

APHC010421072024



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

WRIT APPEAL NO: 812 of 2024

Botta Lakshmi Pavani

...Appellant

Vs.

The State Of Andhra Pradesh and Others

...Respondent(s)

Advocate for Appellant:

O.M.R. Law Firm

Advocate(s) for Respondent(s):

GP for Prohibition & Excise, GP for
Home

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : 07.03.2025

PER DHIRAJ SINGH THAKUR, CJ :

The present writ appeal has been preferred against the judgment and order, dated 23.09.2024, passed in W.P. No.19812 of 2024.

Briefly stated, the material facts are as under:

2. The genesis of the present controversy lies in the action of the Deputy Commissioner of Prohibition and Excise, Visakhapatnam, who by virtue of its order, dated 06.09.2024, suspended the bar licence of the appellant by invoking the provisions of Section 31 and 32 of the Andhra Pradesh Excise Act, 1968, r/w rule 61 & 62 of the Andhra Pradesh Excise (Lease of right of

Selling by Bar, Grant and Conditions of Licence) Rules, 2022 (hereinafter referred to as 'Rules').

3. Preceding the order impugned, dated 06.09.2024, passed by the Deputy Commissioner of Prohibition and Excise, a show cause notice, dated 20.08.2024, was served upon the appellant requiring her to show cause as to why the licence issued in her favour be not suspended. According to the show cause notice, the District Prohibition & Excise Officer (DPEO), Visakhapatnam, had submitted a report stating that the Inspector of Police, III Town police station, Visakhapatnam, had submitted a report stating that on 17.08.2024, the Joint Commissioner of Police, Visakhapatnam, made a surprise check at M/s. Island Bistro Bar & Restaurant on Beach Road, Visakhapatnam, and found that the Restaurant & Bar was open and was conducting business by operating beyond the permitted business hours.

According to the DPEO, as per rules, the Bar and Restaurant has to close the sale of liquor by 11 p.m. and service of food by 12 midnight but the management was running the Bar and Restaurant after the business hours.

4. The show cause notice further recorded, based upon the said report of the DPEO, that on 23.06.2024, the police patrol found the Bistro Bar and Restaurant serving liquor and food at 00.20 hours for which a case in Crime No.157 of 2024 under section 188 IPC was recorded with Police Station Visakhapatnam City, and was under investigation.

The show cause notice further recorded that on 16.03.2024 at night, while the Bar & Restaurant was running its business beyond the permissible hours and while the Police was conducting the drunken driving tests near the said Bar, a car driver rashly drove his car without obeying the signals of the police staff to stop the vehicle and thereby obstructed the police personnel from performing their duty in regard to which Crime No.55 of 2024 under Section 353 IPC was registered with the Visakhapatnam City Police Station and was under investigation. The incident also was thus attributed to the running of the Bar and Restaurant of the petitioner/appellant herein beyond the permissible hours.

The show cause notice further reflects that the Inspector of Police, III Town Police Station, Visakhapatnam, had requested for cancellation of the licence of the petitioner to prevent assault on public servants and to prevent quarrels between drunkards in the area. CCTV footage recorded in a pendrive also appears to have been submitted to the DPEO to that effect along with transaction bills that liquor was being sold beyond the hours of business as per excise rules.

5. Reply to the show cause notice was submitted by the petitioner in which the allegations leveled in the show cause notice that the petitioner was selling liquor beyond the business hours was emphatically denied. It was denied that

there had been any violation of the terms and conditions of the licence or the Rules or the Act of 1968.

The appellant in its reply to the show cause notice, further took a stand that the contents of the report and the proceedings referred to by the DPEO had not been enclosed with the show cause notice. It was also denied by the appellant that the incident pertaining to the driver of a car had no connection whatsoever with the Bar of the appellant and that it related to rash and negligent driving by a car bearing number AP 37 BD 5177 in regard to which case under section 353 IPC had been registered. It was also stated that no inquiry whatsoever was conducted by the DPEO nor was the statement of the appellant recorded before the submission of the report to the office of the Deputy Commissioner of Prohibition & Excise.

6. It appears that after the explanation was submitted by the appellant, the DPEO was asked to submit its remarks to the said the explanation. The said officer then appears to have submitted its explanation and finally, the Deputy Commissioner, passed the order impugned.

7. The order of the Deputy Commissioner was then challenged before the learned single Judge primarily on the following grounds -

- a) firstly that the order impugned was violative of principles of natural justice as the Deputy Commissioner had not provided the entire material including the pendrive, the report of the DPEO and other

material referred to in the report of the DPEO and a copy of the comments furnished by the DPEO on the explanation to the show cause notice submitted by the petitioner.

- b) that the order passed by the Deputy Commissioner was a non-speaking order inasmuch as none of the contentions raised by the petitioner in its explanation to the show cause notice had been dealt with by the Deputy Commissioner in the order impugned.
- c) that the order impugned suspending the licence of the petitioner was passed without mentioning the period during which the licence would remain suspended and therefore, amounted to cancellation of the licence and therefore was unsustainable.

8. The learned single Judge partly accepted the contention of the learned counsel for the petitioner that the order of suspension ought to have reflected the period during which it was to remain in operation and that order of suspension could not take the effect of cancellation of the licence as suspension was temporary whereas cancellation was permanent.

However, learned single Judge did not accept the contention of the petitioner that principles of natural justice had been violated either on account of non-furnishing of the relevant material, which included the report of the DPEO or for that matter, the comments of the DPEO made subsequent to the furnishing of the explanation to the show cause notice by the petitioner.

The learned single Judge, in those circumstances, proceeded to direct the respondents to pass final orders by treating the order of suspension impugned in the petition as temporary. The orders were directed to be passed by the concerned authority within a period of three weeks by adhering to the principles of natural justice and permitting the petitioner to place its defense before passing of the final orders under Section 31 of the act, failing which it was ordered that the suspension would be deemed to have been revoked. However, notwithstanding the directions so issued, the learned single Judge proceeded to dismiss the petition. Hence the present Letters Patent Appeal.

9. Learned counsel for the parties reiterated the arguments, which were advanced before the learned single Judge.
10. Heard learned counsel for the parties.
11. The following issues arise for our consideration:
 1. Whether the order impugned suspending the licence the petitioner stood vitiated on account of the failure of the authority to prescribe the period during which it was to remain in operation.
 2. Were the principles of natural justice violated inasmuch as the relevant material which included the report of the DPEO, the report of the Inspector of Police, III Town Police Station, Visakhapatnam City, along with the pendrive reflecting the operation of the Bar & Restaurant beyond the permissible time limits, report of the Assistant Retail Outlet Monitoring Officer, Andhra Pradesh State Beverages Corporation Limited, and the documents pertaining to Crime No.184 of 2024, dated 18.08.2024, under Section 31(1)(b) of the A.P. Excise Act, 1968, as also the report/comments of DPEO, had not been furnished to the petitioner.

3. Whether the order passed by the Deputy Commissioner of Prohibition and Excise is a non-speaking order and if so, whether it vitiates the said order for being in violation of principles of natural justice.

12. Before we proceed to deal with the aforementioned issues, it is necessary to briefly reflect the relevant provisions of the Excise Act and the rules framed thereunder. Section 31 of the Act envisages that the authority granting any licence or permit under the Act may cancel or suspend it, irrespective of the period to which the licence or permit relates *inter alia* if there is any breach by the holder or by his servants or by any person acting on his behalf of any of the terms and conditions of the licence. Section 31 of the Act reads as under:

“31. Power to cancel or suspend licence, etc. - (1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act irrespective of the period to which the licence or permit relates],-

(a) if any duty or fee payable by the holder thereof is not duly paid; or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act; or

(d) if the holder thereof is convicted of any cognizable and nonbailable offence or of any offence under the Narcotics Drugs and Psychotropic Substances Act, 1985] 3[(Central Act 61 of 1985)] (or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Central Act 16 of 1955), or under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958), or under section 481, section 482, section 483, section 484, section 485, section 486, section 487, section 488, or section 489 of the Indian Penal Code or of any offence punishable under section 112 or section 114 of the Customs Act, 1962

(Central Act 52 of 1962) irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or]

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will: Provided 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.

Provided 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.

...”

13. Rules 31, 61 and 62 of the Rules envisage as under:

“31.Hours of Business:-

The business hours shall be from 11.00 AM to 11.00 PM in respect of Bars other than those of 3-Star and above hotels. For the Bars of 3-Star and above hotels, the business hours shall be from 11.00 AM to 12.00 midnight.

61. Licensee to abide by the provisions of the Act etc.,:-

Every holder of the licence under these rules shall comply promptly with all orders or directions issued from time to time under the Act, and the rules and orders made there under and shall abide by all the conditions of the licence.

62. Suspension, withdrawal or cancellation of a licence:-

A licence granted under these Rules may be suspended, cancelled or withdrawn in accordance with the provisions of Section 31 or 32 of the Act.”

14. The provisions of the Act and Rules do not prescribe the procedure which is required to be adopted for either suspension of the licence or for purposes of cancellation thereof. In fact, *proviso* to Section 31(1) of the Act only envisages 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. It also needs to be seen that, ordinarily, the

expressions 'cancellation' and 'suspension' are conceptually different inasmuch as suspension entails temporary debarment, whereas cancellation means to destroy the force, effectiveness, or validity of an order.

15. In the instant case, the impact of an order of suspension without prescription of a time period as also the impact of an order of cancellation would be at par inasmuch as there would be a total cessation of the operations of the licensee, in the instant case, the Bar and Restaurant, as the licensee would not be in a position to run its business during the currency of the order of suspension and certainly not after the passing of an order of cancellation of the licence.

Although Section 72 of the Act does give the power to the Government to make rules for carrying out all or any of the purposes of the Act, yet, the rule making authority appears not to have dealt with the modalities for dealing with the period for which an order of suspension would remain in force and further whether the order of suspension would be subject to a proper inquiry to be conducted for purposes of cancellation of a licence otherwise envisaged under Section 31 of the Act.

16. Since the order of suspension is only a temporary suspension of the arrangement between the licensor and the licensee, it could never partake the character of an order of cancellation and in the absence of an order of suspension prescribing a definite time period, the same, in our opinion, would

make it unsustainable in law and to that extent only we are in agreement with the view expressed by the learned single Judge.

17. However, in our opinion, it was not open for the learned single Judge to have directed the respondents to pass final orders prescribing the period during which the order of suspension would remain in force inasmuch as the period of suspension is neither covered by the provisions of the Act much less do the Rules deal with them. The period of suspension could, if at all, be passed pending an enquiry for cancellation of licence. However, that is not what was envisaged in the order impugned, dated 06.09.2024, which was under challenge.

18. On the issue of violation of principles of natural justice, it can be seen that no part of the material on which the Deputy Commission of Prohibition & Excise had relied upon in its show cause notice, was supplied to the petitioner. It is not out of place herein to mention that what persuaded the Deputy Commissioner to issue the show cause notice was a report prepared by the DPEO, which was further based upon the report of the Inspector of Police, III Town Police Station, Visakhapatnam City and which the petitioner had specifically asked for in the explanation to the show cause notice but was not furnished.

It is settled law that whenever an authority or a quasi-judicial authority passes an order which has the effect of visiting a person with civil consequences, then the material that is sought to be relied upon by the authority is required to be disclosed, if it is otherwise relevant and has nexus to the action that is to be taken by the authority.

19. In this regard, it would be pertinent to refer to the Apex Court Judgment in **Natwar Singh v. Director of Enforcement**¹ where it was held that if relevant material is not disclosed to a party, there would be *prima facie* unfairness irrespective of whether the material in question arose before or during the hearing and that if prejudicial allegations are made against a person, he must be given particulars of that material so that he can prepare his defense. The disclosure of material, it was held, did not necessarily involve supply of the material and that a person could be permitted to inspect the file and take notes. It was, however, held that the requirements of natural justice would depend on the circumstances of each case, the nature of inquiry and the rules under which the inquiry is held and further that the concept of fairness required that the noticee is entitled to satisfy the authority that the documents upon which reliance has been placed do not make out a *prima facie* case requiring any further inquiry.

20. The Apex Court in **Natwar Singh's** case (supra) however highlighted the various exceptions to the general rule where disclosure of evidential

¹ (2010) 13 SCC 255

material was likely to inflict serious harm on the person directly concerned, or be in breach of confidence, or be injurious to the public interest as it would involve the revelation of official secrets.

21. In the present case, the report of the Inspector from III Town Police Station, Visakhapatnam, was accompanied by a pendrive as also certain receipts perhaps with a view to show that the Bar & Restaurant was operative beyond the permissible time limits, all of which were not furnished to the petitioner. Although the report of the DPEO makes a mention of the supply of the said pendrive, the petitioner did have a right to go through that report and the pendrive, to contest whether the pendrive contained images of the premises belonging to the petitioner and also contest whether the timings reflected in the said pendrive would amount to violation of the terms and conditions of the licence.

All these documents were relevant and ought to have been provided to the petitioner, in the absence whereof, the petitioner would certainly be handicapped in setting up an effective defense against the allegations so made in the show cause notice. Non-furnishing of the said material, which was relevant to the allegation made against the petitioner, therefore, did violate the principles of natural justice in the instant case.

22. Yet another aspect which needs to be seen is that the Deputy Commissioner, in its order, simply reflects the allegations made in the report

furnished by the DPEO, reproduces the explanation tendered by the petitioner, then again proceeds to refer to the factum of the comments invited from the DPEO to the explanation rendered by the petitioner and finally proceeds to pass the order impugned in the following terms:

“The explanation given by Smt Botta Lakshmi Pavani, D/o Venkateswara Rao licensee of M/s Island Bistro Bar & Restaurant, D.No.5-6-45/1 & 5-6-46, East Point Colony, Beach Road, Visakhapatnam has been carefully examined and the explanation submitted by the licensee is not satisfactory and thereby the licensee has violated the rules of the Licence as well as section 36 of AP Excise Act, 1968.

Therefore, in view of the above observations of the case and in exercise of the powers conferred under section 31 of A.P Excise Act 1968 and being the licence granting authority, the 2B (Bar) licence (VSP/MC1/132/102/2022-25) of M/s Island Bistro Bar & Restaurant, D. No.5-6-45/1 & 5-6-46. East Point Colony, Beach Road, Visakhapatnam is hereby suspended, with immediate effect.

..”

On the face of it, none of the contentions raised by the petitioner had been dealt with by the Deputy Commissioner. The order impugned is thus a non-speaking order.

In **Union of India v. Mohan Lal Capoor**², it was held that reasons were a link between the material, which is considered, and the conclusions, which have been arrived at, and that reasons must establish and reveal a rational nexus between the two. The same was the view followed in **Gurdial Singh Fiji v. State of Punjab**³.

² (1973) 2 SCC 836

³ (1979) 2 SCC 368

23. In **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi**⁴, it was held that where facts are disputed, the Inquiry Officer should record reasons in support of the conclusions arrived at. Finally, the Supreme Court in **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**⁵ on a conspectus of various judgments on the point, crystallized the principles as under:

“Summarising the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by

⁴ (1991) 2 SCC 716

⁵ (2010) 9 SCC 496

reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

24. In the present case, what is recorded by the authority in the order impugned, dated 06.09.2024, are not reasons but only the conclusions, which, to us, appear to be based not on an independent assessment of the material on record and upon proper application of mind, but simply based upon the report of the DPEO as also the views expressed by the said Officer pursuant to the explanation tendered by the petitioner to the show cause notice. In our opinion, the learned single Judge committed an error in law in not appreciating that the principles of natural justice had been violated inasmuch as not only

was the relevant material not furnished to the petitioner before passing the order impugned but even on the ground that the order impugned was a non-speaking order and therefore, was required to be set aside.

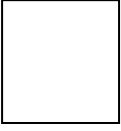
25. Be that as it may, the judgment and order impugned is set aside. The writ appeal is allowed by setting aside the order impugned, dated 06.09.2024. It would be open to the respondent authorities to pass orders afresh based upon the show cause notice after supplying the material as also affording to the petitioner an opportunity of making a representation and being heard. No costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

RAVI CHEEMALAPATI, J

akn



**HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE RAVI CHEEMALAPATI**

W.A.No.812 of 2024

DATE : 07.03.2025

AKN