

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

WEDNESDAY, THE FIRST DAY OF MAY,
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 10235 OF 2024

Between:

Challa Chinna Subba Rao, S/o. Achaiaha, Aged about 62 years, Occ
Business, Licensee of M/s.DV Restaurant and Bar, D.NO.5-41A, Ward NO.5,
Pamur Road, Kothuru, Kanigiri Nagar Panchayat, Prakasam District.

...Petitioner

AND

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

...Respondents

Petition under Article 226 of the Constitution of India is filed praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings Deputy Commissioner of Prohibition and Excise. Guntur issued in RC.No.182/2022/B2 dated 29.04.2024 and the show cause notice for cancellation as illegal, arbitrary and violation of principles of natural justice and contrary to the provisions of the AP Excise Act;

IA NO: 1 OF 2024:

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the writ petition, the

High Court may be pleased to permit the petitioner to conduct the business by suspending the order of the Deputy Commissioner of Prohibition and Excise, Guntur passed in RC.No.182/2022/B2 dated 29.04.2024, pending disposal of WP.No.10235 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of M/s O.M.R.Law Firm for the Petitioner and GP for Prohibition Excise for the Respondent Nos.1 to 4, the Court made the following;

ORDER:

“Impugning the proceedings issued by the 3rd respondent-Deputy Commissioner of Prohibition and Excise, Guntur vide Rc.No.182/2022/B2 dated 29.04.2024 whereby the authority suspended 2B Bar license of M/s DV Restaurant & Bar bearing L.No.22/2022-25, D.No.5-41A, Ward No.5, Pamur Road, Kothuru, Kanigiri Nagara Panchayat, Prakasam District, the above writ petition is filed.

Heard Sri O.Manohar Reddy, learned Senior Counsel assisted by Sri Prasanna Kumar, learned counsel for the petitioner and learned Assistant Government Pleader for Prohibition & Excise appearing on behalf of the respondents 1 to 4.

Learned Senior Counsel would contend that the 3rd respondent failed to exercise the power vested with the authority judiciously. He would submit that suspending the license pending enquiry cannot be exercised in a routine manner. Learned Senior Counsel relied upon the judgment reported in Tappers Cooperative Societies, Maddur vs. Superintendent of Excise, Mahaboobnagar (1984(2) APLJ Page 1).

The learned Government Pleader would submit that suspension order passed by the authority is pending enquiry. The petitioner breached the conditions of license.

Section 31 of A.P. Excise Act, 1968 postulates that the authority granting license or permit may cancel or suspend irrespective of the period to which the license or permit relates in the circumstances under

(a) or (b) or (c) or(d) or (e). The proviso would clarify that the license or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

The said proviso is considered by Full Bench of the Court in case of Tappers Cooperative Societies, Maddur vs. Superintendent of Excise, Mahaboobnagar (1984(2) APLJ Page 1). In Para 42, it was observed that the incidental or ancillary power cannot be exercised in a routine way or in the matter of course. The licensing authority is bound to exercise the discretion reasonably, bonafide and without negligence.

In view of the ratio laid down in the Full Bench judgment referred to supra, in the facts and circumstances of the case, the order vide Rc.No.182/2022/B2, dated 29.04.2024 suspending the license in Form 2B of petitioner's Bar bearing L.No.22/2022-25, D.No.5-41A, Ward No.5, Pamur Road, Kothuru, Kanigiri Nagara Panchayat, Prakasam District, is hereby suspended.

However, this order will not preclude the authorities from proceeding with further enquiry as per the law.

Learned Assistant Government Pleader for Prohibition & Excise seeks time to file counter-affidavit.

List the matter after Summer Vacation-2024."

Sd/- K.Srinivasa Raju
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The Principal Secretary, State of Andhra Pradesh, Revenue (Excise-II) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Vijayawada at Krishna District.
3. The Deputy Commissioner of Prohibition and Excise, Guntur.

4. The District Prohibition and Excise Officer, Prakasam District at Ongole.
(Addressee Nos.1 to 4 by RPAD)
5. One CC to Sri. O.M.R.Law Firm [OPUC]
6. Two CCs to GP for Prohibition Excise, High Court of Andhra Pradesh.
[OUT]
7. One spare copy

MM



HIGH COURT

SRS,J

DATED:01/05/2024

NOTE: LIST THE MATTER AFTER SUMMER VACATION, 2024

ORDER

WP.No.10235 of 2024

DIRECTION

