

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WA.No. 720 of 2004 (B) IN OP.10673/2003

(AGAINST THE ORDER /JUDGMENT IN I.A.NO 4346/2004 IN O.P.10673/2003 of
HIGH COURT OF KERALA DATED 26-03-2004)

APPELLANT(S)/RESPONDENT::

ASST.EXCISE COMMISSIONER, THRISUR
THRISSUR.

BY ADV. GOVERNMENT PLEADER SRI.M.MOHAMMED

RESPONDENT(S)/PETITIONERS::

1. CHANDRIKA BALAN,
PUZHAKADAVIL HOUSE, K.S.E.B., E-10-4
ASOK NAGAR, AYYANTHOLE, THRISSUR.

2. P.K.BALAN,
PUZHAKADAVIL HOUSE, K.S.E.B., E-10-4
ASOK NAGAR, AYYANTHOLE, THRISSUR.

3. DINGLE BALAN,
PUZHAKADAVIL HOUSE, K.S.E.B., E-10-4
ASOK NAGAR, AYYANTHOLE, THRISSUR.

R,R BY ADV. SRI.T.A.SHAJI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R.RAMACHANDRA MENON &
SUNIL THOMAS, JJ.**

W.A.No. 720 OF 2004

Dated this the 22nd day of June, 2015

JUDGMENT

Ramachandra Menon, J.

Asst. Excise Commissioner, Trichur is the appellant.

The writ petition was filed by the respondents seeking for the following reliefs:

“i) issue a writ of certiorari quashing the original of Ext.P3

ii). issue a writ of mandamus or any other writ order or direction commanding the 1st respondent to renew the FL-3 licence NO.TSR.56/2002-03 of Hotel Panchavady, Kodungallur, without insisting for any payment as demanded in Ext.P3.

iii). declare that the proviso to Rule 13(A) (5) of the Foreign Liquor Rules is arbitrary and ultravires the constitution of India as also the Abkari Act and strike it down to the extent it provides that no defaulter of abkari revenue shall be allowed to renew the fixed fee licences under the Abkari Act unless 50% of the arrears have been cleared.”

2. The writ petitioner also filed an I.A.No.4346/2004 for

an interim relief. When that I.A. came up for consideration of the learned Single Judge on 26/3/2004, the following order was passed:

“Heard. The petitioners' FL3-Licence No.TSR.56/02-03 of Hotel Panchavady, Kodungalloor is not being renewed for the reason that there is abkari dues for one of the partners. During the previous financial year, it was renewed as per the interim order of this Court. As per the existing rules, if 50% of the existing liability is paid, the licence can be renewed. Accordingly, the interim order as prayed for is issued on condition that the petitioners pay Rs.18.5 lakhs apart from the licence fee.”

3. Being aggrieved by the said order, the matter was sought to be challenged by the State/Department by filing this appeal. The appeal was admitted on 7/4/2004 and after hearing both sides an interim stay was granted, in respect of the interim order under challenge passed by the learned Single Judge, in the following terms:

“Having heard learned Govt.Plealder appearing for the appellant and learned counsel for the respondents, there will be an interim order staying the operation of the order passed by the learned Single Judge in I.A.No.4346/2004 in O.P.No.10673/2003, pending disposal of the writ appeal. But this order will not stand in the way of the renewal of the licence in favour of the writ petitioners, if they pay fifty percent of Abkari arrears as per the rules and if they produce a

certificate to the effect that they have cleared fifty percent of the Abkari arrears as per rule 13 A (5) of the Foreign Liquor Rules. “

4. It is brought to the notice of the Court that the writ petitioner, being aggrieved by the said order passed by the Division Bench of this Court, preferred R.P. No.316/2014 wherein interference was declined and the Review Petition was dismissed as per the order dated 22/4/2004. It is pointed out that writ petitioner had approached the Apex court by filing SLPs. (Civil) Nos.8907-8988/2004 which were admitted and an interim order was obtained. The matters were pending consideration before the Apex Court till 3/5/2013. But later, after hearing the learned counsel for the parties before the Apex Court, the submission made on behalf of them that the matter had already become infructuous was recorded and the SLPs were dismissed.

A copy of the said order dated 03/05/2013 is placed for perusal of this Court and forms part of the file. This Court is also given to understand that the original petition itself bearing No. O.P. N.10673-2003, wherein the interim order was passed in the I.A., was dismissed on 2/9/2005.

In the above circumstances nothing further survives to be

considered. The writ appeal is dismissed as infructuous.

Sd/-

P.RAMACHANDRA MENON
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.