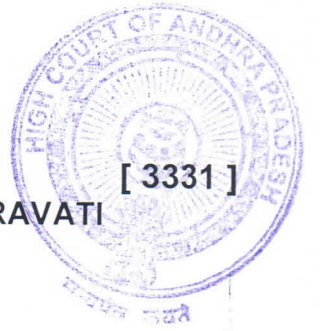




[3331]

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

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

:PRESENT:

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

IA No. 1 OF 2024

IN

WP NO: 11170 OF 2024

Between:

Pavva Pavan Kumar, S/o. Raghuramaiah, Aged about 41 years, Occ: Business, Licensee of M/s.Vijetha Restaurant and Bar, D.NO.1-230/5/20B, Ward No.1 of Chimakurthi 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

Counsel for the Petitioner :M/s. O M R LAW FIRM

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

Petition under Section 151 CPC is filed praying that in the circumstances stated in the grounds filed in support of the 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.138/2022/B2 dated 06.05.2024, Pending disposal of WP No. 11170 of 2024, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

“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 and enquired. Basing on the said allegation case in Crime No.109 of 2024 was registered. In view of the same, suspension of 2B license is warranted and accordingly, 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 set aside.

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

//TRUE COPY//

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SD/- S.SRINIVASA PRASAD
ASSISTANT REGISTRAR
hw
SECTION OFFICER

To,

1. The Principal Secretary, Revenue (Excise-II) Department,
Secretariat, Velagapudi, Amaravathi, Guntur District, State of Andhra Pradesh.
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.(Addressee Nos. 1 to 4 By RPAD)
5. One CC to M/s. O M R LAW FIRM Advocate [OPUC]
6. Two CCs to GP FOR PROHIBITION EXCISE, High Court of Andhra Pradesh. [OUT]
7. One spare copy

KJ

HIGH COURT

SRS,J

DATED:08/05/2024

LIST THE MATTER SUMMER VACATION, 2024

ORDER

IA No. 1 OF 2024
IN
WP NO: 11170 OF 2024

SUSPENSION

