

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).NO. 13758 OF 2014 (T)

PETITIONER:

**P.S.JIBIN, AGED 26 YEARS,
S/O.SUDAKARAN, PUTHUPULLY HOUSE, CHERPU POST
CHENAM DESOM, VILLAGE PARALAM, THRISSUR DISTRICT.**

**BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.JAI GEORGE
SMT.DAISY A.PHILIPOSE**

RESPONDENT(S):

- 1. THE EXCISE COMMISSIONER
COMMISSIONERATE OF EXCISE
THIRUVANANTHAPURAM-695 033.**
- 2. THE DEPUTY EXCISE COMMISSIONER,
THRISSUR-680 001.**
- 3. THE CIRCLE INSPECTOR OF EXCISE,
WADAKKANCHERRY, THRISSUR DISTRICT-680 001.**
- 4. PANGU, AGED 70 YEARS
S/O.CHOZHI, KUZHIPARAMBIL HOUSE, KADANGODU
THEKKUMURI DESOM, KADANGODU VILLAGE
THALAPILLY TALUK-680 001.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT.SHERIN.C.K
R4 BY ADVS. SRI.M.G.KARTHIKEYAN
SRI.C.C.THOMAS (SR.)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-03-2015,
ALONG WITH WPC. 13868/2014 AND WPC. 14191/2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

WP(C).NO. 13758 OF 2014 (T)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: A TRUE COPY OF THE OCCURRENCE REPORT AND THE MAHAZAR IN CR.NO.72/2013.
- EXT.P-2: A TRUE COPY OF THE ORDER IN CRL.M.A NO.7679/2013 IN CRL.M.C.NO.4299/2013 DATED 3.10.2013.
- EXT.P-3: A TRUE COPY OF THE REPORT OF CHEMICAL EXAMINER OFFICER, ERNAKULAM DATED 12.11.2013.
- EXT.P-4: A TRUE COPY OF THE CHALLAN DATED 5.3.2014 EVIDENCING THE PAYMENT OF RS.93,000/- TOWARDS ABKARI WORKERS WELFARE FUND FOR THE YEAR 2014-15.
- EXT.P-5: A TRUE COPY OF THE JUDGMENT DATED 2.4.2014 IN WPC NO.6359/2014.
- EXT.P-6: A TRUE COPY OF THE ARGUMENT NOTE DATED 28.4.2014.
- EXT.P-7: A TRUE COPY OF THE ORDER NO.XA2-23391/2013 DATED 24.5.2014 PASSED BY THE 1ST RESPONDENT.
- EXT.P-8: A TRUE COPY OF THE NOTICE DATED 28.5.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S ANNEXURES:

- ANNEXURE R3(A): COPY OF THE ORDER NO.XA2-15838/14 DATED 30.06.2014.

/TRUE COPY/

P.A. TO JUDGE

AS

C.T.RAVIKUMAR, J

W.P.(C) Nos. 13758, 13868 & 14191 of 2014

Dated this the 9th day of March, 2015

JUDGMENT

In view of the commonness of the issues involved in these writ petitions they are taken up for joint hearing and disposal. The petitioners in all these writ petitions are successful bidders in the auction sale of privilege for vending toddy in different toddy shops in different Excise Ranges under different Excise Divisions. The respective 4th respondent in all these writ petitions are the previous licensees of the shops concerned in each of these writ petitions. However, they were denied preference owing to the registration of abkari cases against them other than under section 56 of the Abkari Act. In W.P(C).No.13758/2014, C.R.No.72/2013 of Wadakkancherry Excise Range was registered against the 4th respondent therein under section 55(a)&(i) of the Abkari Act. In W.P(C) No.13868/2014 against the 4th respondent therein C.R.Nos. 14/2013 and 23/13 of Kunnamangalam Excise Range were registered under section 57(a) & 56(b) of the Akbari Act and Rule 9(2) of the Kerala Abkari Shops Disposal Rules, 2002 and in W.P (C)No.14191/2014 against the 4th respondent therein Crime

No.472/2013 of Pulimkunnu police station was registered under section 56(b) & 55(a) & (i) of the Abkari Act. By virtue of the provisions under Rule 5(1) of the Kerala Abkari Shops Disposal Rules, 2002 (in short 'the Rules') registration of an abkari case against a licensee other than under section 56 of the Abkari Act would disentitle that license to claim the preference as contemplated thereunder. In the said circumstances, it was decided to conduct disposal of toddy shops in the general category. The petitioners in all these cases took part in the auction thus conducted in respect of those shops and became the successful bidders in respect of the shops concerned. Consequently, provisional allotment of the concerned toddy shops were also effected in their names. In all these cases pursuant to the registration of the crimes as aforementioned against the respective 4th respondent the licenses issued in their favour were initially suspended and then cancelled. Feeling aggrieved by such actions they approached this court by filing writ petition as also criminal cases challenging the registration of crimes as also cancellation. In W.P.(C)No.13758/2014 the 4th respondent therein filed W.P.(C). No.6359/2014 and an interim order was passed therein by this

court whereby the investigation in the crime concerned was stayed. In W.P.(C) No.13868/2014, the 4th respondent therein filed W.P.(C).No.8094/2013 and Ext.P3 interim order dated 22.3.2013 (Ext.P3 in W.P.(C) 13868/2014) was passed thereon. The 4th respondent therein prayed for staying operation and implementation of Ext.P1 viz., the order dated 17.3.2013 passed by the 1st respondent besides the prayer for a direction to permit him to continue to conduct the toddy shops in Group No. I of Kunnamangalam Excise Range. While admitting the said writ petition the said interim order as prayed for was granted. This was in respect of C.R.No.14/13 of Kunnamangalam Excise Range. Pursuant to the registration of C.R.No.23/14 against the said licensee the license of the 4th respondent therein was suspended and that was again challenged before this Court. As per Ext.P5 in this writ petition viz., W.P.(C) No.13868/2014 the said order of suspension was stayed. In W.P.(C).No.14191/2014, against the 4th respondent therein Crime No.472/2013 was registered against him and as per Ext.P2 his license was suspended. Later, it was revoked and the shop was notified for sale. Earlier, when the shops concerned were notified for sale the 4th respondents in these writ

petitions approached this Court by filing respectively W.P.(C)Nos. 6324/2014, 6359/2014 and 6380/2014. Those writ petitions were disposed of by this Court as per a common judgment dated 2.4.2014 (Ext.P3 in W.P.(C) No.14191/2014). Those writ petitions were filed claiming preferential right under Rule 5(1)(a) of the Rules. They contended that taking into account the registration of the aforesaid abkari cases and in the light of the provisions under Rule 5(1) their preferential rights were overlooked and the authorities failed to take note of interim orders passed by this Court in connection with the abkari cases registered against them. It was their contention that if the authorities considered the interim orders passed in their favour, in such proceedings, the preferential rights to which they were entitled by virtue of the provisions under Rule 5(1)(a) of the Rules would not have been denied to them. After hearing the petitioners therein and the learned Government Pleader in those writ petitions this Court granted interim orders restraining the official respondents from confirming the sale effected in respect of the shops concerned. At the time of final hearing it was submitted by the learned counsel on both sides that the auction conducted were only confirmed provisionally subject to

the confirmation of the sale by the Excise Commissioner invoking the power under Rule 5(15) of the Rules and therefore, they sought for a direction to the Excise Commissioner to consider the question of their entitlement for preference under Rule 5(1)(a) of the Rules before passing orders on the provisional allotments. It was taking note of such contentions that this Court passed the common order dated 2.4.2013 in W.P.(C)Nos.6324/2014, 6359/2014 and 6380/2014 directing the Excise Commissioner, the common first respondent in those writ petitions to issue notice of hearing to the parties before passing orders invoking the power under Rule 5(15) of the Rules in respect of the shops concerned and pass orders thereon only after considering the question of entitlement of the petitioners for preference under Rule 5(1)(a) of the Rules and subject to such decision. The parties were given liberty to raise all their contentions for establishing/resisting the respective claims. Pursuant to the directions in the said common judgment, orders have been issued by the 1st respondent. In W.P.(C).No.13758/2014 pursuant to the direction in the common judgment, Ext.P7 order dated 24.5.2014 was passed and in W.P.(C).Nos.13868/2014 and 14191/2014 Ext.P7 order dated 13.5.2013 (Sic 13.5.2014) and

Ext.P5 order dated 23.5.2014 were passed respectively pursuant to the said direction. Evidently, the said orders are passed by the said respondent in invocation of his power under Rule 5(15) of the Rules pursuant to the common judgment dated 2.4.2014. Evidently in all these cases, the first respondent revoked the provisional allotment granted in favour of the petitioners herein subject to final orders in the connected criminal cases pending before this Court and further observed that the previous licensee/the 4th respondent in these writ petitions, are entitled to get preferential right in terms of Rule 5(1) (a) of Kerala Abkari Shops Disposal Rules, 2002, subject to the final decision of this Court in the pending CrI.M.Cs filed by the 4th respondent and also of final verdict in the respective crimes registered against each of them. Consequently, the concerned Deputy Commissioners were directed to dispose of toddy shops concerned afresh in accordance with the Kerala Abkari Shops Disposal Rules, 2002. These writ petitions are filed on the challenge against the aforementioned orders.

2. I have heard the learned counsel for the petitioners in these writ petitions, the learned counsel appearing for the 4th respondent as also the learned Government Pleader.

3. The facts expatiated above would reveal that the concerned 4th respondent in these writ petitions was the previous licensee of the shop concerned and all those shops were put for auction in a general category pursuant to the registration of abkari cases against the respective 4th respondent in these cases. Evidently, in all these cases the petitioners became the successful bidders in the auction. The provisional allotments in their favour came to be cancelled by the impugned orders passed pursuant to the common judgment passed by this Court in W.P.(C) Nos.6324/2014, 6359/2014 and 6380/2014 dated 2.4.2014. A bare perusal of the common judgment would reveal that this Court had never made any observations touching the merits of the rival claims and, in fact, those writ petitions were filed by the respective 4th respondents in these cases raising grievances against the provisional allotment in favour of the petitioners herein, ignoring their preferential right available under Rule 5(1) (a) of the Rules taking note of the registration of the abkari cases against them. This Court stayed the confirmation of the sale and directed the Commissioner of Excise to pass appropriate orders invoking his powers under Rule 5(15) of Rules after taking a decision on the

question of the preferential right claimed by the petitioners therein, who are respectively the 4th respondents in these writ petitions. The writ petitioners were also directed to be afforded with an opportunity of hearing. Evidently, the impugned orders were passed after affording opportunity of being heard to both the petitioners as also the 4th respondent in all these writ petitions. It is admitted by both sides that the writ petitions as also the criminal cases filed by the 4th respondents in these writ petitions against the cancellation as also the registration of the cases are still pending. In such circumstances, the question posed for consideration is whether the first respondent is justified in cancelling the provisional allotments issued in favour of the petitioners herein and restoring the preferential right available to the 4th respondent in the concerned writ petitions as per the impugned orders subject to the outcome of the connected criminal cases pending before this Court and directing to conduct resale of the shops concerned?

4. In W.P.(C) No.13758/2014 Ext.P2 is the order passed by this Court on 3.10.2013 in CrI.M.A.No.7679/2013 in CrI.M.C.No.4299/2013 filed by the 4th respondent therein. The same was subsequently extended as per Ext.P2(2)/Ext.R4(C) dated

29.10.2013. The contention of the petitioner is that though the petitioner therein (the 4th respondent in W.P.(C) No. 13758/2014) was granted an interim order staying all further proceedings pursuant to Annexure-B that is the occurrence report in C.R.No.72/2013 of Excise Range, Wadakkanchery, including the suspension and cancellation of the toddy shop in Group No.III of the Kunnamkulam Excise Range no consequential direction to give preferential claim was granted in favour of the 4th respondent. Such a contention was raised by the learned counsel appearing for the petitioner in the said writ petition taking note of the prayers made in Crl.M.A.No.7679/2013 as is discernible from Ext.P2 and also from Ext.R4(C). Evidently, the 4th respondent herein who was the petitioner therein prayed for stay of all further proceedings pursuant to Annexure-B therein (C.R.No.72/2013 registered by the Excise Inspector, Excise Range, Wadakkanchery, Thrissur Division) including the suspension/cancellation of the licences of toddy shops in Group No.III of Kunnamkulam Excise Range in Thrissur Division and also for a direction to give preferential claim for the allotment/renewal /extension of the toddy shops in Group No. III in Kunnamkulam Excise Range if he is otherwise qualified, till the

disposal of the Crl.M.C. As per Ext.P2 this Court granted only an interim order staying all further proceedings pursuant to Annexure-B therein including suspension/cancellation of the licences of toddy shops concerned and the specific direction sought for as above was not granted. Per contra, the learned counsel for the 4th respondent submitted that even in the absence of a specific direction to give preferential claim for the allotment/renewal/extension of toddy shops the order of stay in respect of suspension and cancellation of licences of toddy shops would have the impact of protection of his preferential right otherwise available under Rule 5(1)(a) of the Rules in favour of the 4th respondent. In other words, the stay of the suspension and cancellation of licences when once stayed it would enable the 4th respondent to continue to run the shop, based on the licence issued in his favour and in such circumstances, on the strength of such licence the 4th respondent therein is entitled to claim for preference by virtue of the provisions under Rule 5(1)(a) of the Rules. According to the 4th respondent therein a separate direction though sought for in Crl.M.C.No.4299/2013 such a direction was uncalled for as even in the absence of such a direction preference by virtue of the Rule 5(1)(a) of the Rules

ought to be available owing to the stay of all further proceedings pursuant to the registration of Annexure-B including suspension and cancellation of the licence of the shops concerned was carried out. In the light of the aforementioned rival contentions it will only be appropriate to refer to Rule 5(1)(a) of the Rules. It reads thus:-

5. The Grant of privilege of vending Toddy shall be subject to the following conditions, namely:-

(1)(a) While giving privilege, preference shall be given to those licensees who has conducted toddy shops during the preceding three years consecutively from 2006-2007, 2007-2008 and 2008-2009 provided no Abkari case is registered against him other than under section 56 of the Abkari Act. The licensees who has conducted the shops during 2002-2003 and subsequent years and whose licences cancelled due to registration of Abkari cases and subsequently exonerated by the Courts and those Licensees who could not complete the preceding three years on account of the closure of shops shall also be given preferences.”

A bare perusal of Rule 5(1)(a) would reveal that registration of abkari case against a licensee during the periods referred thereunder, other than under section 56 of the Abkari Act would disentitle that licensee to claim preference thereunder. In this case the licence issued in favour of the 4th respondent though ordered to be cancelled as per Ext.P2 suspension/cancellation of licences of toddy shops was stayed by this Court. In such circumstances, the contention of the 4th respondent is that the adverse effect of suspension/cancellation of licence could not visit him. As noticed herein before, the contention of the petitioner in W.P.(C) No.13758/2013 is that since a direction to grant preferential right was specifically sought for by the 4th respondent and was not granted the 4th respondent is not legally justified in contending with his right which is otherwise available under Rule 5(1)(a) is still available even on the non-grant of a direction to give preferential right. A scanning of the impugned order in W.P.(C) No. 13758/2014 viz., Ext.P7 dated 24.5.2014 would reveal that though in the light of the common judgment dated 2.4.2014 such contentions were to be considered, in accordance with law, by the

Excise Commissioner taking into account the factual position as well those points were not pointedly considered. In fact, a decision to cancel the provisional allotment and to restore the preferential right was taken solely taking into the factum of existence of the interim order passed by this Court in the aforesaid Crl.M.C. There was absolute absence of any discussion in the light of the provisions as also the authorities concerned. When this Court issued a direction to the Excise Commissioner to consider the availability of preferential right under Rule 5(1)(a) of the Rules claimed by the 4th respondent in W.P.(C) No.13758/2014 (the petitioner in one of the writ petitions disposed of as per the said order dated 2.4.2014) with notice to the petitioner in W.P.(C) No.13758/2014 the first respondent should have taken a decision after addressing the said issues in accordance with law. The learned counsel for the petitioner submitted that as a matter of fact yet another contention which was taken up by the petitioner that the 4th respondent in the said writ petition had actually failed to apply and obtain the preferential certificate and did not participate in the auction was also not considered by the Excise Commissioner. Evidently, the said contention was pointedly posed for

consideration, going by the argument note submitted at the hearing conferred to the petitioner by virtue of the directions in the common judgment dated 2.4.2014. However, it was also not considered. True that while passing the impugned order the first respondent took note of the decision of this Court in **Anilkumar v. State of Kerala** reported in 2013(3) KLT 358. In the said decision this Court held that while deciding the question of preferential right the question to be considered is whether the abkari case was validly registered or not. In such circumstances, the first respondent was bound to consider the question whether the abkari case was validly registered or not against the 4th respondent while deciding his entitlement to the preferential right under Rule 5(1)(a) of the Rules. Ext.P6 order dated 24.5.2014 would indicate that the eligibility of the 4th respondent for preferential right under Rule 5(1)(a) of the Rules was considered by the first respondent in the light of the decision in **Anilkumar's** case (supra) with reference to the records and considering the impact of the stay granted by this Court including against the suspension and cancellation of the licences of the shops concerned. It is held therein that in compliance with the interim order passed in CrI.M.C.No.4299/2013

the licence of the 4th respondent in W.P.(C) No.13758/2014 was provisionally renewed up to 31.3.2014 subject to the result of W.P. (C) No.7945/2012 and CrI.M.C.No.4229/2013. It is thereafter held that if the 4th respondent get exonerated in the aforesaid abkari case he would be entitled to the preferential right and that the interim order passed by this Court in CrI.M.C.No.4299/2013 is still in force. It was taking into account such factors that the said order was passed. As per the impugned Ext.P7 order the provisional allotment of different shops in Group Nos.111/14/17 of Kunnamangalam Excise Range to the petitioner in W.P.(C) No. 13758/2014 was cancelled and the Deputy Excise Commissioner, Thrissur was directed to dispose of the shops in accordance with the rules. At the same time, in the light of the discussion as above a scanning of Ext.P7 impugned order dated 24.5.2013 in W.P.(C) No.13758/2014 would reveal that though the decision in **Anilkumar's** case was referred to therein the question whether an abkari case was validly registered or not against the 4th respondent was not actually considered by the first respondent. It is also to be taken into account the fact that specific contention of the petitioner was that the 4th respondent therein had not obtained a preferential

certificate and also had not participated in the auction. This point was also not considered while passing the impugned order. I shall not be understood to have held or said that by virtue of his non-participation he would lose his preferential right. The long and short of the discussion is that the first respondent ought to have considered all such points after affording an opportunity to the 4th respondent and also to the petitioner in W.P.(C) No.13758/2014 and taken a decision on the availability of the 4th respondent therein to the preferential right. In such circumstances, W.P.(C) No.13758/2014 I am of the view that a fresh decision is to be taken in terms of the common judgment in W.P.(C) Nos.6324/2014, 6359/2014 and 6380/2014 dated 2.4.2014, after considering all such relevant aspects on the aforesaid point in this writ petition. To enable such consideration Ext.P7 in W.P.(C) No.13758/2014 is set aside and the first respondent is directed to consider the question of the availability of the preferential right under rule 5(1)(a) of the Rules to the 4th respondent after considering all the legal contentions raised by both the parties. I may hasten to add that this Court has not made any observation touching the merits of the rival contentions and both the parties are

left at liberty to raise all legal and factual contentions. After considering all such aspects appropriate orders shall also be passed on the aforesaid question while passing orders in terms of the common judgment dated 2.4.2014 as mentioned hereinbefore, expeditiously and at any rate, within a period of 6 weeks from the date of receipt of a copy of this judgment.

W.P.(C) No.13868/2014

Ext.P7 dated 13.5.2013 (sic 13.5.2014) is the impugned order in this writ petition. Evidently, in this case two reports were registered against the 4th respondent viz., C.R.No.14/2013 and C.R.No.23/13. Exts.P3 and P5 are the interim orders obtained by the 4th respondent against the suspension of his licences by virtue of the registration of the aforementioned cases. Subsequently, auction was conducted on 5.3.2014. Evidently, the 4th respondent approached this Court by filing W.P.(C).No.6324/2014. The impugned order came to be passed subsequent to the direction in the common judgment in W.P.(C) Nos. 6324/2014, 6359/2014 and 6380/2014 whereby this Court directed the first respondent to consider the claim of the petitioner for preferential right under rule 5(1) (a) of the Rules and then to pass orders invoking the power under Rule 5 (15) of the Rules. The learned counsel for the 4th

respondent in this case would submit subsequently the criminal proceedings launched against the 4th respondent in C.R.Nos.14/2013 and 23/13 culminated in the discharge of the 4th respondent. Exts.R4(h) and (i) are the orders of the Court of the Judicial First Class Magistrate, Kunnamangalam discharging the 4th respondent under section 239 of the Code of Criminal Procedure in C.C.Nos.787/2013 and 1253/2013 arising respectively from C.R.Nos.14/2013 and 23/2013. The learned counsel for the petitioner submitted that though the 4th respondent participated in the auction, at that point of time the challenge against the prosecution proceedings launched against him was not there. In such circumstances, according to the petitioner the disqualification by virtue of the registration had to be adversely affected the 4th respondent and subsequent discharge as per Ext.R4(h) and R4(i) would be inconsequential. It is also contended that the 4th respondent had never approached the concerned Circle Inspector to get the preferential certificate. The learned counsel for the 4th respondent submitted that with his discharge and by virtue of the restoration of the preferential right as per the impugned Ext.P7 order pursuant to the directions of this Court those contentions

raised by the petitioner could not have and would not have any adverse impact on the right of the 4th respondent. In other words, according to the learned counsel for the 4th respondent in the light of Exts.P3 and P5 which are the interim orders obtained by the 4th respondent in his favour regarding the suspension of his licence it should be deemed that the 4th respondent was having the right to continue with the conduct of the shops in question and in such circumstances, the disqualification could not have been worked out against the 4th respondent. At the same time, the fact that the 4th respondent had participated in the auction concerned held on 5.3.2014 is not in dispute. In such circumstances, the effect of the aforesaid contentions were to be considered by the first respondent while taking a decision pursuant to the direction of this Court in the common judgment dated 2.4.2014. A scanning of the impugned Ext.P7 order dated 13.5.2014 would reveal that those points were not pointedly considered by the first respondent. In the said circumstances, I am of the considered view that a fresh decision shall be taken by the first respondent after bestowing consideration and to enable the first respondent to consider those points the parties are permitted to take up their respective contentions on the

points mentioned hereinbefore, appropriately, within two weeks from the date of receipt of a copy of this judgment. To enable such consideration Ext.P7 impugned order is set aside. There will be a direction to the first respondent to consider all such contentions if taken up appropriately by both the parties, on merits and to take appropriate decisions, in accordance with law, and also in terms of the common judgment dated 2.4.2014 after affording an opportunity of being heard to both the parties. It shall be done expeditiously, and at any rate, within six weeks from the date of receipt of the respective petitions carrying such contentions from the petitioner and the 4th respondent.

W.P.(C) No.14191/2014

Ext.P5 dated 23.5.3014 is the order impugned in this writ petition. Evidently, it was passed pursuant to the common judgment of this Court in W.P.(C) No. 6380/2014 and connected cases, dated 2.4.2014. Evidently, as per Ext.P3 common judgment dated 2.4.2014 this Court directed the first respondent to consider the claim of the 4th respondent for preferential right under Rule 5(1)(a) of the Rules and subject to the said decision to pass an order invoking the power under Rule 5(15) of the Rules. The parties were given liberty to raise all the contentions for and against the said

claim of the preferential right. As per the impugned Ext.P5 order which was passed pursuant to Ext.P3 common judgment the provisional allotment granted in favour of the petitioner was cancelled and the Deputy Commissioner of Excise, Alappuzha was directed to dispose of the toddy shop afresh, in accordance with rules. A perusal of the order would reveal that the first respondent passed such an order taking into account the order of stay granted by this Court in Crl.M.C.No.3269/2013 filed by the 4th respondent. The said order passed by this Court in Crl.M.C No.3269/2013 has been produced by the 4th respondent as Ext.R4(C). It would reveal that the 4th respondent/ the petitioner in the said Crl.M.C sought for stay of investigation in Crime No. 472/2013 of Pulinkunnu police station registered against him as also his arrest. After hearing the learned counsel for the 4th respondent herein/ the petitioner therein stay of investigation as also his arrest was granted. The learned counsel for the petitioner contended that since this Court granted stay only in respect of further investigation and the arrest of the 4th respondent it could not efface the consequence of the registration of the crime against the petitioner in the light of the provisions under Rule 5(1)(a) of the Rules. At the

same time, the learned counsel for the 4th respondent submitted that on obtaining Ext.R4(C) order in CrI.M.C.No.3269/2013 the same was produced before the first respondent and consequently the first respondent passed Ext.R4(d) order No.XA7-20145/2013 dated 25.9.2013 whereby and whereunder the earlier order suspending the licence was revoked subject to the final orders in the said CrI.M.C. and the Deputy Commissioner of Excise, Alappuzha was directed to restore the privilege of licence of toddy shops concerned to the 4th respondent. It is the further contention that said order dated 25.9.2013 has not been successfully challenged and, in fact, on the strength of the said order the 4th respondent continued to conduct the shop in question. The learned counsel for the petitioner submitted that one of the employees of the shops concerned run by the 4th respondent approached this Court challenging Ext.R4(d) which is Ext.P2 in this writ petition, and the said writ petition is still pending. In the said circumstances, according to him he is entitled to the preferential right which is otherwise available under Rule 5(1)(a) of the Rules. A perusal of impugned Ext.P5 order would reveal that the rival contentions on the aforesaid points were not actually gone into by the first

respondent. It is obvious that the first respondent had considered the question whether aforementioned crime was validly registered against the 4th respondent in the light of the decision in **Anilkumar**' case (supra). Certainly, that was a point which the first respondent should have considered while considering the claim of the preferential right under Rule 5(1)(a) of the Rules raised by the 4th respondent. True that, the petitioner herein took up a contention that the order passed by this Court in CrI.M.C.No.3269/2013 could not efface the impact of registration of the aforementioned crime and to buttress the said contention the petitioner relied on the decision of this Court in **State of Kerala v. Komalan** reported in 2010(2) KLT 190. As a matter of fact after rendering the decision in **Komalan**'s case (supra) the very same bench rendered the decision in W.A.No.530/2010. It is taking note of the said decision that the decision in **Anilkumar**'s case was rendered. In such circumstances, as stated hereinbefore, the first respondent was duty bound to consider the question whether the crime was validly registered or not against the 4th respondent while considering the question of preferential right under Rule 5(1)(a) in the light of the decision in **Anilkumar**'s case. It is to be noted that

the decision in **Anilkumar's** is still good law. At the same time, a scanning of the impugned order would reveal that despite referring to **Anilkumar's** case the question whether the abkari case in question was validly registered or not was pointedly considered in Ext.P5 order. A bare perusal of Ext.P5 would reveal that no finding was actually returned by the first respondent as to the question whether the crime in question was validly registered or not against the 4th respondent. In the light of the common judgment of this Court in W.P.(C)Nos. 6324/2014, 6359/2014 and 6380/2014 dated 2.4.2014 the first respondent was bound to consider that question before proceedings to pass order invoking the power under Rule 5(15) of the Rules. However, the impugned order would reveal that the aforesaid points were not actually considered in accordance with law. To enable such a consideration in the light of the provisions as also the decisions on the point the impugned Ext.P5 order is set aside. Consequently, this writ petition is disposed of with liberty to the petitioner and the 4th respondent to take up the aforesaid questions and points appropriately before the first respondents within two weeks from the date of receipt of a copy of this judgment and with a direction to the first respondent to consider those questions

and points taking note of the observations in this judgment as also the common judgment dated 2.4.2014 and any other authorities if cited by the concerned parties and in accordance with law. Such a decision shall be taken expeditiously, at any rate within a period of six weeks from the date of receipt a copy of such petitions.

Till such a decisions are taken in all the three cases the status quo as on today shall be maintained in respect of the shops concerned involved in these cases.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk