

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 5848 of 2015 (E)

PETITIONER:

M/S. HOTEL LAKE PALACE,
REPRESENTED BY ITS MANAGING PARTNER, D.RAJEEV,
ANCHALUMMOODU, KOLLAM.

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

RESPONDENTS:

1. DISTRICT COLLECTOR & DISTRICT MAGISTRATE
KOLLAM-691 001.
2. CITY POLICE COMMISSIONER, KOLLAM-691 001.
3. DEPUTY COMMISSIONER OF EXCISE
KOLLAM-691 001.

R BY SRI. JUSTIN JACOB, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 5848 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE FL 3 LICENSE ISUED TO THE PETITIONER AND RENEWED UP TO 3.3.2015.

EXHIBIT P2: A TRUE COPY OF THE ORDER BEARING DATED 20.2.2015 ISSUED BY THE IST RESPONDENT AND SERVED ON THE STAFF OF THE PETITIONER ON 21.2.2015 AT 4.15 PM.

EXHIBIT P3: A TRUE COPY OF THE SAID JUDGMENT DATED 16.2.2005 IN WPC 5187/2005 OF THIS HON'BLE COURT.

EXHIBIT P4: A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 6.3.2009 IN WPC 5748/2009.

EXHIBIT P5: A TRUE COPY OF THE CIRCULAR DATED 29.4.2009 ISSUED BY GOVERNMENT OF KERALA.

EXHIBIT P6: A TRUE COPY OF THE ORDER DATED 17.1.2012 IN W.P.(C) 1328/2012 PASSED BY THIS HON'BLE COURT.

EXHIBIT P7: A TRUE COPY OF THE ORDER DATED 10.1.2014 IN W.P.(C)899/2014 PASSED BY THIS HON'BLE COURT.

EXHIBIT P8: A TRUE COPY OF THE JUDGMENT DATED 23.1.2014 W.P.(C) 899/2014 PASSED BY THIS HON'BLE COURT.

EXHIBIT P9: A TRUE COPY OF THE ORDER DATED 3.3.2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT P10: A TRUE COPY OF THE ORDER DATED 10.3.2014 IN W.P.(C) 6801/2014 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 5848 of 2015 (E)

Dated this the 26th day of February, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record. The issue involved in this case is similar to that in W.P.(C) No. 5925 of 2015 disposed of by this Court on 26.02.2015.

2. The learned counsel for the petitioner has, however, raised an additional plea that Ext.P2 is verbatim with Ext.P9 order passed last year. He has further submitted that Ext.P9 was stayed by this Court through Ext.P10 interim order. He has drawn my attention to the observation of this Court in Ext.P10 interim order that the authorities could not have passed orders verbatim in a mechanical manner.

3. The learned counsel for the petitioner has fairly conceded that it is only an interim order, but has further

contended that what is to be observed is the principle that has weighed with this Court while issuing the interim order, that is, the verbatim nature of orders interdicting the substantial rights of the parties in carrying on their business.

4. In judgment dated 26.02.2015 in W.P.(C) No. 5925 of 2015, this Court, per me, considered all the issues, including the verbatim nature of the orders in question, apart from examining all the judgments that have been rendered by that time on the issue. On appreciation of all the circumstances, this Court has come to a conclusion that the orders in the nature of Ext.P2 cannot be interdicted merely because for the last few years there had been no untoward incidents.

5. The contention with regard to how the judicial directives of the learned Division Bench as found in the judgment dated 16.02.2005 and also the guidelines as contained in Ext.P5 circular are to be complied with stands answered in the judgment referred to above.

6. Further before parting with the issue, it may be necessary to observe that the festivities take place under identical circumstances, annually. The apprehension is concerning the breach of peace or that of law and order because of easy availability of intoxicating drinks in the vicinity. Though the orders may seem verbatim, we cannot expect that even under identical circumstances, the authorities are expected to pass orders as if it were an exercise in creativity, thereby assigning different reasons at different times, which, in my considered view, is neither possible nor desirable. It is not an unknown practice even for the Court to dispose of judicial proceedings under identical circumstances with common orders or a cryptic observation that the ratio of so and so case is applied and the matter disposed, thus obviating the exercise of rendering elaborate reasons for the decision, which in fact is based on cogitation undertaken earlier under similar circumstances, as is the case presently.

7. Though the learned counsel has made herculean efforts to impress upon the Court that going by Ext.P2, it is evident that the City Police Commissioner has made a request to confine the ban at the place where the temple is situated, I am afraid, appealing as the submissions is, it does not carry much conviction. In fact, the statute itself has taken care of the distance norms to the effect that in the vicinity of temple or any place of worship, no sale of intoxicating liquor should take place. In the present instance, the distance from the temple to the petitioner's hotel is said to be about 1.5 kms, which, in my considered view, is a short distance requiring the protective measures to be taken.

8. Under the totality of circumstances, and going by the ratio in the judgment, dt.26.02.2015, in W.P.(C) No. 5925 of 2015, this writ petition stands dismissed. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

