

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 7219 of 2011 (B)

PETITIONER:

**M/S.ARAMANA BAR & RESTAURANT,
THRISSUR, REPRESENTED BY ITS MANAGING PARTNER,
SMT. OMANA ASOKAN, AGED 59 YEARS, W/O.V.K.ASOKAN.**

**BY SRI.C.C.THOMAS (SENIOR ADVOCATE)
ADVS. SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW
SRI.SAJI SANKARAN NAIR**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES (A) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE DEPUTY COMMISSIONER OF EXCISE,
THRISSUR - 680 001.**
- 4. SMT. S.MURUGAR SELVI,
W/O.LATE E.SATHEESHKUMAR, 144-145, DPF STREET,
PAPPANAICKENPALAYAM, COIMBATORE-37 TAMILNADU.**
- 5. T.K.SAJEEVAN, THASHNATH HOUSE,
KANNAMPULLIPPURAM PO, CHANDRAPPANNI,
THRISSUR DISTRICT - 680 001.**

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***ADDL. R6 IMPEADED**

6. RUKMANI, W/O.LATE EASWARA MOORTHY, 95 B,
SREENIVASAPURAM, COVAI MAIN ROAD, AVINASI,
COIMBATORE - 691 654.

ADDL. R6 IS IMPEADED AS PER ORDER
DATED 10.9.2012 IN IA.12115/2012.

R1 TO R3 BY SENIOR GOVT. PLEADER SMT.LILLY LESLIE

R4 BY ADV. SRI.P.K.ANIL

R5 BY ADVS. SRI.G.SREEKUMAR (CHELUR)

SRI.K.RAVI (PARIYARATH)

ADDL.R6 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. PHOTOCOPY OF THE ORDER NO.XC6-472/05 DATED 28.5.2005 PASSED BY THE EXCISE COMMISSIONER.
- EXHIBIT P2. PHOTOCOPY OF THE ORDER NO.XC6-17655/05 DATED 17.6.2005 PASSED BY THE EXCISE COMMISSIONER.
- EXHIBIT P3. PHOTO COPY OF THE PARTNERSHIP DEED DATED 22.6.2005 EXECUTED BETWEEN THE PARTNERS OF THE PETITIONER FIRM.
- EXHIBIT P4. PHOTOCOPY OF THE ORDER NO.R2-1690/2009 DATED 20.3.2010 PASSED BY THE 3RD RESPONDENT.
- EXHIBIT P5. PHOTOCOPY OF THE INTERIM ORDER DATED 30.3.2010 IN WPC 9742/2010 PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P6. PHOTOCOPY OF THE JUDGMENT DATED 29.3.2007 IN WPC 8577/2007 PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P7. PHOTOCOPY OF THE JUDGMENT DATED 8.9.2009 IN WA 1067/2007 PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P8. PHOTOCOPY OF THE ORDER DATED 2.11.2009 IN RP 1031/2009 IN WA 1067/2007 PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P9. PHOTOCOPY OF THE ORDER DATED 2.4.2009 IN CRMC 753/2009 PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P10. PHOTOCOPY OF THE ORDER NO.XC6-472/05 DATED 26.2.2011 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT P11. PHOTCOPY OF THE REVISION PETITION DATED 3.3.2011 FILED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P12. PHOTOCOPY OF THE ORDER G.O (RT) NO.436/2012/TD DATED 18.6.2012 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT P13. PHOTOCOPY OF THE PARTNERSHIP DEED DATED 19.2.1998 OF M/S.ARAMANA BAR & RESTAURANT.
- EXHIBIT P14. PHOTOCOPY OF THE AMENDED PLAINT IN OS.NO.282/2008 FILED BEFORE THE 1 ADDL. DISTRICT JUDGE, COIMBATORE FILED BY SMT.MURUGAR SELVI.
- EXHIBIT P15. PHOTOCOPY OF THE LETTER DATED 26.4.2005 SENT BY SMT.MURUGAR SELVI TO THE EXCISE COMMISSIONER.
- EXHIBIT P16. PHOTOCOPY OF THE DECLARATION DATED 30.9.2004 OF SMT.MURUGAR SELVI & SMT.RUKMINI.
- EXHIBIT P17. PHOTOCOPY OF THE JUDGMENT DATED 23.5.2011 IN WA.545/2001 PASSED BY THIS HON'BLE COURT.

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**EXHIBIT P18. PHOTOCOPY OF THE STATEMENT FILED BY THE 3RD RESPONDENT IN
WP(C)NO.9742/2010 BEFORE THIS HON'BLE COURT, DATED 27.4.2011.**

RESPONDENT(S)' EXHIBITS:

- EXT.R1(A) : TRUE COPY OF THE INTERIM ORDER IN WP(C)NO.7219/2011
DATED 8.3.2011.**
- EXT. R4(A) : TRUE COPY OF THE DECLARATION FORM DATED 30.9.2004
PRODUCED BY THE THEN PARTNERS OF THE FIRM BEFORE THE
THEN COMMISSIONER OF EXCISE.**
- EXT. R4(B) : TRUE COPY OF THE STATEMENT OF THE PETITIONER WHICH THE
THEN CIRCLE INSPECTOR OF EXCISE CLAIMED TO HAVE RECORDED
ON 20.3.2005.**
- EXT. R4(C) : TRUE COPY OF THE FIRST INFORMATION REPORT ALONG WITH FI
STATEMENT.**
- EXT. R4(D) : TRUE COPY OF THE WRIT PETITION IN WP(C).8577/2007 OF THIS
HON'BLE COURT.**
- EXT. R4(E) : TRUE COPY OF THE APPEAL MEMORANDUM OF WRIT APPEAL
NO.1067/2007.**
- EXT. R4(F) : TRUE COPY OF JUDGMENT OF WP(C)8294/10 OF THIS HON'BLE
COURT.**

//TRUE COPY//

P.S. TO JUDGE

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ANU SIVARAMAN, J.

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W.P.(C).No.7219 of 2011

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Dated this the 8th day of September, 2015

JUDGMENT

This writ petition is filed challenging Ext.P10 order of the Commissioner of Excise revoking an earlier order granting sanction for the reconstitution of partnership. The petitioner is a firm which was holding an FL3 licence being conducted in a hotel owned by it. By Ext.P1 dated 28.05.2005 the firm's request for sanction for reconstitution on account of the death of Sri.E.Satheesh Kumar, a partner, on 25.06.2004 was allowed by the 2nd respondent. The deceased partner was the husband of the 4th respondent herein and the son of the 6th respondent. The 5th respondent herein was the erstwhile partner of the firm along with Sri.Satheesh Kumar.

2. It is submitted that by Ext.P2 order dated 17.06.2005 sanction was accorded for a further reconstitution of the firm by which the 5th respondent retired from the firm and three other partners were inducted. The 2nd respondent had, by Ext.P2 order, also accorded sanction to transfer the FL3 licence from the name of the 5th respondent to the name of Smt.Omana

Asokan, a newly inducted partner. Thereafter, it is submitted that the firm was conducting the business on the strength of the licence issued to it. The 4th respondent had initiated litigation stating that she had not signed the declaration which was produced before the 2nd respondent by the 5th respondent for procuring Ext.P1 order. Though the writ petitions preferred by the 4th respondent were closed directing her to take up the matter in appropriate civil proceedings, she was successful in getting the Enquiry Commissioner and Special Judge to issue directions for registration of crimes against suspected officers and private parties and for conduct of investigation into the matter. Thereafter, by Ext.P10 order which is alleged to have been issued without notice to the parties, the 2nd respondent, relying solely on the registration of a vigilance case on the complaint raised by the 4th respondent as also on a direction issued by the Government for revocation of sanction for reconstitution of the partnership, revoked Ext.P1 sanction and directed the reconstitution of the partnership by including the 4th respondent and her minor son into the partnership if they are otherwise eligible as per rules. On the ground that Ext.P10 was

an order issued without notice and on the directions issued by the Government, the firm had preferred Ext.P11 revision before the 1st respondent. By Ext.P12 order, the revision was also dismissed stating that the order of the Commissioner was issued on the basis of directions issued by the Government. It is also stated that the vigilance case registered as V.C.No.20 of 2009 is still pending. In the said circumstances, the order of revocation of sanction was declined to be interfered with. Aggrieved by Exts.P10 and P12, this writ petition is filed.

3. Heard Sri.M.G.Karthikeyan, learned counsel for the petitioner, Sri.P.K.Anil, learned counsel for the 4th respondent, Sri.G.Sreekumar (Chelur), learned counsel for the 5th respondent, Sri.M.Gopikrishnan Nambiar, learned counsel for the Additional 6th respondent and Smt.Lilly Leslie, learned Government Pleader appearing for respondents 1 to 3. Learned counsel appearing for the petitioner has a specific case that at the time of the death of the predecessor-in-interest of the 4th respondent, no sanction of the 2nd respondent was required for the reconstitution of the firm. Even otherwise, it is contended that going by Ext.P13 partnership deed which was in effect at the time of the death of

Sri.Satheesh Kumar, clause 17 thereof specifically provided that the surviving partners would be entitled to continue the business of the firm. The relevant clauses are extracted hereunder:-

"17 : The retirement or death of a partner shall not dissolve the firm but the firm shall be carried on by remaining or surviving partners as they think fit.

18. In the event of retirement of a partner or death of a partner the share of profit or loss of such a partner upto the date of any such event, shall be determined on the basis of time at the end of the financial year of the firm i.e. in proportion to the number of days he was a partner in that year to the total number of days in the year."

4. It is also submitted that in the plaint preferred by the 4th respondent before the I Additional District Court, Coimbatore as O.S.No.282 of 2008, she specifically seeks only a settlement of accounts on the death of her husband and a 45% share in the profits of the firm as on the date of his death. The learned counsel also relies on the provisions of Section 26 of the Abkari Act as well as Rule 19 of Foreign Liquor Rules to contend that the power to recall licenses or to revoke sanction for reconstitution once granted is a statutory power to be exercised independently by the 2nd respondent and it cannot be exercised by the statutory authority on the dictates of the Government

which has, in the Scheme of the Abkari Act, no role to play in the grant or revocation of license. It is also submitted that Ext.P10 was issued without notice or hearing to the firm or any of its partners and is bad in law.

5. Learned counsel also contends that the firm had been further reconstituted and sanction accorded by Ext.P2 and the re-induction of the erstwhile partners after the second reconstitution was an impossibility. The 5th respondent having resigned from partnership by Ext.P3 and having no surviving interest in the partnership. The reconstitution as now ordered is completely unworkable, it is contended.

6. The 5th respondent as well as the additional 6th respondent have filed counter affidavits essentially supporting the contentions raised by the petitioner. The counter affidavit filed by the first respondent Government also reiterates the facts pleaded by the petitioner. It is further contended in the counter affidavit of the 1st respondent that the impugned order was issued by the second respondent on the basis of the directions issued by the Government. It is the contention of the Government that in course of vigilance enquiry, the documents

submitted by the 5th respondent for re-constitution of the partnership deed were taken for forensic examination and it was revealed that the signatures are forged.

7. The sanction for reconstitution of the firm by Ext.P1 now stands revoked by Ext.P10 on the ground that it was procured on production of a forged declaration of the 4th respondent. Even if that be the case, the 5th respondent is no longer a partner and the firm cannot be directed to be reconstituted by inducting the 4th respondent at this distance of time. By Ext.P2, further reconstitution was sanctioned on 17.6.2005. Even today, Ext.P2 sanction stands unaffected. The deceased partner Satheeshkumar had passed away on 25.6.2004. Application for sanction for reconstitution of the partnership was made by the 5th respondent on 16.3.2005. It is the case of the petitioner that even as on that day there was no provision in the rules requiring prior sanction of the second respondent for the reconstitution of the partnership.

8. In the above view of the matter, the direction in Ext.P10 cancelling Ext.P1 reconstitution and inducting the 4th respondent and her son to the newly constituted partnership,

that too without hearing the firm or any of its existing partners, cannot be countenanced. Further, it is clear from a reading of Exts.P10 and P12 that the orders are issued, not on the satisfaction of the statutory authority but on the basis of the dictates Government which is revisional authority.

In the above circumstances, I have no hesitation to hold that Ext.P10 order directing revocation of Ext.P1 and reconstitution of partnership is vitiated and cannot be sustained. The order in revision passed by the Government is also unsustainable. Exts. P10 and P12 orders are therefore, set aside. Parties are free to agitate any disputes surviving between them before the appropriate authorities or civil courts. No costs.

Sd/-
Anu Sivaraman, Judge

sj/al/-