



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3331]

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

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 11170/2024

Between:

Pavva Pavan Kumar

...PETITIONER

AND

The State of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.O M R LAW FIRM

Counsel for the Respondent(S):

1.GP FOR PROHIBITION EXCISE (AP)

The Court made the following:

Rule *Nisi*. Call for Records.

List the matter Summer Vacation-2024.

I.A.No.1 of 2024:

Assailing the suspension order passed by the 3rd respondent in RC.No.138/2022/B2 dated 06.05.2024, the above writ petition is filed.

Heard Sri O. Manohar Reddy, learned Senior Counsel appearing for the petitioner and Sri K. Narsi Reddy, learned Government Pleader for Prohibition and Excise appearing for respondent Nos.1 to 4.

Learned Senior Counsel would submit that the order of suspension passed by the Deputy Commissioner of Prohibition and Excise, Guntur i.e.,

the 3rd respondent, is contrary to the Full Bench judgment in ***Tappers Co-operative Societies, Maddur vs. Superintendent of Excise, Mahaboobnagar*** reported in 1984 (2) APLJ Page 1. He would also submit that the order of suspension does not contain the period of suspension.

Learned Government Pleader for Prohibition and Excise would submit that since the petitioner violated the conditions mentioned in B2 Bar license, case in crime No.109 of 2024 under Section 36(1) (b&c) and 41 of Andhra Pradesh Excise Act, 1968 read with Rule 31 & 48 of Andhra Pradesh Excise (Lease of Right of selling by Bar, Grant & Conditions of license) Rules, 2022 was registered against the petitioner in SEB Station, Chimakurthy, Prakasam District. He would also submit that separate show cause notice dated 06.05.2024 was issued to the petitioner calling for explanation on the same day.

As seen from the suspension order, on 05.05.2024 the Flying Squad Team-1 (shift-B), Chimakurthy & Santhanuthalapadu, proceeded to M/s. Vijetha Restaurant & Bar, Chimakurthy and recorded the proofs of photographs and videos which reveals and establishes that the said Bar is allowing the consumers into the premises and conducting the business before Bar scheduled hours. Basing on the said allegation, case in Crime No.109 of 2024 was registered and 2B license is suspended pending the enquiry.

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 and without considering the circumstances of the case when interim suspension is necessary.

The Division Bench of Composite High Court in **Goka Bujjamma vs Prohibition and Excise Superintendent, Srikakulam and Others** reported in 2003 (2) ALT 549, while placing reliance upon the judgment in **K. Srinivasa Reddy v. Superintendent, Prohibition and Excise** reported in 2002 (1) ALT 108, observed as follows:

“the proviso appended to Section 31(1) of the Act clearly states that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed. In the instant case, the 1st respondent neither gave any notice to the appellants nor gave them any opportunity to make their representation against the action proposed. The 1st respondent, instead of proposing the action of suspending the licence, has passed a final order suspending the licence of the appellants, which, in our opinion, is illegal and against the provisions of Section 31(1) of the Act.”

The case at hand, as pointed out by learned Senior Counsel, the authorities failed to exercise the powers judicially and rationally. Apart from that, the suspension order does not contain period of suspension.

In view of the same, this Court, *prima facie*, is of the opinion that the suspension order dated 06.05.2024 is liable to be suspended.

Accordingly, the impugned order of suspension passed by the 3rd respondent *vide* RC.No.138/2022/B2 dated 06.05.2024 is hereby suspended.

SUBBA REDDY SATTI,J