IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No.9133 of 2015 (N)

PETITIONER:

BINITH.M.R,S/O.LATE RADHAKRISHNAN,
AGED 38 YEARS,MANAGING PARTNER,
M/S.HOTEL RAJADHANI,KOTTAYAM.

BY ADV.SRI.N.RATHEESH

RESPONDENT'S:
----

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF EXCISE,
GOVERNMENT COLLECTORATE,
THIRUVANANTHAPURAM-695001.

2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM.

3. THE DEPUTY COMMISSIONER OF EXCISE,
KOTTAYAM.

R1 TO R3 BY SENIOR GOVT. PLEADER SMT.C.K.SHERIN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.9133 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1:TRUE COPY OF THE STOCK LIST PREPARED BY THE OFFICIALS OF THE EXCISE DEPARTMENT DATED 31.3.2014.

EXHIBIT-P2:TRUE COPY OF THE REPRESENTATION DATED 20.10.2014 SUBMITTED BY THE PETITIONER TO THE RESPONDENTS.

EXHIBIT-P3:TRUE COPY OF THE LETTER DATED 14.11.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 9133 of 2015

Dated this the 09th day of April, 2015

JUDGMENT

Briefly stated, when the petitioner's Bar – Hotel was compelled to be closed down owing to the liquor policy adopted by the Government, the officials of the Excise department seized the entire stock of liquor available at the bar on 31.03.2014. Later, on 20.10.2014, the petitioner is said to have submitted Exhibit P2 application requesting, among others, the third respondent to liquidate the stock by distributing it among the Government's outlets and pay the price of stock to the petitioner.

2. The second respondent, however, issued Exhibit P3 reply dated 14.11.2014 to the petitioner directing him to find a suitable licensee who could purchase the petitioner's stock from the custody of the respondent authorities. Thereafter, having waited a couple more months, the

petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that the petitioner could not, despite his best efforts, find any willing retailer to purchase the petitioner's stock. According to him, the respondent authorities could have long back liquidated the stock by distributing it among its own outlets and pay the sale profits to him. The learned counsel has eventually urged this Court to issue a direction to the respondent authorities to take the stock and pay the price thereof to the petitioner, which according to him comes to about Rs.10,50,000/- (Rupees ten lakh and fifty thousand only).

4. The learned Government Pleader, on her part, has brought to my notice Rule 33 of the Foreign Liquor Rules and has contended that there is a strict time frame prescribed under the said Rule for liquidation of stock. In expatiation of her submissions, the learned Government Pleader would contend that any licensee whose license stood cancelled, should, within 30 days from the date of expiry of the period of the license, sell the full stock of foreign liquor in its possession to any vendor who holds a license to sell such

liquor. According to her, the maximum period that could be extended over and above the initial period of 30 days is 30 more days. The learned Government Pleader has also placed reliance on a circular dated 16.09.2014, issued by the second respondent, prescribing the guidelines concerning the liquidation of the stock. Summing up her submissions, the learned Government Pleader has submitted that the respondent authorities could not be found fault with for the inaction on the part of the petitioner in making an application in terms of Rule 33 at the earliest point of time.

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

6. Indeed, the issue lies in a very narrow compass. Rule 33 of the Foreign Liquor Rules provides a strict time frame with regard to the liquidation of stock. Since the contention of the petitioner revolves around Rule 33 of the Rules, it is apposite to extract the same, which is as follows:

> "33. When the period of a licence granted under these rules expires and such licence is not renewed for the next following financial year or when a licence is cancelled and a notice of such

cancellation is given to the licensee, such person shall within thirty days from the date of expiry of the period of the licence or from the receipt of such notice, as the case may be, sell the full stock of foreign liquor in his possession to any vendor who holds a licence to sell such liquor. Should the owner of the foreign liquor fails to do so within the prescribed period, the Excise Inspector of the Range within which the shop of such owner of the foreign liquor is situate, shall take into his custody such foreign liquor and keep the same in his office. The owner of such foreign liquor shall be allowed a further period of thirty days for selling the same in one transaction to another licenced vendor of foreign liquor. If before the expiry of the further period the owner fails to sell it, the officer in charge of the Division shall sell such foreign liquor by public auction and deliver to the owner the proceeds thereof after deducting from the same the expenses connected with the sale."

7. It is not in dispute that the petitioner could not make an application within the statutorily stipulated time, nor has it taken an advantage of the circular referred to by the learned Government Pleader. The fact, however, remains that the learned counsel for the petitioner has stoutly denied having received any copy of the circular in question.

8. On a perusal of Rule 33 it is evident that once the owner of the stock which was seized by the authorities could not make an application on time, it is obligatory on the part of the respondent authorities to sell the stock in the public auction and to pay the sale proceeds to the owner of the stock, after retaining the expenditure incurred on conducting the public auction.

9. The learned counsel for the petitioner has said that the petitioner does not have any objection if the respondent authorities conduct a sale auction in terms of Rule 33, even at this stage, and pay the proceeds to the petitioner.

10. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader for the respondents, this Court directs the third respondent to comply with Rule 33 and conduct a public auction concerning the stock of the petitioner and to take all other steps in tune with Rule 33 of the Foreign Liquor Rules. Needless to observe that the third respondent shall complete the entire exercise as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this

judgment.

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

DAMA SESHADRI NAIDU
JUDGE

DMR/-