

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 12947 of 2013 (P)

PETITIONER:

JAYAN.R., AGED 38 YEARS, S/O.RAMANKUTTY,
KULATHUMKAROTTU HOUSE, AREKKARA P.O.,
MULAKKUZHA, CHENGANNUR, ALAPPUZHA DISTRICT.

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

RESPONDENTS:

1. THE EXCISE INSPECTOR, CHENGANNUR EXCISE RANGE,
ALAPPUZHA DISTRICT.
2. THE DEPUTY EXCISE COMMISSIONER, ALAPPUZHA.
3. THE ADDL.EXCISE COMMISSIONER, EXCISE HEADQUARTERS,
NANDAVANAM, THIRUVANANTHAPURAM - 695 001.
4. THE EXCISE COMMISSIONER, COMMISSIONERATE OF EXCISE,
EXCISE HEADQUARTERS, NANDAVANAM,
THIRUVANANTHAPURAM - 695 001

BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 12947 of 2013 (P)

PETITIONER'S EXHIBITS:

EXT.P-1 PHOTOCOPY OF THE CRIME AND OCCURRENCE REPORT IN CR NO.68/2010 PREPARED BY THE 1ST RESPONDENT

EXT.P-2 PHOTOCOPY OF THE ORDER NO.A6-6570/2010 DATED 5.3.2012 PASSED BY THE 2ND RESPONDENT

EXT.P-3 PHOTOCOPY OF THE APPEAL MEMORANDUM DATED 30.3.2012 FILED BEFORE THE 3RD RESPONDENT

EXT.P-4 PHOTOCOPY OF THE ORDER NO.14/APL/12 DATED 11.10.2012 PASSED BY THE 3RD RESPONDENT

EXT.P-5 PHOTOCOPY OF THE ARGUMENT NOTES SUBMITTED BEFORE THE 4TH RESPONDENT DATED 21.11.2012

EXT.P-6 PHOTOCOPY OF THE ORDER NO.XA4-28618/2012 DATED 15.1.2013 PASSED BY THE 4TH RESPONDENT

EXT.P-7 PHOTOCOPY OF THE JUDGEMENT DATED 13.7.2012 IN WPC NO.4172/2008 PASSED BY THIS HON'BLE COURT.

EXT.P-8 PHOTOCOPY OF THE JUDGEMENT DATED 22.12.2011 IN WA NO.1951/2011 PASSED BY THIS HON'BLE COURT.

EXT.P-9 PHOTOCOPY OF THE JUDGEMENT DATED 23.2.2012 IN WPC NO.16964/2010 PASSED BY THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.12947 of 2013 P

Dated this the 14th day of September, 2015

JUDGMENT

The petitioner, the owner of a Mahindra Jeep bearing Reg.No.KL-30/A 5498, assailed in the present writ petition Exhibit P6 order passed by the fourth respondent purportedly under Section 67F of the Abkari Act. As can be seen, the fourth respondent suo motu reviewed Exhibit P4 order of the third respondent and directed confiscation of the vehicle.

2. The facts in brief are that on 23.12.2010 the Circle Inspector of Excise, Chengannur and party detected an abkari crime by seizing the petitioner's vehicle, which is said to have been illegally transporting toddy. Having arrested the driver on the spot, the Circle Inspector registered Crime No.68/2010 under Section 13 read with

Sections 63, 56(b) and 67B of the Abkari Act. In the course of time, the petitioner's vehicle was produced before the second respondent, who ordered its seizure under Section 67B of the Act.

3. Once the second respondent had passed Exhibit P2 confiscation order, the petitioner assailed it in Exhibit P3 appeal before the third respondent and invited Exhibit P4 order. In fact, having found that the violation is minor, the third respondent, exercising his discretion, ordered release of the vehicle. Nevertheless, the fourth respondent suo motu revised Exhibit P4 order and issued Exhibit P6, thereby confirming Exhibit P2 order. Under these circumstances, the petitioner has approached this Court.

4. The learned counsel for the petitioner has submitted that the licensee who used the petitioner's vehicle, in fact, had a valid permit to transport toddy in respect of another vehicle. The defence offered by the

petitioner, as submitted by the learned counsel, is that on that particular day as the licensee's authorised vehicle was in the workshop, the licensee on a temporary basis took the petitioner's vehicle for transportation of toddy to different shops under his control.

5. According to the learned counsel, the authorities themselves have acknowledged the fact that the authorised vehicle of the licensee was under maintenance, and that under those circumstances the petitioner's vehicle was used. In this regard, the learned counsel has also drawn my attention to the observations of the fourth respondent in Exhibit P6 impugned order.

6. The learned counsel has also submitted that under identical circumstances, this Court in Exhibit P7 judgment has felt that the revisional authority ought not to have exercised its power, much less suo motu, when the transgression is purely technical. Summing up his

submissions, the learned counsel has submitted that guided by the ratio laid down in Exhibit P7 judgment, this Court may as well interdict Exhibit P6 and restore Exhibit P4, so that the petitioner could have his vehicle released permanently.

7. Per contra, the learned Government Pleader has submitted that Exhibit P6 is a well-reasoned order and it cannot be interfered with under Article 226 of the Constitution of India. He has further submitted that though the fourth respondent has exercised the revisional powers suo motu, he has exercised it with a reasonable time and after providing an opportunity to the petitioner. As such, the petitioner cannot have any grievance on account of any procedural irregularity. In the end, the learned Government Pleader would contend that Exhibit P6 order of confiscation called for no interference.

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

9. The facts are not in dispute, as has been rightly contended by the learned counsel for the petitioner. Indeed, Exhibit P6 impugned order itself acknowledges the fact that the person who used the petitioner's vehicle has a valid licence and transport permit for some other vehicle, however. The fact indisputably remains that the vehicle which had been authorised to be used by the licensee, on that eventful day, was under maintenance. Under those circumstances, though technically called a violation, the licensee temporarily used the petitioner's vehicle for transportation of toddy, which is otherwise legal, but for the change of vehicle.

10. A perusal of Exhibit P7 judgment of this Court reveals that it was rendered under identical factual

circumstances. This Court has eventually found that the transgression is purely technical; the discretion exercised by the second respondent, under those circumstances, ought not to have been interfered with by the fourth respondent, especially by invoking his suo motu powers. I am in respectful agreement with the ratio laid down by his Lordship in the said judgment.

11. Thus, guided by the ratio laid down in Exhibit P7 judgment, I am of the considered opinion that Exhibit P6 order cannot be sustained and it is accordingly set aside. As a consequence Exhibit P4 has been restored, which, in fact, means that the petitioner is entitled to have his vehicle released without any further hindrance.

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

Dama Seshadri Naidu, Judge

tkv