

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 14666 of 2013 (G)

PETITIONER:

JACOB MATHEW
AGED 56 YEARS, S/O. MATHEW, KAVUNKAL HOUSE
VELLOOR P.O., PAMPADY, KOTTAYAM DISTRICT
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
SRI. SHIBU K., AGED 39 YEARS
S/O. KUNJU PILLAI (LATE), KIZHAKKEDATH HOUSE
VADAKKEDATHUCAVE P.O., ADOOR, PATHANAMTHITTA

BY ADV. SRI.M.G.KARTHIKEYAN

RESPONDENTS:

1. THE EXCISE COMMISSIONER
COMMISSIONERATRE OF EXCISE
THIRUVANANTHAPURAM - 695 001.
2. THE DEPUTY COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM - 686 001.
3. THE CIRCLE INSPECTOR OF EXCISE,
KOTTAYAM - 686 001.
4. STATE OF KERALA
REPRESENTED BY SECRETARY, TAXES (A) DEPARTMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

R1 TO 4 BY GOVERNMENT PLEADER SRI.REJI JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 14666 of 2013 (G)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE POWER OF ATTORNEY EXECUTED ON
18/01/2013.

EXHIBIT-P2-TRUE COPY OF THE APPLICATION DATED 19/01/2013
SUBMITTED BEFORE THE 1ST RESPONDENT.

EXHIBIT-P3-TRUE COPY OF THE STATEMENT TAKEN FROM THE
MANAGER/ATTORNEY OF THE PETITIONER DATED 21/01/2013 BY THE
C.I OF EXCISE, KOTTAYAM.

EXHIBIT-P4-TRUE COPY OF THE STATEMENT TAKEN FROM THE
PETITIONER/LICENCE OF THE PETITIONER DATED 18/01/2013 BY THE
C.I OF EXCISE, KOTTAYAM.

EXHIBIT-P5-TRUE COPY OF THE ORDER NO. XC7-5121/13/L.DIS DATED
04/06/2013 PASSED BY THE 1ST RESPONDENT.

EXHIBIT-P6-TRUE COPY OF THE FL 3 LICENCE NO. KT 52 ISSUED BY
THE EXCISE COMMISSIONER, DATED 20/02/2001.

EXHIBIT-P7- TRUE COPY OF THE ORDER NO. XC7-9998/09/ R.DIS DATED
31/03/2012 PASSED BY THE EXCISE COMMISSIONER.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.14666 of 2013

Dated this the 9th day of November, 2015

JUDGMENT

This Writ Petition is filed by the petitioner seeking to quash Ext.P5 order passed by the 1st respondent dated 4.6.2013 whereby the application submitted by the petitioner to carry on the day to day activities of the FL-3 licence issued to the petitioner through a Power of Attorney Holder was rejected.

2. Brief facts for the disposal of the Writ Petition are as follows:

3. Petitioner was conducting a bar attached hotel with licence No.FL-3-KT-52, originally issued on 12.02.2001, being renewed during subsequent years and was valid upto 31.03.2014. Learned counsel for the petitioner Sri.M.G.Karthikeyan submitted that now the FL-3 licences are replaced with FL-11 licences consequent to the policy decision of the State Government. Originally the licence was issued on the strength of 'approved restaurant' and the licence is regularised by

introducing 4th proviso to Rule 13(3) of the Foreign Liquor Rules (hereinafter referred to as "the Rules" for short) w.e.f. 01.04.2004. Thereafter all the licences functional on 31.03.2007 are regularised by introducing the 6th proviso to Rule 13(3) of the Rules. Any how the said situation prevailing at the time of renewal and the filing of the Writ Petition are no more surviving consequent to the introduction of the new policy in the year 2014/2015 whereby all FL-3 licence holders were conferred with FL-11 licence.

4. The thrust of the contentions advanced by the petitioner is that, the rejection of Ext.P5 is bad since the petitioner has sought only for appointment of a Power of Attorney Holder to carry on the business of the petitioner, especially due to the fact that petitioner is carrying on business in United States of America also and his presence for the requirements of the Excise Authorities may not be available throughout the period. It is further contended that, the 1st respondent has declined the approval sought for the appointment of a Power of Attorney Holder on the ground that the licence cannot be changed without approval as provided under the Foreign Liquor Rules and therefore, the petitioner is not entitled to the request sought for.

It is thus challenging Ext.P5 this Writ Petition is filed.

5. Second respondent has filed a statement dated 18.6.2013 reiterating the stand that was adopted by the 1st respondent while passing Ext.P5 impugned order and contended that the order passed by the 1st respondent is in order and in accordance with the provisions of the Foreign Liquor Rules. It was further contended that petitioner will have to be present for the purpose of renewal and other requirements as stipulated under the Rules and therefore, the petitioner cannot be allowed to be represented in the proceedings by a Power of Attorney Holder.

6. Pursuant to the direction issued by this Court, an additional statement is filed by the 1st respondent reiterating the contentions in the original statement and also contending that Rule 13B of the Foreign Liquor Rules is clear that the licence cannot be transferred. It is further contended in the statement that, any person desirous of obtaining a licence may apply to the Commissioner in writing through the Deputy Commissioner of Excise of the District concerned and the application shall be stamped with court fee label of the value prescribed by law. It is also contended that the Deputy Commissioner of Excise or such

other officer as may be authorised by the Commissioner shall enquire into all the points mentioned above and submit the application to the Commissioner with his report thereon. It is thus contended that the Rule contemplates that the application must be submitted by the party himself and it therefore follows that the licence can be granted only to the applicant alone and not to any other person, agent or in any representative capacity and therefore, the power of attorney holder is not a workable proposition as per the Foreign Liquor Rules.

7. Heard Sri.M.G. Karthikeyan learned counsel for the petitioner and learned Government Pleader appearing for the respondents.

8. Learned counsel for the petitioner contended that what was sought for by the petitioner in his application was not transfer of the licence but seeking permission to carry on the day to day activities of business by appointing a Power of Attorney Holder as an agent. Learned counsel has brought my attention to Rule 19 of the Foreign Liquor Rules which speaks of sale, transfer or sub-rent without the previous sanction of the Excise Commissioner. On the other hand, learned Government Pleader has invited my attention to Rule 13B of the Foreign Liquor Rules

and contended that any person desirous of obtaining a licence may apply to the Commissioner in writing through the Deputy Commissioner of Excise of the District concerned. Therefore, learned Government Pleader contended that the licence can be granted on each occasion to the licensee alone and not to an agent of the licensee.

9. I have considered the rival submissions advanced by the learned counsel, perused the entire records and I am of the considered opinion that Rule 13B speaks of obtaining licence by a person who is desirous of acquiring the same. In my view that will not take away the right of a person to appoint an agent in accordance with law so as to carry on the business by obtaining the licence. Learned counsel for the petitioner also invited my attention to Ext.P7 order passed by the 1st respondent dated 31.3.2012 in favour of one K. Rajendran, licensee of FL-3 No.46/11-12, Archana Royal Park, Thiruvallam. On a perusal of the said document, the same was passed by the Excise Commissioner taking into account the application submitted by the Power of Attorney Holder Sri. V. Jayachandran and permission was granted to alter the nature of licence in favour of a partnership firm. Moreover, there is no prohibition created

under the Foreign Liquor Rules for appointing a Power of Attorney Holder to carry on the business by executing necessary documents before the respondents, as provided under law. In my view the 1st respondent has not considered any of these aspects while passing Ext.P5 impugned order. Therefore, I am inclined to set aside Ext.P5 order passed by the 1st respondent and accordingly I do so. In that circumstances, there will be a direction to the 1st respondent to re-consider the application submitted by the petitioner seeking to carry on the business by appointing a Power of Attorney Holder in accordance with law. This shall be done by the 1st respondent within a period of 30 days from the date of receipt of a copy of this judgment after taking into account the observations and precedence mentioned above and in accordance with law.

Writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
09.11.2015