

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 11808 of 2013

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the Prohibition and Excise Superintendent, Nizamabad, in not renewing the licences of the petitioner as per Rule-6 of the Andhra Pradesh Excise (Grant of Licence to sell toddy, conditions of licence tapping of excise trees) Rules, 2007 (for short "the Rules") and Cr.No.11565/ 2012/ CPE/ E1, dated 24.09.2012 & 28.09.2012 of the Commissioner of Prohibition and Excise, as illegal, arbitrary and contrary to Rule-6 of the Rules and against to the Government Excise Policy in Memo No.40114/ Ex.II(1)/ 2012-1, dated 22.09.2012 and are liable to be set aside.

2) The averments in the affidavit filed in support of the writ petition would show that the Prohibition and Excise Superintendent, Nizamabad, issued three toddy shop licenses and one toddy depot licence in favour of Toddy Tappers Co-operative Society, Saloora (petitioner society). The members have distributed the trees, as well as toddy shops amongst themselves and they are tapping the toddy in the topes which is sold to the respective licenced toddy shops. The members are selling pure toddy and are eking out their livelihood by tapping toddy. While things stood thus, the Prohibition and Excise Inspector, Bodhan, registered cases against the petitioner in COR Nos.405, 406, 407 and 408 of 2012-2013, dated 17.08.2012, under Rule 27 of the Rules. The Excise Officials, at the time of inspection tested toddy and found it free from adulteration. However, three samples of toddy were deposited in Judicial Magistrate of First Class Court,

Bodhan, out of which, one sample in each case was sent to the Regional Excise Laboratory Chemical Examiner, Nizamabad, for analysis. The Chemical Examiner vide report dated 04.09.2012 opined that the toddy drawn in C.O.R.Nos.407 and 408 is adulterated with diazepam. An application dated 17.09.2012 along with requisite fee drawn from State Bank of Hyderabad, Nizamabad, was made for sending one of the sample to independent laboratory. While so, the 1st respondent suspended the licenses of the petitioners in Cr.No.E4/ 316/ 2012, dated 17.09.2012. Challenging the same, the petitioner filed W.P.No.30710 of 2012. By an order, dated 05.10.2012, this Hon'ble Court while dismissing the writ petition, directed the second respondent to complete the enquiry within a period of six (06) weeks from the date of receipt of a copy of the order, after giving reasonable opportunity to the petitioner.

3) Aggrieved by the same, the petitioner filed W.A.No.1430 of 2012 and the same was partly allowed on 23.11.2012. Pursuant to the orders of this Court in the writ appeal, the petitioner continued the business. During pendency of the writ petition, the 1st respondent rejected the request of the petitioner for sending the sample to an independent laboratory vide Cr.No.E4/ 316/ 2012, dated 28.09.2012. Challenging the same, the petitioner filed W.P.No.35200/ 2012 seeking sending of second sample to independent laboratory. By an order, dated 16.11.2012, the said writ petition was disposed of. Pursuant to direction issued by this Court, the respondents sent one sample to Andhra Pradesh State Food Laboratory, Hyderabad, through the Court of Judicial Magistrate of First Class Court, Bodhan. The report of analyst indicates absence of diazepam. The tests conducted for chloral hydrate and alprazolam also proved negative. Hence, the petitioner made a

representation dated 25.03.2013 seeking renewal of licence. Inaction on the part of the respondents in renewing the licence lead to filing of the present writ petition.

4) By an order, dated 18.04.2013, this Court while admitting the writ petition, directed the third respondent to renew the group licences of the petitioner society in accordance with Rule-6 of the Rules.

5) A counter came to be filed by the third respondent denying the averments made in the affidavit filed in support of the writ petition. It is said that all the licences of petitioner society were suspended on 17.09.2012, for indulging in selling toddy adulterated with daizepam. Further, a notice for cancellation of licence was issued on 17.09.2012, to show-cause as to why the liecenses of all toddy shops and toddy depot of the petitioner should not be cancelled. Subsequently, this Court *set aside* the suspension orders.

6) Relying upon the judgment of this Court in *Toddy Tappers Co-op. Society Group, Khammam v. Prohibition and Excise Superintendent, Khammam and others*¹, learned Government Pleader for Prohibition and Excise, submits that even though the subsequent report obtained by the licensee from an independent agency show absence of diazepam, but it is open to the excise authorities to act only on first report and they are declined to revocation of the suspension of licence, basing on the second report.

7) Relying on the judgment of this Court in *Toddy Tappers Co-operative Society, Karimnagar v. Prohibition and Excise Superintendent, Karimnagar and another*² and in *W.P.No.879 of*

¹ (2001) 6 ALD 309 (DB)

² (1999) 3 ALT 669

2013, learned counsel for the petitioner seeks a direction to the authorities to consider the representation made on 25.03.2013 in accordance with law.

8) Since the request is for considering of the representation, the present writ petition is disposed of, directing the third respondent to pass appropriate orders on the representation dated 25.03.2013, in accordance with law, as early as possible, preferably, within a period of four to six weeks from the date of receipt of a copy of the order.

9) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

28.02.2017
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JUSTICE C. PRAVEEN KUMAR