

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 22387 of 2012 (W)

PETITIONER:

COCHIN GYMKHANA CLUB, TOC-H NAGAR,
VYTTILA, COCHIN-19 REP. BY ITS SECRETARY,
SRI.RENJITH KUMAR, AGED 42 YEARS,
S/O.T.KAMALAKARAN.

BY ADVS.SRI.C.C.THOMAS (SR.)
SRI.NIREESH MATHEW
SRI.M.G.KARTHIKEYAN

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY SECRETARY,
TAXES (A) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM. 695 001.
3. THE DEPUTY COMMISSIONER OF EXCISE,
ERNAKULAM. 682 018.
4. THE CIRCLE INSPECTOR OF EXCISE,
ERNAKULAM. 682 018.

BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-10-2015 ALONG WITH WPC. 21357/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WPC 22387/2012

PETITIONER'S EXHIBITS:

EXT. P1- PHOTOCOPY OF THE FL-4A LICENSE, NO.E-11 ISSUED BY THE EXCISE COMMISSIONER.

EXT. P2- PHOTOCOPY OF THE ORDER NO.XC6-4137/12 D.DIS DATED 24.8.2012 PASSED BY THE EXCISE COMMISSIONER.

EXT. P3- PHOTOCOPY OF THE ORDER DATED 16.3.2010 IN WP(C) NO.8544/2010 PASSED BY THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.22387 of 2012
and 21357 of 2013

Dated this the 9th day of October, 2015

COMMON JUDGMENT

The petitioner in W.P.(C)No.22387/2012 is a Club having an FL-4A licence for the purpose of serving liquor to its members. The said licence, evidently, was issued in the name of the Secretary of the Club. In the course of time, owing to the subsequent elections, a new set of office bearers, including the Secretary, assumed charge.

2. Under those changed circumstances, when the petitioner Club applied for a change of the Secretary's name in FL-4A licence, the Excise Commissioner allowed the application through Exhibit P2 order. However, he directed the petitioner Club to pay Rupees Two lakhs as fee in terms of Rule 19(4) of the Foreign Liquor Rules ('the Rules' for brevity). Assailing that portion of Exhibit P2 whereby the

Excise Commissioner has demanded the fee treating it to be a transfer of licence, the petitioner has filed the writ petition.

3. Similar is the case in W.P.(C)No.21357/2013, in which another Club raised an identical grievance. In the light of the fact that both the writ petitions raise the same question of fact and law, having the same set of respondents, this Court has proposed to dispose of the writ petitions through a common judgment.

4. The learned counsel for the petitioners, in the above factual background, has strenuously contended that though the authorities, as a matter of convenience and practice, issued FL-4A licence in the name of the Secretary, it is for all practical purposes the Club that has the licence. According to him, the licence has never been granted to the Secretary in his personal or individual capacity.

5. In further elaboration of his submissions, the learned counsel would contend that stipulation of paying

the fee for change of name of the licensee in terms of Rule 19(4) of the Rules has no application in the present instance.

6. Per contra, the learned Government Pleader has, however, submitted that the FL-4A licence was, in fact, granted in the names of the Secretaries of the Clubs, as is evident from Exhibit P1. According to him, now the petitioners want the name of the licensees to be changed. Drawing my attention to Rule 19(4) of the Rules, the learned Government Pleader has further contended that Exhibits P2 and P8 are unexceptionable, calling for no interference.

7. Indeed, the statute enumerates the entities that could have the licence under various categories, such as FL-3, FL-4A, FL-11, to vend liquor: the hotels, clubs, resorts, etc. In most of such instances, the entities that seek the licence are legal entities rather than actual persons. Under

those circumstances, the executive in its wisdom has adopted the practice of issuing the licences in the name of a human agent rather than the impersonal entities. It is indisputable that in all those cases it is the entity that has the licence, though a human agent may have merely represented it.

8. In this regard, we may examine the ratio of **State of Kerala and others v. M/s.Panamoottil Investments and others**¹ rendered by a learned Division Bench of this Court. The fact of the matter is that a partnership firm initially having one managing partner had another partner also designated as a managing partner. Thus, instead of one, two managing partners started representing the firm. The Excise Commissioner has treated this as amounting to transfer of licence as well as reconstitution of the firm.

9. In that factual background, the learned Division Bench has held that the licence has in fact been in favour of

¹ 2010 (1) KHC 353

the partnership firm. Their Lordships have further held that neither the partnership is reconstituted nor the name of the licensee is changed. So, Sub-rules (iii) and (iv) of Rule 19 of the Rules have no application to the facts of the case.

10. In the facts and circumstances, in the light of the statutory scheme under the Rules, I do not see any justification for the respondent authorities to insist on the petitioner Clubs to pay Rupees Two lakhs for the purpose of having the change of the name effected in FL-4A licences.

11. I, therefore, set aside Exhibits P2 and P8 orders to the extent of the authorities demanding the petitioners to pay any fees for changing the names of the Secretaries in the FL-4A licences.

With the above observations, the writ petitions are allowed.

Dama Seshadri Naidu, Judge

tkv

'C.R.'