

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 14131 of 2013 (N)

PETITIONER:

P.SREEDHARAN,
S/O. KRISHNAN, PELIKUNNATH, VAVANNOOR,
NAGALASSERRI, OTTAPALAM,
PALAKKAD. (LICENSEE OF T.S.NO.31/2012-13 MEZHATHUR).

BY ADV. SRI.M.C.JOHN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY (TAXES-G) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM-695 001.
3. THE DEPUTY COMMISSIONER OF EXCISE,
PALAKKAD-678 001.

Addl.R4 IMPEADED:

- 4.SAJEESH K.V.,
KOLLARA VALAPPIL, MEZHATHUR PO., PALAKKAD,
PIN - 679 534.

(ADDL.R4 IS IMPEADED AS PER ORDER DATED 06.07.2015 IN
IA 9145/15.)

R3 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 14131 of 2013 (N)

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

P1 : COPY OF THE RELEVANT PAGES OF THE LICENCE DTD.1.8.2012 ISSUED BY
THE 3RD RESPONDENT.

P2 : COPY OF THE TODDY TRANSPORT PERMIT DTD.23.9.2012.

P3 : COPY OF THE LETTER NO.P2-1181/12 DTD.22.5.2013 ISSUED BY THE 3RD
RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 14131 of 2013 (N)

Dated this the 14th day of December, 2015.

JUDGMENT

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

2. The petitioner is the licensee of a toddy shop No. 31/2012-13 of Mezathur in Thrithala Excise Range, Palakkad Division, having his licence renewed periodically. Presently, the licence is valid up to 31st March, 2016.

3. The petitioner filed the writ petition questioning Ext.P3 order of the Government directing the shifting of the petitioner's toddy shop. Letter No. 4247/G1/2013/TD dated 26.03.2013 is said to have been issued by the first respondent directing the second respondent to take necessary steps to shift the petitioner's toddy shop from the present location to another location. The second respondent, in turn, issued Ext.P3 direction to the third respondent to implement the the Government's directive and ensure compliance.

4. In the counter affidavit filed by the third respondent, it is

stated that one Sri. Sajeesh K.V filed the complaint and that necessitated the Government's direction referred to above. In that context, this Court directed the petitioner to implead the said Sri. Sajeesh, who has come on record as additional 4th respondent. When notice is sought to be served on the additional 4th respondent through speed post, it was returned with an endorsement 'not known'.

5. Having regard to the submissions made by the learned counsel for the petitioner, it is evident that at no point of time—either at the time of the Government's issuing its directive in letter dated 26.03.2013 or in Ext.P3 consequential order —has the petitioner been put on notice. Ext.P3 in fact reads very cryptically that the Government has directed shifting of the toddy shop because of the objections from the public.

6. It is trite to observe that whatever be the nature of objections either from the additional 4th respondent or from any other person among the public, it is imperative that the respondents ought to have followed the principles of natural justice. In other words, the petitioner ought to have been put on notice prior to the initiation of any steps to shift the toddy shop.

7. The counter affidavit reveals to the effect that when a report was sought by the third respondent from the Circle Inspector of Excise, Ottappalam, he placed on record that the shop had been functioning in the same place since 2001 strictly in accordance with Rule 7(2) of the Kerala Abkari Shops Disposal Rules, 2002.

8. In the facts and circumstances, Ext.P3 as well as the Government Letter No. 247/G1/2013/TD dated 26.03.2013 is set aside. Consequently, it is further directed that the respondent authorities, if still are desirous, should take further steps concerning the proposal to shift the petitioner's toddy shop after affording an opportunity of hearing to the petitioner and all others concerned.

With the above observation, this writ petition stands allowed.

sd/- DAMA SESHADRI NAIDU, JUDGE.

