

**HON'BLE SRI JUSTICE P. KESHA RAO**

**WRIT PETITION No.7232 of 2000**

**ORDER:**

Heard the learned counsel for the petitioner and the learned Government Pleader.

The present writ petition is filed seeking a writ of mandamus declaring the action of respondent No.2 in passing order in Cr.No.185/2280/DPE/99/B2, dated 25.10.1999 in confirming the order passed by respondent No.1 in Proc.No.A1/2743/98 dated 16.04.1999 confiscating lorry (Rocket) bearing No.ADT 3409, as illegal, bad, arbitrary and violation of principles of natural justice, and consequently, set aside the same.

The facts of the case are that the petitioner is the owner of the above said lorry. The said lorry was engaged by the Toddy Tappers Cooperative Society (TCS), Ramayampet, to transport their toddy from the depot to its retail shops. On 27.12.1998, the Excise officers of Deputy Commissioner's Office, Nizamabad, and the Station House Officer, Medak, have inspected the toddy depot of TCS, Ramayampet and found that the toddy loaded in the said lorry was adulterated with Chloral Hydrate content. Therefore, a case was registered in Crime No.115/98-99 for the offence under Section 37(a) of A.P. Excise Act against the driver – Mahaboob and one Tujala Raja Goud, who were looking after the affairs of the toddy depot and a show cause notice was issued to

submit explanation as to why the said lorry should not be confiscated. However, no explanation was submitted. The Chemical Examiner, Nizamabad, in his report No.103/99 dated 24.02.1999 has confirmed that the toddy was adulterated with Chloral Hydrate. In those circumstances, the 1<sup>st</sup> respondent passed orders in Proc.No.A1/2743/98 dated 16.04.1999 confiscating the above said lorry. Aggrieved by the same, the petitioner filed an appeal before the 2<sup>nd</sup> respondent stating that the TCS, Ramayampet, has challenged the second sample in Crime No.115/98-99 and the same was sent to State Food Laboratory, Nacharam, vide Lr.Dis.No.178 dated 05.02.1999 from the Court of the Judicial First Class Magistrate, Medak. The Chief Public Analyst of the said laboratory issued analysis report in R.C.No.379/SFL/99 dated 23.03.1999 stating that Chloral Hydrate is absent in the said sample. In the said appeal, the petitioner has stated that the show cause notice issued to him is vague and without any specific reasons. However, it is said that even prior to the service of the show cause notice, the petitioner submitted representation on 29.12.1998 stating that the lorry was engaged by the President of TCS, Ramayampet, to transport the toddy from the depot to its retail shops on monthly hire charges and his lorry is no way concerned with the alleged offence of adulteration of toddy. However, the 2<sup>nd</sup> respondent dismissed the appeal in Crime No.185/2280/DPE/99/B2 by orders dated 25.10.1999

stating that the Chief Public Analyst, State Food Laboratory, Nacharam, has not opined that the second sample is free from Chloral Hydrate and on the contrary he gave opinion that the toddy was adulterated. It is also said that the finding of the 2<sup>nd</sup> respondent is contrary to the second report of the Chief Public Analyst to the extent that Chloral Hydrate is absent in the second sample. Therefore, the toddy sample is not adulterated within the meaning of Section 37(a) of the A.P. Excise Act or violation of any provisions of the Excise Act or the Rules made thereunder. It is also said that basing on the second analyst report, the licence of the toddy depot, TCS, Ramayampet, and its retail shops are restored by the Prohibition and Excise Superintendent, Medak District in proceedings Cr.No.1914/98/B4 dated 19.07.1999. The present vehicle was also released on 16.02.1999 in favour of the petitioner for interim custody on depositing F.D.R. for a value of Rs.30,000/-. Therefore, the present writ petition is filed assailing the orders dated 25.10.1999 of the 2<sup>nd</sup> respondent confirming the orders passed by the 1<sup>st</sup> respondent dated 16.04.1999 confiscating the vehicle.

The learned counsel for the petitioner would contend that the second analyst report issued by the Chief Public Analyst, Hyderabad, vide his report dated 23.03.1999 indicates that Chloral Hydrate is absent in the sample. However, the sample does not conform to the standards of Alcohol content, total acidity and volatile acidity and therefore

it is not adulterated. Further, basing on the said report, the Prohibition and Excise Superintendent, Medak, in proceedings dated 19.07.1999, restored the licences of the toddy depot and the shops of TCS, Ramayampet. As the respondents have already restored the licenses and since no Chloral Hydrate is found in the second sample, the orders passed by the 2<sup>nd</sup> respondent confirming the confiscation orders of the 1<sup>st</sup> respondent are liable to be set aside.

To support his contentions, learned counsel placed reliance on the judgment of this Court in **Gazetted Food Inspector, Div-I, Mahabubnagar District v. P. Mohan Goud**<sup>1</sup>. The relevant paragraph is as under:

“The Analyst Report in the instant case shows that the sample did not conform to alcohol content. The sample containing less percentage of alcohol content cannot be termed as adulterated having due regard to the Rules 4 and 5 of the latter rules. The sample has not been analysed by the Chemical Examiner as envisaged under the provisions of the former rules. Lifting of the samples and getting the samples analysed as has been done in this case by the Food Inspector are in total deviation to the provisions of the Rules envisaged under the former Rules. The penal provisions are contained in the Excise Act. Section 34 thereof prescribes penalties for illegal import, export, transport, manufacture, sell or possess, of any intoxicant. The expression “intoxicant” is defined under clause (19) of Section 2 of the Excise Act. As per the said provisions the expression “intoxicant” means any liquor as defined in clause (21) thereof. As discussed hereinabove, clause (21) of Section 2 defines the expression and it includes toddy. Therefore, toddy though it is tapped from a tree, is a liquor and consequently intoxicant as per the provisions of the Excise Act. If such an intoxicant is sold in contravention of any Rules issued under the Excise Act, it is punishable under Section 34 thereof. Section 36 thereof prescribes penalty to holder of licence for his misconduct. Section 37 thereof prescribes penalty for adulteration by the licensed vendor or manufacturer. The provision specifically envisages that if the licensee indulges in mixing or permitting to mix with the intoxicant being sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent

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<sup>1</sup> 2005 (2) ALD (CrI.) 689 (AP)



intoxicating quality or strength or any article prohibited by any Rule made under the Excise Act. Therefore, adulteration of toddy shall have to be understood as contained in Section 37 of the Excise Act and as contained in Rule 5 of the latter Rules. The samples not conforming to the alcohol content, as has been drawn and analysed in the instant case, cannot be considered to be adulterated under the provisions of the Excise Act and the Rules framed specifically in respect of toddy intoxicant. The whole case launched against the respondent herein in that view of the matter is misconceived.”

Per contra, the respondents filed a counter affidavit stating that on 27.12.1998, the Excise Officers of Deputy Commissioner's Office and the Station House Officer, Medak, inspected the toddy depot, TCS, Ramayampet and on testing the toddy with prescribed chemicals on the spot, it was found that the toddy was adulterated with Chloral Hydrate. Therefore, a crime was registered and the subject vehicle was seized. In the counter affidavit it is also averred that though a show cause notice was issued, no explanation has been submitted. Since no explanation was offered by the owner of the lorry, proceedings dated 16.04.1999 were issued confiscating the said vehicle. It is also stated in the counter affidavit that the Chief Public Analyst, State Food Laboratory, analyzed second sample and opined that the toddy was adulterated. In those circumstances, the appeal filed by the owner of the subject vehicle is also dismissed and as such, there are no merits and the writ petition is liable to be dismissed.

To substantiate his contention, learned Government Pleader relied on the judgment of this Court in **Toddy Tappers Co-op., Society Group, Khammam v. Prohibition**

**and Excise Superintendent, Khammam and others<sup>2</sup>.**

However, on examination of the same, the said judgment is not applicable to the facts and circumstances of the present case.

A perusal of the material placed on record would reveal that the subject vehicle was involved in transportation of toddy from the toddy depot, TCS Ramayanpet, to its retail shops and on testing with chemicals, it was found adulterated with Chloral Hydrate. On initiation of criminal proceedings, when the second sample was sent to the Chief Public Analyst, the opinion given is that the sample is free from Chloral Hydrate or as a matter of fact, any other foreign substance so as to make the toddy as an adulterated one, but the sample does not conform to the standards of Alcohol content, total acidity and volatile acidity. Based on the said report, the licences of the toddy depot as well as its retail shops were restored by the authorities vide proceedings dated 19.07.1999. The operative portion of the said proceedings is as under:

“In view of the result of the second sample as per the instructions of the Commissioner of Prohibition and Excise, A.P., Hyderabad and opinion of the Government Pleader for Prohibition and Excise, High Court of A.P., Hyderabad and in view of the orders of Hon’ble High Court of A.P. Hyderabad in W.P.No.10690 of 1999 dated 08.06.1999, the suspension of licences of toddy depot and shop of TCS group Ramayampet issued vide ref.<sup>2nd</sup> cited are hereby restored with immediate effect.”

When the sample containing less percentage of alcohol content cannot be termed as an adulterated, having due

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<sup>2</sup> 2001 (6) ALD 309 (D.B)

regard to Rules 4 and 5 of the Rules and also as held by this Court in **Gazetted Food Inspector, Div-I, Mahabubnagar District (1 supra)**, it cannot be said that the toddy is adulterated one, more particularly, when it is free from foreign chemical substance so as to turn it as an adulterated one. It cannot be said that the toddy seized from the toddy depot, TCS Ramayampet is an adulterated one. Even accepting the report dated 19.07.1999 of the Prohibition and Excise Superintendent, Medak District, when the licences were restored the question of confiscation of the subject vehicle cannot be sustained.

Therefore, this Court is of the opinion that relying on the report of the second sample issued by the Chief Public Analyst of the State Government when the licences of the toddy shop, TCS Ramayampet and its respective retail shops were already restored, the question of confiscation of the subject vehicle cannot be sustained.

The writ petition is therefore allowed setting aside the orders passed by the 2<sup>nd</sup> respondent in Cr.No.185/2280/DPE/99/B2 dated 25.10.1999 confirming the order passed by the 1<sup>st</sup> respondent in Proc.No.A1/2743/98 dated 16.04.1999. No costs.

Miscellaneous petitions, if any, shall stand closed.

**P. KESHAVA RAO, J**

Date: 19.04.2018.  
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