

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 693 of 2015 (J)

PETITIONERS : -

1. P.S JAYARAJ, AGED 49 YEARS,
S/O.SREEDHARAN, PADATHU VEEDU, KODUVAZHANGA,
ALANGAD VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
2. A.B.UNNI, AVANAKUMPARAMBIL HOUSE,
KODUAZHANGA, ALANGAD VILLAGE,
PARAVUR TALUK, ERNAKULAM DISTRICT.
3. P.G.SHIBU, PANAKKAPARAMBIL HOUSE,
EDAVANAKKAD, NAYARAMBALAM,
ERNAKULAM DISTRICT.

BY ADVS.M.G KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS: -

1. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM - 695 033.
2. THE CIRCLE INSPECTOR OF EXCISE,
NORTH PARAVUR, ERNAKULAM DISTRICT - 683 513.
3. V.V.SUDHEESH BABU,
VATTAPARAMBU HOUSE, VENNALA,
ERNAKULAM DISTRICT - 682 023.
4. STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES (A) DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-07-2015, ALONG WITH WPC. 1422/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

- EXT.P1 : PHOTOCOPY OF THE ORDER NO. XA1-1111/2014 DATED 13/03/2014
PASSED BY THE 1ST RESPONDENT.
- EXT.P2 : PHOTOCOPY OF THE REVISION PETITION DATED 15/03/2014 FILED
BEFORE THE 4TH RESPONDENT.
- EXT.P3 : PHOTOCOPY OF THE STAY PETITION DATED 15/03/2014 FILED
ALONG WITH EXT.P2 BEFORE THE 4TH RESPONDENT.
- EXT.P4 : PHOTOCOPY OF THE JUDGMENT DATED 27/03/2014 IN WPC NO.
8008/2014 PASSED BY THIS HON'BLE COURT.
- EXT.P5 : PHOTOCOPY OF THE LETTER DATED 27/05/2014 SENT TO THE 4TH
RESPONDENT.
- EXT.P6 : PHOTOCOPY OF THE ORDER GO (RT) NO. 929/2014/TD DATED
25/11/2014 PASSED BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 693 of 2015

&

W.P.(c) No. 1422 of 2015

Dated this the 20th day of July, 2015

COMMON JUDGMENT

Since the issues raised in both the writ petitions are identical and the challenge is laid against the common order issued by the same respondent authority, this Court disposes of both the writ petitions through a common judgment. For ease of reference and convenience, the facts set out in W.P. (C) No. 693 of 2015 are taken as the basis for discussing the issues.

2. The petitioners, three in number, along with the third respondent, were the joint licensees of all the toddy shops in Group No.V of Varappuzha Excise Range, the licence being valid up to 31.03.2014. For the next period of 2014-2017, on 04.03.2014, the petitioners and third respondent jointly submitted an application, based on a joint preferential certificate issued by the second respondent.

3. Though the petitioners and the third respondent applied for preferential certificates independently, the second respondent, the competent authority, is said to have issued the preferential certificates jointly. Consequently, the petitioners and the third respondent were together given the privilege for the period 2014-2017.

4. Insofar as the facts in W.P. (C) No. 1422 of 2015 are concerned, the petitioner along with the third respondent obtained a joint licence for all the toddy shops in Group No.II of Varappuzha Excise Range, the licence being valid till 31.03.2014. For the period 2014-2017, the petitioner and the third respondent were jointly given the privilege, recognizing their preferential right, as has been done in the case of the petitioners in W.P. (C) No. 693 of 2015.

5. Eventually, all the proceedings have been sent for confirmation to the first respondent, in terms of Rule 5(15) of the Kerala Abkari Shops Disposal Rules, 2002. On receipt of the proceedings, the first respondent passed Exhibit P1 order rejecting confirmation in both cases, holding that the third respondent has availed himself of the advantage of having the preference in both the groups, which is

prohibited.

6. Aggrieved by Exhibit P1, initially the petitioners in both the writ petitions filed Exhibit P2 revision and Exhibit P3 stay petition before the fourth respondent. The petitioners in both the writ petitions soon thereafter, pending the revision, filed W.P. (C) Nos. 8040 of 2014 and 8008 of 2014, inviting Exhibit P4 judgment.

7. On perusal of Exhibit P4 judgment, it is evident that this Court directed the fourth respondent to dispose of Exhibit P2 revision, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of the copy of judgment. It has been further observed that any such order shall be passed with notice to the third respondent as well. Eventually, the fourth respondent passed Exhibit P6 order without hearing any of the affected persons, including the third respondent. Under those circumstances, assailing Exhibit P6, the petitioners in both the writ petitions have come before this Court.

8. The learned counsel for the petitioners, apart from advancing arguments on the merits of the matter, has strenuously contended that the direction in Exhibit P4 that

the third respondent shall pass an order 'with notice to the 3rd respondent as well' does not mean that the third respondent alone should be heard. According to him, the fourth respondent ought to have heard all the affected persons, who include, evidently, the petitioners in both the writ petitions, as well.

9. The learned counsel has also drawn my attention to Exhibit P5 communication, through which the petitioners are said to have made a request to the fourth respondent to hear them before the revision could be disposed of. In any event, going by the submission of the learned counsel for the petitioners, even the third respondent had not been heard before Exhibit P6 order was passed.

10. The learned Government Pleader, on his part, has submitted that the third respondent has acted in violation of the statutory mandate in Rule 5(1)(b), as well as Rule 5(17) of the Rules. He has also, further, contended that in the light of the statutory violation committed by the third respondent, the petitioners who had the licence along with him earlier could not be extended the privilege.

11. Be that as it may, this Court in Exhibit P4 judgment has directed that the third respondent as well be put on notice or heard before the statutory revision is disposed of. In my considered view, the direction by this Court in Exhibit P4 judgment, as has been rightly contended by the learned counsel for the petitioners, cannot be construed as a direction for affording an opportunity of hearing to the third respondent alone. Needless to observe that even in the absence of any judicial directive, it is incumbent on the part of the revisional authority, exercising quasi-judicial powers, to hear all the affected persons before rendering any order affecting the civil rights of the said persons.

12. In the light of the incurable procedural lapse on the fourth respondent's part, namely not following the principles of natural justice, which indisputably go to the root of the matter, this Court is inclined to set aside and accordingly sets aside Exhibit P6 order, with a consequential direction to the fourth respondent to rehear the matter after putting the petitioners in both the writ petitions, as well as the third respondent, on notice by affording an opportunity

of personal hearing to all of them, before rendering orders in Exhibit P3 revision.

It is further directed that the fourth respondent shall, in the manner indicated above, dispose of the revision petition as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

With the above observations, these writ petitions are disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-