

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 4127 of 2015 (M)

PETITIONER:

P.P.PRADEEPKUMAR,
PUTHANPURAYIL HOUSE, MUTTUNGAL VILLAGE,
MUTTUNGAL DESOM, VADAKARA, KOZHIKODE.

BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI
SRI.R.SYLESHWAREN NAIR
SRI.JOSE JONES JOSEPH

RESPONDENTS:

1. EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE
THIRUVANANTHAPURAM-695 001.
2. DEPUTY COMMISSIONER OF EXCISE
KOZHIKODE-673 001.
3. EXCISE INSPECTOR,
EXCISE RANGE OFFICE, VADAKARA-673 021.
4. ASSISTANT CHEMICAL EXAMINER,
GOVERNMENT OF KERALA,
REGIONAL CHEMICAL EXAMINER'S LABORATORY
KOZHIKODE-673 001.
5. JOINT CHEMICAL EXAMINER,
GOVERNMENT OF KERALA,
REGIONAL CHEMICAL EXAMINER'S LABORATORY,
KOZHIKODE-673 001.

R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF CHEMICAL ANALYSIS REPORT NO.1850/14 DATED 21.3.2014 ISSUED BY THE ASSISTANT CHEMICAL EXAMINER TO GOVERNMENT OF KERALA CHEMICAL EXAMINATION LABORATORY, KOZHIKODE IN RELATION TO CRIME NO.125/14.

EXHIBIT-P2: TRUE COPY OF THE CRIME AND OCCURRENCE REPORT DATED 28.11.2014 SUBMITTED AGAINST THE PETITIONER AND ANOTHER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE VADAKARA.

EXHIBIT-P3: TRUE COPY OF CHEMICAL ANALYSIS REPORT NO.2757/14 DATED 12.5.2014 ISSUED BY THE ASSISTANT CHEMICAL EXAMINER TO GOVERNMENT OF KERALA CHEMICAL EXAMINATION LABORATORY, KOZHIKODE IN RELATION TO CRIME NO.63/2014.

EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 23.7.2014 BEARING NO.XA1-18384/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 8/10/2014 BEARING NO.XA8-18384/2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P6: TRUE COPY OF THE ORDER DATED 17.12.2014 PASSED BY THE JUDICIAL MAGISTRATE OF THE FIRST CLASS, VADAKARA IN CMP NO.7950/2014.

EXHIBIT-P7: TRUE COPY OF THE CERTIFICATE OF CHEMICAL ANALYSIS BEARING CERTIFICATE NUMBER 6066 OF 2014 DATED 16.10.2014 ISSUED BY ASST.CHEMICAL EXAMINER TO GOVERNMENT OF KERALA, THIRUVANANTHAPURAM IN RESPECT OF SAMPLE B INVOLVED IN CRIME NO.63/2014.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 4127 of 2015 (M)

Dated this the 10th day of February, 2015.

JUDGMENT

The petitioner had been given the privilege to vend toddy at shops in Group No.III of Vadakara Range. When he had been carrying on the business with a renewed licence for the year 2014–2015, a crime No. 125 of 2014 of Vadakara Excise Range came to be registered against the petitioner under Section 57(a) of the Kerala Abkari Act.

2. Apart from sample A getting tested positive, in course of time, sample B also tested to be positive. Under those circumstances, the first respondent issued Ext.P4 proceedings dated 23.07.2014 suspending the licence. Later, the same authority issued Ext.P5 proceedings dated 08.10.2014 cancelling the petitioner's licence for the abkari year 2014–2015. Aggrieved thereby, the petitioner has filed the present writ petition.

3. The learned counsel has submitted that in the

chemical analysis, it came to light that there was a very minimal quantity of starch found in the toddy collected as sample from the petitioner's shop. The first contention raised by the petitioner is that the substance 'starch', assuming it to have been found in the toddy, is not a noxious substance. He has further contended that since the purpose of adding starch is to increase the quantity or volume of toddy with a view to making pecuniary gain, 1.587 grams of starch per litre of the sample cannot be said, contends the learned counsel, to be any gross adulteration of the substance with a view to increasing the volume of toddy. He has drawn my attention to Ext.P3, the Chemical Analysis report in respect of Sample A, wherein the chemical examiner has observed that all the samples were found to be free from noxious ingredients injurious to health.

4. It is the specific contention of the learned counsel for the petitioner that once it is held that the substance is not noxious and that it could have been added allegedly for the purpose of increasing the volume of the toddy, it is imperative

that the authorities ought to have conducted a quantitative test to determine the extent of volume stood increased per litre by the alleged addition of starch.

5. In the alternative, the learned counsel, placing reliance on *Gopidas v. Shibu Mathew*¹, has strenuously contended that the samples were drawn on 22.12.2013 in one instance and later on 24.11.2013, in another instance, i.e., during the subsistence of licence for the abkari year 2013–2014. According to him, during that year, the licence was not interdicted. The present impugned proceedings were issued cancelling the licence of the subsequent year i.e., 2014–2015.

6. In sum and substance, the contention of the learned counsel is that under whatever circumstances and for whatever violation of any licence conditions, if the licence is to be either suspended or cancelled altogether, it shall be confined to the licensing year, when the transgression was found. In other words, in any subsequent year, for an alleged infraction of the

1 2004(1) KLT 570

licence conditions in the previous year, no cancellation can be inflicted.

7. The learned counsel has also submitted that since samples were taken on two occasions, though the result of sample B was made available in the first instance, concerning the second one, still the result is awaited. Under these circumstances, the first respondent, contends the learned counsel, ought not to have taken any precipitous steps affecting the petitioner's substantial right to business. Accordingly, he has urged this Court to set aside Exts. P4 and P5.

8. The learned Government Pleader has strenuously opposed the claims and contentions of the petitioner. She has submitted that a crime was registered under Section 57(a) of the Abkari Act. As such, the petitioner has earned disqualification under Section 26(b) of the Act r/w Rules 519 and 9(2) of the Kerala Abkari Shops Disposal Rules, 2002.

9. In elaboration of her submissions, the learned Government Pleader has submitted that in terms of Section 26

(b) of the Act, in the event of any breach of conditions of licence, it shall visit upon the perpetrator of the crime with penal consequences, apart from the cancellation of the very licence. She has also drawn my attention to Rule 519, as well as Rule 9 (2) of the Rules, to justify the action of the first respondent in issuing Exts.P4 and P5 proceedings.

10. The learned Government Pleader has further submitted that the decision relied on by the learned counsel for the petitioner, namely Gopidas (*supra*), is clearly distinguishable on facts. Eventually, she has urged this Court to dismiss the writ petition at the threshold.

11. The factual matrix is not in dispute. Firstly, there is no gainsaying the fact that the crime has been registered against the petitioner under Section 57(a) of the Act. It appears that now charge sheet has been filed, and the matter is ripe for trial. It is further not in dispute that, though the samples were collected on two different days, insofar as the sample collected in the former instance, even B sample tested positive.

12. In this context, the issues to be addressed are whether the licence of the subsequent year could be cancelled for any infraction of licence conditions committed in the previous year, especially in the light of the ratio laid down by this Court in *Gopidas* (supra). The second issue to be addressed is whether the licence can be cancelled without awaiting the result of the trial, even when it is found that what was allegedly mixed in the toddy is not a noxious substance.

13. Taking the first issue for discussion, I may observe that the samples were drawn on 24.11.2013 and 22.12.2013. They were subjected to chemical analysis by way of two samples – A & B. In one instance, both tested positive and in another sample A already tested positive, while the report of chemical analysis concerning sample B is awaited. Inevitably, the process of sampling and chemical analysis takes considerable time. One may assume, without much attention to temporal accuracy, that the whole process may take 4 to 6 months. If a person is to commit any offence or breach of a condition in the last quarter

or in the last six months of a licensing year, if the contention of the learned counsel for the petitioner is to be accepted that for the violation of the licence conditions in a particular year, the licence of that year alone can be cancelled, every time the perpetrator can get away, because by the time the results are available based on the chemical analysis, considerable time must pass and the licensee can obtain the renewal of licence for the next year. Such interpretation of the provision would render the statutory provisions either nugatory or totally unworkable.

14. Insofar the ratio laid down in *Gopidas* (supra) is concerned, it is trite to observe that the ratio of judgment is to be reckoned based on the factual matrix under which it has been obtained. In *Gopidas*, the issue was concerning the transfer of licence, which cannot be said to be any offence, though violation of a condition, still. Subsequently, without reference to that violation, the licence was renewed at a later point of time. When that licence was sought to be cancelled, this Court, under those circumstances has held that for a

violation--which in my opinion, a technical one--without involving any penal aspects such as adulteration, the authorities have not been invested with any power to interdict a licence in the subsequent period, when no breach has been committed. In my considered view, the ratio laid down in Gopidas cannot be made applicable to the present factual matrix. This Court, on the other hand, in judgment dated 20.12.2014 in Crl.M.C. No. 4360/2014 has observed thus:

Adding anything to the basic ingredients or the natural composition of toddy, or adding anything alien, which is not permitted under the Act, or the Rules framed under the Act, with the object of changing the natural composition or basic ingredients of toddy, will amount to an act of adulteration. Much thought is not required to find that adding starch to toddy, with the dishonest object of increasing the quantity, and thereby making unlawful profits dishonestly, will amount to adulteration meant under the law and it will definitely amount to violation of Rule 9(2) of the Rules.

15. It is further seen that there have been sufficient provisions in the Act and also in the Rules to ensure that mere registration of a crime does not result in deprivation of licence. The legislature had ensured that only upon charging of an

accused i.e., after the filing of the charge sheet or in other words, after taking cognizance, any disqualification has to be reckoned. Once person is to take advantage of that provision, he cannot be heard saying that the licence could have been cancelled or interdicted immediately the breach was found to have been committed. In my view, it is a contradiction in terms.

16. Viewed from another angle, once an offence has been committed, even based on prima facie evidence, if a statute provides for consequences, penal or otherwise, they can be inflicted only when the issue gets determined. In the present instance, the action was taken based on the results of the sample B. On that count, I do not find any illegality having been committed by the first respondent in issuing Exts.P4 and P5 proceedings.

17. It is the singular contention of the learned counsel for the petitioner that a very minimal quantity of starch allegedly was found mixed in the toddy. According to him, mixing of starch has a commercial element, inasmuch as it is used, if at

all, only for the purpose of increasing the volume of the liquid. In the absence of any quantitative test, the authorities could not have inflicted a major blow of cancellation of licence through Ext.P5 on the petitioner. Once Rule 9(2) is examined, it is very clear that the prohibition concerning the addition or mixing of any foreign substance has been couched in mandatory terms. it is profitable to extract the said provision to the extent relevant, and it is as follows:

(2) No toddy other than that drawn from Coconut, Palmyra, or Choondapana palms and on which tree-tax due under the Act has been paid shall be sold by the licensee, all toddy kept or offered for sale shall be natural and conforming to such specifications and complying to such restrictions and may be notified by Government under clause (n) of rule 2. Nothing shall be added to it to increase its intoxicating quality or strength or to alter its natural composition or for any other purposes.

18. A perusal of the above provision makes it clear that no degrees of variation have been provided for under the Rule. Even otherwise, until and unless the statute provides any measure in terms of the quantity that is permissible, this Court cannot read something into the provision to say that once it is minimal, it can be condoned. Such interpretation amounts to a

legislation by way of interpretation, which is not appreciated by the Court.

19. Since the termination of licence is an interim measure, subject to the result of the criminal proceedings initiated against the petitioner, especially in the face of the statutory sanction in that regard, I do not find any illegality in Exts.P4 and P9 orders passed by the first respondent.

Accordingly, this writ petition stands dismissed.

sd/- DAMA SESHADRI NAIDU, JUDGE.

