

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 15339 of 2006 (A)

PETITIONER:

S.V.SURESH KUMAR, VALAYAMKANDATHIL,
KUMARAKOM, KOTTAYAM DISTRICT.

BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF TAXES,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.
3. THE ASSISTANT EXCISE COMMISSIONER,
KOTTAYAM.
4. THE DISTRICT WELFARE FUND INSPECTOR,
TODDY WORKERS WELFARE FUND BOARD, KOTTAYAM.

R,R1 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER
R,R4 BY ADV. SRI.K.D.BABU,SC
R BY SRI.A.K.JOHN, SC, KTWWF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT ON 27.06.2005.
- EXT.P2 : TRUE PHOTOCOPY OF THE NOTICE BEARING NO.XA-6/21564/2004 DATED 23.11.2005 ISSUED BY THE SECOND RESPONDENT.
- EXT.P3 : TRUE PHOTOCOPY OF THE EXPLANATION DATED 08.12.2005 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXT.P4 : PHOTOCOPY OF THE NOTICE BEARING NO.XA-6-26364/05 DATED 20.12.2005 ISSUED BY THE SECOND RESPONDENT.
- EXT.P5 : TRUE PHOTOCOPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT ON 01.01.2006.
- EXT.P6 : TRUE PHOTOCOPY OF THE JUDGMENT DATED 20.02.2006 IN W.P.(C) NO. 1546/2006 OF THIS HON'BLE COURT.
- EXT.P7 : TRUE PHOTOCOPY OF THE ORDER GO(RT) NO.338/06/TD DATED 30.05.2006.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

'CR'

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 15339 of 2006

Dated this the 3rd day of December, 2015.

JUDGMENT

The issue in this writ petition is with regard to the refund of amounts deposited by a prospective licensee before he could obtain the licence and commence the business.

2. The petitioner was granted the privilege to vend toddy for the abkari year 2005–2006 in a shop within the Changanacherry Excise Range. In compliance with the statutory provisions, before the confirmation and actual issuance of licence, the petitioner paid the following amounts:

1. ₹56,880/- : annual rental
2. ₹1,07,400/- : wages of workers payable for one month
In advance
3. ₹67,200/- : toddy workers' welfare fund
(3 months' advance)

3. Obtaining the consent of the landlord being a pre-requisite,

the petitioner who intended to establish his business in a rented premises could not secure the consent of the landlord. As a result, the petitioner on 27.06.2005 submitted Ext.P1 representation before the Assistant Excise Commissioner, the third respondent, requesting the said authority to cancel the privilege granted to him and refund the amounts deposited. The petitioner has also made a similar request to the Toddy Workers' Welfare Fund Inspector, the 4th respondent.

4. The statute mandates that the petitioner should obtain a certificate from the third respondent that the shop was not functioning. And it is essential for the purpose of seeking refund of the welfare fund. In fact, the petitioner did obtain a certificate and produced it before the 4th respondent.

5. Evidently, in the light of the petitioner's Ext.P1 representation, the Excise Commissioner issued Ext.P2 notice requiring the petitioner to show cause why the privilege granted earlier to him should not be cancelled. Having received the petitioner's Ext.P3 reply, the second respondent eventually passed Ext.P4 order not only cancelling the privilege, but also forfeiting all the amounts. Aggrieved, the

petitioner filed Ext.P5 revision. Seeking its expeditious disposal, the petitioner also filed W.P.(C) No. 1546 of 2006, which resulted in Ext.P6 judgment. In compliance with Ext.P6 judgment rendered by this Court, the first respondent, the revisional authority, dismissed the revision through Ext.P7 order. Aggrieved, the petitioner has filed the present writ petition.

6. Sri. N. Raghuraj, the learned counsel for the petitioner, has strenuously contended that both Exts.P4 and P7 orders are illegal and unsustainable. In elaboration of his submissions, the learned counsel has submitted that the order by the primary authority and also by the revisional authority uniformly suffer from the vice of perversity and also lack of proper reasoning.

7. The learned counsel would contend that in terms of Rule 5 (10)(16) and (19) of the Kerala Abkari Shops Disposal Rules, 2002 ('the Rules' for brevity), the Government is entitled to forfeit only the amount that is legitimately due to the Government, but not any amount it has incidentally come to hold in terms of the statutory mandate.

8. The learned counsel has also drawn my attention to Rule 7

(15) of the Rules and has submitted that in the event the Government goes for re-auction of the privilege and in that process it sustains any loss, it can recover the same from the previous licensee who failed to commence the business or abandoned the business halfway. In other words, after quantifying the loss the Government notionally sustained owing to the failure of the licensee to carry on the business, the Government could exercise its right of set off vis-a-vis the funds the licensee had earlier deposited.

9. The learned Government Pleader, on the other hand, has submitted that Rule 5(10)(16) & (19) of the Rules have conferred ample powers on the Government to forfeit all the amounts that have been deposited by the petitioner at the time he secured the privilege to vend toddy. The learned Government Pleader has also laid specific emphasis on Rule 7(15) of the Rules to hammer home his point that the said provision is sweeping in its scope and the petitioner cannot be heard saying that the Government could forfeit the amounts only under certain heads, but not all heads of deposit.

10. The 4th respondent has filed a statement affirming the stand of the petitioner—at least concerning the refund of the advance

contribution towards the toddy workers' welfare fund. In fact, the learned counsel for the petitioner has submitted that pending the writ petition, the said authority has released the said amount.

11. Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

12. Indeed, the facts are not in dispute. The petitioner initially secured the privilege to vend toddy for the abkari year 2005–2006, but could not proceed further as he had failed to secure the consent of the landlord. At his behest, the authorities have cancelled the privilege. In other words, the very privilege granted to the petitioner has become still born.

13. Indisputably, at the time of securing the privilege, the petitioner was made to deposit certain amounts under three heads: (1) annual rentals, (2) wages and other benefits to the workers payable for one month in advance, and (3) three months' advance contribution to the toddy workers' welfare fund. Since the amount under the third head has already been returned, any discussion on the said issue is obviated. To the credit of the learned counsel for the petitioner, he has readily agreed that the first head—annual rental—

paid by the petitioner has rightly been forfeited by the Government in terms of Rule 5(16) of the Rules. As such, the discussion on issue No. (2) has also been obviated.

14. Now, the singular issue that is to be adjudicated upon is whether the petitioner is entitled to refund of wages and other benefits to the workers payable for one month in advance. If we examine the statutory scheme, Rule 5(10) mandates to the following effect:

“As soon as the privilege of any group range is provisionally declared under sub-rule 9 the officer conducting the sale shall immediately enter in the 'Sale List', the name of the group range sold, the name of the applicant declared by him as the grantee of privilege of that group range, the annual rental fixed as licence fee for that group range and any such details as he may think necessary. The Sale List shall be signed and dated at the place of sale, by the officer conducting the sale and by the applicant declared by him to be the grantee of privilege. The Bank Guarantee furnished towards wages and other benefits to the workers shall be retained by the Deputy Commissioner of Excise and be renewed from time to time until wages and other benefits due to the workers are paid by the grantee. Bank draft accepted in lieu of Bank Guarantee shall be deposited in Treasury Savings Account pledged in the name of the Deputy Commissioner of Excise concerned. The Bank Guarantee or the amount in the account pledged in favour of the Deputy Commissioner of Excise shall not be released to the grantee until he proves to the satisfaction of the Deputy Commissioner of Excise that the wages and other benefits to the workers have been paid in full.”

15. It is explicit from Rule 5(10) that the Government is entitled to retain the bank guarantee furnished by the licensee towards wages

and other benefits to the workers until the wages and other benefits due to the workers are paid by the grantee. Rule 5(16) concerns the annual rental, which has been justifiably forfeited by the Government.

Rule 5(19) reads as follows:

“[T]he Commissioner of Excise may cancel any licence issued under these Rules at any time on valid grounds. Any resale or disposal otherwise, ordered shall always be at the risk and loss of the original purchaser who shall not have any claim to any gain received by Government accruing from such disposal. Further, the original purchaser shall have no claim for refund of any amount he had paid to Government or any amount that had been forfeited from him.”

16. Indeed, there is no cavil as regards the proposition that the licensee shall have no claim for refund of any amount he had paid to the Government. Now, the moot question is whether the amount paid under the second head—wages and other benefits to the workers payable for one month in advance—has been 'paid' to the Government. In other words, whether the amount can be appropriated by the Government in its own name.

17. As has already been adverted to above, Rule 5(10) specifies that any amount paid by the licensee by way of bank guarantee or otherwise can be retained by the Government to ensure that the licensee does not commit any default in paying the wages and other

benefits to the workers being engaged by the said licensee. In a sense, it is retention, rather than appropriation the statute authorises.

18. A compendious view of Rule 5 leaves no manner of doubt, in my view, that the Government insofar as ensuring the benefits due to the workers place a role akin to *parens patriae*. I further opine that both sub-Rules 10 and 19 of Rule 5 are to the effect that the amount required to be retained or forfeited by the Government should be the amount which it is entitled to it in its own name. A case in point being the rentals it is to receive from the licensee. Once the Government has been deprived of the rentals owing to the default committed by the licensee, it has got every legitimacy to forfeit any amount deposited towards rentals.

19. As far as the other two heads are concerned, without much cavil, I may observe that the Government is, at best, a trustee which only holds the funds until a particular contingency. Once the said contingency fails to arise, as is the case in the present instance, the Government cannot but refund the said amounts as they do not belong to it.

20. In the facts and circumstances, I am of the considered

opinion that the Government is liable to refund to the petitioner forthwith the said amount of ₹1,07,400/- desptied by him towards wages and other benefits to the workers payable for one month in advance. To the said extent, Exts.P4 and P7 are set aside. Since It is reported that the amount was initially deposited in the Treasury Savings Account, the petitioner is entitled to interest that has accrued in the said account.

This writ petition is disposed of as above. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

