

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 7747 of 2013 (P)

PETITIONER:

A.PRAJITH, AGED 27, S/O.PRABHAKARAN,
AYADATH HOUSE, KAYANNA AMSOM DESOM,
KOYILANDI TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS:

1. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM-695 001.
2. THE DEPUTY COMMISSIONER OF EXCISE,
KOZHIKODE-673 001.
3. THE CIRCLE INSPECTOR OF EXCISE,
KOZHIKODE-673 001.
4. THE EXCISE INSPECTOR, EXCISE RANGE,
CHELANNUR, KOZHIKODE DISTRICT-673 001.
5. STATE OF KERALA REPRESENTED BY SECRETARY,
TAXES (A) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 7747 of 2013 (P)

PETITIONER'S EXHIBITS:

EXT.P1: PHOTOCOPY OF THE ORDER NO.XA1-5323/2013 DATED 8/3/2013 PASSED BY THE 1ST RESPONDENT.

EXT.P2: PHOTOCOPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 22/12/2012 ISSUED BY THE ASST. CHEMICAL EXAMINER TO GOVT. OF KERALA, KOZHIKODE

EXT.P3: PHOTOCOPY OF TH CRIME AND OCCURRENCE REPORT IN C.R.NO. 16/2013 OF CHELANNUR EXCISE RANGE.

EXT.P4: PHOTOCOPY OF THE REPLY DATED 16/3/2013 SENT BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P5: PHOTOCOPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 11/3/2013 ISSUED BY THE ASST. CHEMICAL EXAMINER TO GOVT. OF KERALA, KAKKANAD, ERNAKULAM.

EXT.P6: PHOTOCOPY OF THE ORDER NO.XA7-32658/110 DATED 20/5/2011 PASSED BY THE 1ST RESPONDENT.

EXT.P7: PHOTOCOPY OF THE ORDER NO.XA6-13768/2012 DATED 21/8/2012 PASSED BY THE EXCISE COMMISSIONER

EXT.P8: PHOTOCOPY OF THE ORDER DATED 13/1/2012 IN WPC NO.1070/2012 PASSED BY THIS HON'BLE COURT.

EXT.P9: PHOTOCOPY OF THE ORDER DATED 25/1/2012 IN WPC NO.2171/2012 PASSED BY THIS HON'BLE COURT.

EXT.P10: PHOTOCOPY OF THE ORDER DATED 24/7/2012 IN WPC NO. 17233/2012 PASSED BY THIS HON'BLE COURT.

EXT.P11: PHOTOCOPY OF THE ORDER DATED 6/11/2012 IN WPC NO. 26080/2012 PASSED BY THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.7747 of 2013 P

Dated this the 4th day of November, 2015

JUDGMENT

The petitioner is the licensee of all the toddy shops included in Group No.IV of Chelannur Excise Range. The privilege was granted to the petitioner on the basis of his preferential right.

2. As can be seen from the record, the sample taken on 14.06.2012 from different toddy shops run by the petitioner were found to contain excess strength of Ethyl alcohol. It is evident from Exhibit P2 chemical analysis report. As a consequence, the respondents registered Exhibit P3 crime and occurrence report against the petitioners for the offences under Sections 57(a) and 56(b) of the Abkari Act.

3. In the course of time, at the option of the petitioner, the samples were subjected to second analysis.

Nevertheless, before the respondents could have the report of the B-samples, they issued Exhibit P1 show cause notice seeking explanation from the petitioners, apart from suspending the licences of the toddy shops.

4. Aggrieved, the petitioner has filed the present writ petition and obtained an interim stay on 20.03.2013. As a matter of further developments, on the strength of Exhibit P3 crime and occurrence report, C.P.No.22/2013 was taken on file by the Judicial Magistrate of the First Class-I, Thamarassery.

5. In the course of time, the petitioner along with another filed CrI.M.C.No.2081/2013 before this Court to quash all further proceedings pursuant to CrimeNo.16/2013 of Chelannur Excise Range. This Court, on merits, allowed the petition.

6. In the light of the discharge earned by the petitioner, the learned counsel for the petitioner seeks this Court to set aside Exhibit P1 notice-cum-suspension order.

7. Exhibit P5 B-sample report reads thus:

“Report : - Ethyl alcohol was detected in the sample of toddy. The sample of liquid contained 6.14 percent by volume of ethyl alcohol. The sample was found to be free from noxious ingredients injurious to health”

8. It is not in dispute that the threshold level is 8.1% by volume.

9. The learned Government Pleader, on his part, has submitted that in the light of Exhibit P1 and now the order of discharge dated 23.05.2012, this Court may take an appropriate decision concerning the validity of Exhibit P1.

10. In the facts and circumstances, going by Exhibit P1 and the subsequent discharge earned by the petitioner as has been indicated above, Exhibit P1 notice cannot be sustained, and it is accordingly set aside.

With the above observation, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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