made the following: ORDER

***HON'BLE SRI JUSTICE BATTU DEVANAND**

+W.P.NO.10256 OF 2020, W.P.No.10308 OF 2020, W.P.NO.10310 OF 2020, W.P.No.9947 OF 2020, W.P.NO.10176 OF 2020, W.P.NO.10337 OF 2020, W.P.NO.10349 OF 2020, W.P.NO.10407 OF 2020, W.P.NO.10469 OF 2020, W.P.NO.10532 OF 2020, W.P.NO.10533 OF 2020, W.P.NO.10540 OF 2020, W.P.NO.10601 OF 2020, W.P.NO.10607 OF 2020, W.P.NO.10575 OF 2020, W.P.NO.10604 OF 2020, W.P.NO.10641 OF 2020 AND W.P.NO.10698 OF 2020

% 24-06-2020

WP.No.10256 of 2020

Smt. Chandu Saradha W/o Venkata Sambasiva Rao,
Aged 45 years, R/o D.No.399, Manchala Village, Chebrolu Mandal,
Guntur District and others.

... Petitioners.

Vs.

\$ The State of Andhra Pradesh, represented by its Principal
Secretary to Government, Prohibition and Excise Department,
Velagapudi, Amaravathi, Guntur District and 3 others.

... Respondents.

! Counsel for the petitioners: Sri N. Satyanarayana.

! Counsel for the Respondents: Advocate General (AP).

< Gist:

> Head Note:

? Cases referred:

¹ AIR 2019 SC 3949 = 2019 (11) SCALE 118

² 2014 (6) ALD 380

³ 2012 (1) ALD 414

THE HON'BLE SRI JUSTICE BATTU DEVANAND

W.P.NO.10256 OF 2020
W.P.No.10308 OF 2020
W.P.NO.10310 OF 2020
W.P.No.9947 OF 2020
W.P.NO.10176 OF 2020
W.P.NO.10337 OF 2020
W.P.NO.10349 OF 2020
W.P.NO.10407 OF 2020
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W.P.NO.10532 OF 2020
W.P.NO.10533 OF 2020
W.P.NO.10540 OF 2020
W.P.NO.10601 OF 2020
W.P.NO.10607 OF 2020
W.P.NO.10575 OF 2020
W.P.NO.10604 OF 2020
W.P.NO.10641 OF 2020
W.P.NO.10698 OF 2020

COMMON ORDER:

Heard the learned counsel for the petitioners and the learned Advocate General appearing for respondents in all the writ petitions.

2) All these writ petitions are filed by the petitioners against the action of the respondents in seizing their vehicles in connection with the different crimes registered by various Station House Officers of different parts of the State under Section 34(a) of The Andhra Pradesh Excise Act, 1968 (for short "the act") and not releasing their vehicles in spite of readiness of the petitioners to fulfill certain conditions to be imposed by the Court.

3) It is noticed that everyday number of writ petitions are being filed before this Court against the officials of the Prohibition and Excise Department and Officers of the Home Department i.e., the Station House Officers complaining that the concerned officers are not releasing vehicles seized in connection with the transportation of liquor bottles in

which FIRs are registered under Section 34(a) of The Andhra Pradesh Excise Act, 1968. In some cases, the allegation of the petitioners is that though they are in possession of only three liquor bottles or less than three liquor bottles which were permitted under G.O.Ms.No.411 Revenue (Excise-II) Department, dated 24.09.2019, their vehicles are seized and cases are registered illegally.

4) After hearing the learned counsel for the petitioners in all cases and upon perusing the material available on record, it reveals that the vehicles seized under the mediators reports for violation of Section 34(a) of The Andhra Pradesh Excise Act, 1968 after registering FIRs, the concerned Station House Officers are not producing the seized vehicles before the competent authorities i.e., the Deputy Commissioner of Prohibition and Excise concerned by following the procedure prescribed under Section 46 of the Excise Act.

5) For example in W.P.No.10256 of 2020, the Station House Officer of Chebrolu Police Station, Guntur District has seized Maruti Dzire VDI Car bearing No.A.P.07 CX 2977 in Crime No.103 of 2020 on 27.05.2020. It was brought to the notice of this Court by the learned counsel for the petitioner and the learned Assistant Government Pleader appearing on behalf of the Prohibition and Excise Department that the said seized vehicle was not produced before the Deputy Commissioner of Prohibition and Excise concerned by following the procedure prescribed under Section 46 of the Excise Act, till today.

6) The grievance of the petitioners in these writ petitions is that keeping the vehicles in the premises of the police stations days

together, the vehicles are being damaged due to exposure to sun and rain.

7) In some cases the petitioners i.e., the owners of the seized vehicles approached the Deputy Commissioner of Prohibition and Excise concerned and their applications for interim custody of the vehicles pending proceedings under Section 46 of the Excise Act are not entertained saying that the seized vehicles were not produced before them by the Station House Officers, who seized those vehicles along with the seizure reports.

8) It was brought to the notice of this Court that hundreds of vehicles (i.e.) 2 wheelers/4 wheelers are kept in the police stations without producing the same before the competent authorities, and it is affecting the larger interest of the public.

9) On 22.06.2020, when these writ petitions are listed for admission, after considering the submissions of the learned counsel for the petitioners and the Assistant Government Pleaders appearing for the Home and Prohibition and Excise Departments and in view of the importance of the issue involved in these writ petitions, this Court felt it appropriate to implead the Director General of Police, Government of Andhra Pradesh, as respondent by suo motu in W.P.No.10256 of 2020.

10) In view of the fact that every day number of cases are being filed before this Court for the same issue, this Court directed the Advocate General to get specific instructions on certain points from the Director

General of Police, Government of Andhra Pradesh and posted these writ petitions to 23.06.2020.

11) On 23.06.2020 when these writ petitions have been taken up for hearing, the learned Advocate General placed a memo, dated 23.06.2020 before this Court by enclosing a circular memorandum dated 22.06.2020 issued in Rc.No.416/F1/2020 by the office of the Director General of Police, Andhra Pradesh. Upon perusing the said memo and hearing the submissions made by the learned Advocate General, this Court felt that the directions issued by this Court on 22.06.2020 are not complied with and the specific instructions as directed in the said order are not placed before this Court and as such, directed the Director General of Police, Andhra Pradesh, who was impleaded as 4th respondent as per order dated 22.06.2020 in W.P.No.10256 of 2020 to be present before this Court on 24.06.2020 to submit the instructions as directed in the said order.

12) Today (i.e.) on 24.06.2020, the Director General of Police, Andhra Pradesh, is present before this Court and placed instructions as directed by this Court on 22.06.2020 in the form of his sworn affidavit. The sworn affidavit filed by the 4th respondent is placed on record. The averments in para Nos.5, 6, 9 and 10 of the said affidavit which are relevant in the present issue are extracted hereunder:

"5. It is submitted that the vehicles seized are not kept intentionally in the police stations for longer periods than required. The vehicles seized are kept in the police stations till the legal procedures such as verification of genuineness of documents, establishment of ownership, etc. are completed. There is also an established procedure of ordering seized vehicles for interim release by the confiscating authority to the owner. This generally

prevents damage caused to the vehicles due to exposure to sun and rain. The persons entitled to the custody of the vehicles can always move Deputy Commissioner of Prohibition and Excise for interim custody, who is a quasi Judicial authority. The petitioners have not availed such appropriate and efficacious legal remedy and directly approached the Hon'ble High Court by filing writ petitions, which are not maintainable.

6. I submit that in pursuance of the orders dated 22.06.2020 of this Hon'ble Court which were put to my knowledge on 22.06.2020 itself, a Circular Memorandum vide Rc.No.416/F1/2020 dated 22.06.2020 was issued instructing the Unit Officers (District SPs and Commissioner of Police, Visakhapatnam and Vijayawada) to direct all the Station House Officers and Investigation Officers under their jurisdiction who seized the property pursuant to the registration of crimes under the provisions of the A.P. Excise Act to produce the property so seized before the Deputy Commissioner of Prohibition and Excise by following the procedure prescribed under A.P. Excise Act, 1968 and A.P. Prohibition Act, 1995 and report compliance. I submit that in the said Circular Memo, all the Unit Officers were further directed to review the cases and ascertain the reasons for delay and shortcomings if any by duly filing responsibility so as to answer the issues raised in the present writ petition and batch. I submit that the said Circular Memo dated 22.06.2020 was requested to be placed before this Hon'ble Court on 23.06.2020 for the perusal of the Hon'ble Court by communicating the same to the Office of the learned Advocate General for filing the same before this Hon'ble Court and accordingly the same was uploaded through a memo dated 23.06.2020 of the Government Pleader for Home Office.

9. I submit that in view of the above circumstances, my office has given written instructions to the learned Advocate General to appraise the said position with reference to the Circular Memo already issued by this office on 22.06.2020 so as to take further time for answering the issues with reference to the individual cases after obtaining necessary information from the concerned Unit Officers.

10. I submit that there is no willful intention on my part to disobey the orders passed by this Hon'ble court in answering the issues indicated in the order dated 22.06.2020 in the form of instructions to be submitted to the learned Advocate General as directed in the said orders."

13) Upon perusing the contents of the sworn affidavit filed by the 4th respondent, it appears that though written instructions are submitted by

the Director General of Police, Andhra Pradesh to the learned Advocate General on 22.06.2020, they were not placed before this Court on 23.06.2020. Though this Court intends to express its displeasure and anguish, but keeping in view of the status of the office of the learned Advocate General, who is a constitutional authority, without expressing any opinion of this Court, it is left to their wisdom. It is needless to state that the Law Officers of the State has to assist the Court for proper adjudication of the cases and also it is the duty of every Advocate and Law Officers, who are the officers of the Court to protect the dignity, decorum and majesty of this Court.

14) As the issue involved in these writ petitions is with regard to the non-production of the seized vehicles before the competent authority under A.P. Excise Act by police officers only and in view of the affidavit filed by the Director General of Police, Andhra Pradesh is placed on record, with the consent of both sides, these writ petitions are disposed of at the stage of admission.

15) The contention of the 4th respondent in para No.5 of his affidavit is not acceptable due to reason that without producing the seized vehicles before the concerned Deputy Commissioner of Prohibition and Excise, the stand taken by the 4th respondent that "the petitioner failed to avail appropriate and efficacious legal remedy by approaching the Deputy Commissioner of Prohibition and Excise and directly approached this Hon'ble Court by filing writ petition which are not maintainable" is not acceptable. As such, this Court is not accepting the contention of the 4th

respondent as it is against to the procedure contemplated under Section 46 of the A.P. Excise Act, 1968.

16) To examine the issue involved in the instant cases, the relevant provisions of A.P. Excise Act, 1968 are extracted.

Section 34 of the Andhra Pradesh Excise Act, 1968 which deals with penalties for illegal import etc. to the extent it is relevant runs as under:

- (a) imports, exports, transports, manufactures, collects or possesses or sells any intoxicant; or
- (b)
- (c)
- (d)

17) Under Section 45 of the Andhra Pradesh Excise Act, 1968 whenever any offence has been committed, which is punishable under this Act, any intoxicant, materials, still, utensil, implements or apparatus in respect of which such offence has been committed shall be liable for confiscation.

18) The Section 46 of the Andhra Pradesh Excise Act, 1968 is extracted hereunder:

46. Confiscation by Excise Officers in certain cases. -

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under Section 45 is seized or detained under the provisions of this Act, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area.

19) The ratio laid down by the Hon'ble Supreme Court of India in **Mustafa v. State of Uttar Pradesh**¹ considering the earlier decisions

¹ AIR 2019 SC 3949 = 2019 (11) SCALE 118

of the Hon'ble Apex Court with regard to the power of the competent authority to confiscate the vehicles for violation of Sections 60 and 72 of the United Provinces Excise Act, 1910 as reproduced hereunder:

30. After examining the provisions of the Act, we hold that the Collector has exclusive jurisdiction to confiscate the vehicles and in case the seized things are subject to speedy wear and tear or natural decay, he may order to sell the same in the manner prescribed under sub-section (3) of Section 72 of the Act. Sub-section (4) deals with distribution of sale proceeds when the seized thing is sold which is subject to wear and tear and natural decay or when it is expedient in public interest to do so. Subsection (8) of Section 72 of the Act deals with a situation where a prosecution of an offence is instituted in relation to which confiscation was ordered, the thing or animal shall be disposed of subject to the provisions of sub-section (4) of Section 72 of the Act in accordance with the order of the Court. The order of the Court in sub-section (8) of Section 72 of the Act is after conclusion of the prosecution which is different from the seized things which are subject to speedy wear and tear or natural decay as contemplated by sub-section (3) of Section 72 of the Act.

20) In the light of the ratio laid down by the Hon'ble Apex Court as stated supra and on careful examination of the relevant provisions of A.P. Excise Act, 1968, it is clear that Section 46 of the Act, 1968, mandates the officer, who seized and detained the property for the offence punishable under the Excise Act shall without any unreasonable delay produce the same before the Deputy Commissioner of Prohibition and Excise who is having the jurisdiction over the area. But in the present writ petitions, though the vehicles of the petitioners were seized before considerable period, they were not produced before the Deputy Commissioner of Prohibition and Excise concerned till date. Under these circumstances, the contention of the 4th respondent that the petitioners have to approach the Deputy Commissioner of Prohibition and Excise who is a quasi Judicial authority to seek release of the seized vehicles

instead of filing writ petitions before this Court is unsustainable, unreasonable, illegal and contrary to the provisions of the Section 46 of the Andhra Pradesh Excise Act, 1968.

21) The entrustment of interim custody of any property including a motor vehicle is an incidental power springing from the authority to confiscate such a property. As such, the Deputy Commissioner of Prohibition and Excise concerned, who should be approached by an applicant (i.e.) owner of the seized vehicle for release of the property seized in connection with any Prohibition and Excise cases, which are subject to speedy wear and tear or natural decay.

22) I am fortified in my view by the decision of the Hon'ble High Court of Andhra Pradesh in **Banavathu Babu v. Government of Andhra Pradesh and others**² wherein it was held in paras 8 and 9 which are reproduced hereunder:

8. However, the petitioner has claimed ownership of the vehicle, which is an auto used for transportation of goods for hire. It is stated that he makes a living by running it for hire. Therefore, pending detailed examination and investigation and then initiation of confiscation proceedings, if the motor vehicle is not put to use, it is more likely that it will get rusted and will become useless later on, and its value will get rapidly deteriorated, if it is kept out of use and if rusting takes place, particularly, the modern motor vehicles, which are fitted with electronic components and parts, they need regular usage, failing which, they get jammed, because of the fine dust particles and other adverse material gathering thereupon. Therefore, it will be in the best interest of the State to get any such motor vehicle valued by the Motor Vehicle Inspector, and thereafter, entrust the interim custody thereof to the person, who claimed ownership, so long as credible proof of identity is produced and so long as copy of registration certificate of the motor vehicle is retained,

² 2014 (6) ALD 380

the Deputy Commissioner of Prohibition & Excise would always be in a position to trace out the said vehicle even at a later point of time.

9. Therefore, the balance of convenience would invariably lie in favour of the owner of the motor vehicle being entrusted with the interim custody, subject to the owner producing copy of the registration certificate, copy of the driving licence of the driver of the vehicle, the identity proof of the owner and also of the driver and also obtaining an undertaking from the owner that the vehicle will be kept insured at all times, and that he will also keep it in a good running condition by attending to its periodical upkeep and maintenance, and also upon depositing a reasonable amount in the form of fixed deposit receipt drawn on any nationalized bank payable at par to the Deputy Commissioner of Prohibition & Excise concerned. This would also help in decongesting the Prohibition & Excise Stations as well as the Court premises.

23) Having regard to the legal position explained in **Kuppili Ravi Kumar v. Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad and others**³ it was held that under Section 46(1) of the Excise Act, if anything which is liable for confiscation under Section 45 is seized or detained under the provisions of the Act, the officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area.

24) It is the legitimate duty of the officers working under the control of 4th respondent to follow the rule of law and the procedure prescribed under the relevant laws. The action of the officers working under the control of 4th respondent keeping the vehicles in their custody for unreasonable period which were seized for the offence punishable under

³ 2012 (1) ALD 414

the Andhra Pradesh Excise Act, 1968 without producing the same along with the case record to the concerned Deputy Commissioner of Prohibition and Excise having the jurisdiction by following the procedure mandated under Section 46 of the Andhra Pradesh Excise Act, 1968 is nothing but illegal, arbitrary, unjust and violative of Article 21 of the Constitution of India.

25) The validity and legality of the seizure made by the Station House Officers concerned has to be decided by the competent authority i.e., the Deputy Commissioner of Prohibition and Excise concerned after completion of the enquiry prescribed under Section 46 of the Andhra Pradesh Excise Act, 1968. During pendency of the confiscation proceedings, the vehicles are kept in the premises of the office of the Station House Officers of police department or elsewhere there is every likelihood of causing damage to the said vehicles due to exposure to the sun and rain. If the enquiry ends in favour of the owner of the vehicle, the State has to bear the expenditure out of the public exchequer to compensate the vehicle owner. Considering all these aspects and gravity of the cases, the competent authority under Section 46 of the Andhra Pradesh Excise Act, 1968 has to take appropriate decision to release the seized vehicles for interim custody during pendency of the proceedings before him. Non production of the seized vehicles before the competent authority, who is vested with power under Section 46 of the Andhra Pradesh Excise Act, 1968, within reasonable period by the officers working under the control of 4th respondent is nothing but depriving the legitimate rights provided under law to the petitioners to

seek interim custody of the vehicle, which is not permissible as per the settled law.

26) In the light of the above findings, it is held that the action of the officers working under the control of the 4th respondent, who seized the vehicles of the petitioners alleging that they were involved in a case punishable under Section 34(a) of A.P. Excise Act in causing unreasonable delay in producing the seized vehicles before the Deputy Commissioner of Prohibition and Excise, who is the competent authority under Section 46 of the Excise Act, 1968, is illegal, arbitrary, unjust and violative of Article 21 of the Constitution of India.

27) In view of the above, these writ petitions are allowed with the following directions:

(i) The Station House Officer, who seized the vehicle of the petitioner, shall produce the said vehicle before the Deputy Commissioner of Prohibition and Excise concerned within three (03) days from today.

(ii) The 4th respondent i.e., Director General of Police, Andhra Pradesh is directed to issue necessary instructions to his subordinate officers and to ensure to implement this order from today.

(iii) The petitioner i.e., the owner of the vehicle is permitted to submit his application forthwith before the Deputy Commissioner of Prohibition and Excise concerned to release the seized vehicle for interim

custody pending proceedings under Section 46 of the Andhra Pradesh Excise Act, 1968.

(iv) The Deputy Commissioner of Prohibition and Excise concerned is directed to dispose of the said application filed by the owner of the vehicle for release of the vehicle for interim custody within a period of three (03) days from the date of such application.

(v) The three (03) days time stipulated above, would be applicable to the seizures of the vehicles if any, in future also.

28) The appearance of the Director General of Police, Andhra Pradesh is dispensed with.

29) There shall, however, be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed in consequence.

JUSTICE BATTU DEVANAND

Dt.24.06.2020

Note: Issue CC tomorrow
B/o
PGR

L.R. Copy to be marked.