

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 459 of 2015 (F)

PETITIONERS:

1. C.P.KUMARAN, CHETHIL HOUSE,
KOKKALLOOR HOUSE,
BALUSSERI, KOZHIKODE.
2. SHIJU, KOLATHUVAYAL HOUSE,
PANANGAD, BALUSSERI, KOZHIKODE.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. STATE OF KERALA
REP. BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE STATE OF KERALA
REP. BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
3. THE EXCISE COMMISSIONER,
EXCISE DEPARTMENT, OFFICE OF
THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM-695 001.
4. THE KERALA STATE CONSUMER FEDERATION LTD.
GANDHI NAGAR, ERNAKULAM-682 017
REPRESENTED BY ITS MANAGING DIRECTOR.

ADDL. R5 TO R10 IMPEADED

5. T.A.KRISHNAN, S/O SANKUNNY, MANGALASSERY
HOUSE, P.O.BALUSSERY, KOZHIKODE DISTRICT
CHAIRMAN, KAIRALI ROAD MADYA SHOP VIRUDDHA
SAMARASAMITHI, BALUSSERY.

Impleaded as per order dated 20.1.15 in IA 812/14

6. PRASANTH KUMAR, KARIMPNAKKAL HOUSE,
NANMANDA PANCHAYAT, NANMANDA,
KOZHIKODE - 673 613.

7. VINOD.T., THAROL HOUSE, POONATH P.O.,
KOTTOOR PANCHAYAT, KOZHIKODE-673 614.
8. PRASANTHAN.T.T., PANANKANDI HOUSE,
KOKKALLOOR P.O., BALUSSERI PANCHAYAT,
KOZHIKODE - 673 612.
9. SHIJU MON, URUNIYAMKUNNUMMEL,
KAKKOOR P.O., KAKKOOR PANCHAYAT,
KOZHIKODE - 673 619.
10. BIJU, THEKKUMPALATH HOUSE, PALOLI,
KOOTTALIDA PANCHAYAT, KOZHIKODE - 673 614.

Impleaded as per order dated 20.1.15 in IA 815/15

R1 TO R4 BY GOVT. PLEADER SRI.JUSTIN JACOB
ADDL. R5 BY ADV. SRI.S.SUJIN
ADDL. R6 TO R10 BY ADV. SRI.JOHNSON ALLESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 459 of 2015 (F)

PETITIONER'S EXHIBITS:

EXT. P1 : TRUE PHOTOCOPY OF THE LICENCE ISSUED BY EXCISE DEPARTMENT DATED NIL.

EXT. P2 : TRUE PHOTOCOPY OF THE RENT DEED EXECUTED BY THE 4TH RESPONDENT DATED 11.3.2014.

EXT. P3 : TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT DATED 30.12.2014

EXT. P3(a): TRUE ENGLISH TRANSLATION OF EXT.P3.

EXT. P4 : TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT DATED 31.12.2014.

EXT. P4(a): COPY OF ENGLISH TRANSLATION OF EXT.P4.

EXT. P5 : TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE FIRST PETITIONER BEFORE THE GOVERNMENT DATED 2.1.2015.

EXT. P5(a): TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE FIRST PETITIONER BEFORE THE 3RD RESPONDENT DATED 2.1.2015.

EXT. P5(b): TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE FIRST PETITIONER BEFORE THE 4TH RESPONDENT DATED 2.1.2015.

EXT. P6 : TRUE ENGLISH TRANSLATION OF EXT.P5.

EXT. P6(a): TRUE ENGLISH TRANSLATION OF EXT.P5(a).

EXT. P6(b): TRUE ENGLISH TRANSLATION OF EXT.P5(b).

RESPONDENT'S EXHIBITS:

EXT.R5(a): TRUE COPY OF THE REPRESENTATION DATED 17.9.2014 SUBMITTED BY THE ACTION COMMITTEE BEFORE THE HON'BLE CHIEF MINISTER WITH TRANSLATION

EXT.R5(b): TRUE COPY OF THE REPRESENTATION DATED 24.9.2014 SUBMITTED BY THE ACTION COMMITTEE BEFORE THE HON'BLE MINISTER FOR CO-OPERATIVES WITH TRANSLATION

EXT.R5(c): TRUE COPY OF THE PHOTOGRAPHS OF THE AGITATIONS NEAR THE SHOP ORGANISED BY THE PETITIONER AND HIS ORGANISATION

EXT.R5(d): TRUE COPY OF THE LETTER DATED 4.11.2011 ISSUED BY THE DEPUTY EXCISE COMMISSIONER, KOZHIKODE WITH TRANSLATION

EXT.R5(e): TRUE COPY OF THE LETTER DATED 5.6.2013 ISSUED BY THE DEPUTY EXCISE COMMISSIONER, KOZHIKODE WITH TRANSLATION

EXT.R5(f): TRUE COPY OF THE LETTER DATED 11.1.2013 RECEIVED BY THE SAMITHI WITH TRANSLATION

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.459 of 2015 F

Dated this the 2nd day of February, 2015

JUDGMENT

The first petitioner is said to be a resident of the area where Shop No.11018 is situated; the second petitioner is an employee of the shop. Both of them have filed the writ petition assailing Exhibit P4 order of the Government through which the Government has decided to close down certain foreign liquor outlets, which include Shop No.11018 of Balussery in Kozhikode District.

2. The principal contention of the petitioners is that in the light of the judgment dated 30.10.2014 in W.P.(C)No. 22195/2014 and batch rendered by this Court, the Government has taken a policy decision either to shift or close down the shops which are situated near the National Highways. According to them, the shop in question is not situated anywhere near the National Highway.

3. When the locus of the petitioners is questioned, the learned counsel for the petitioners has submitted that the first petitioner being a resident of the area is a consumer and the second petitioner is an employee of the shop. To a specific query from this Court, the learned counsel for the petitioners has submitted that the second petitioner, on the closure of the shop, would not be rendered jobless, but may be posted at a different place.

4. As a matter of policy, the Government has taken a decision to close down or shift certain retail outlets. Whether the shop in question is situated near the National Highway or not, it is also found mentioned in Exhibit P4. Since it is exclusively owned by the Government, the livelihood of no citizen has been threatened on the closure of the shop. Nor can it be said that the second petitioner will be adversely affected by the policy of the Government. It lies entirely in the discretion of the Government as to which shop is to be closed down and which shop is to be

run, subject to any binding judicial directives. It seems that there has been a lot of public protest against continuation of the shop in question, as could be seen from Exhibit R5(c).

5. When it comes to the locus of the first petitioner, it cannot be said that there is any provision of law mandating that to serve the needs of a consumer, albeit, of liquor, a shop is required to be established within a particular distance. At any rate, the first petitioner is said to have submitted Exhibit P5(b) representation, which is yet to be disposed of by the fourth respondent.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioners and the learned Government Pleader, this Court disposes of the writ petition with a direction to the fourth respondent to consider Exhibit P5(b) representation of the first petitioner, uninfluenced by any of the observations made while disposing of the present writ petition, and pass appropriate orders thereon, as expeditiously as possible, at

any rate, within a period of six weeks from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

tkv