

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 19340 of 2014 (N)

PETITIONER :

**P.P. LOUSE,
S/O PAILY, PARASSERY HOUSE, ALAMATTAM DESOM,
THIRUMUKKULAM VILLAGE, MUKUNADAPURAM TALUK,
THRISSUR DISTRICT (LICENSEE OF T.S
NO.1/2014-15 -THRITHALA RANGE)**

BY ADV. SRI.M.C.JOHN

RESPONDENTS :

**1. THE KAPPUR GRAMA PANCHAYATH
KUMARANALLUR P.O.,
PALAKKAD REPRESENTED BY THE SECRETARY
PIN - 679 522.**

**2. THE DEPUTY COMMISSIONER OF EXCISE,
PALAKKAD, PIN - 679 551**

**3. THE CIRCLE INSPECTOR OF POLICE,
PATTAMBI, PALAKKAD, PIN - 679 551.**

***ADDL. R4 IMPEADED :**

**4. MADYA NIRODHANA SAMITHI
KOZHIKKARA, PO.KAPPUR, PIN - 679 552
PALAKKAD DISTRICT, REPRESENTED BY ITS CONVENOR
MR.JAMEEL PALLATH.**

***ADDL.R4 IMPEADED AS PER ORDER DATED 20.12.2014 IN IA 17380/14.**

**R1 BY ADV. SRI.A.KRISHNAN
R2 & R3 BY GOVERNMENT PLEADER SMT. C.K. SHERIN
ADDL.R4 BY ADV. SRI.C.R.REKHESH SHARMA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1 : TRUE COPY OF THE RELEVANT PAGES OF TEH LICENCE
NO.512/2014-15 DATED 31.03.2014 ISSUED BY THE 2ND RESPONDENT**

**EXHIBIT P1(a) : TRUE COPY OF RELEVANT PAGES OF THE LICENCE NO.320/2011-12
DATED 30.10.2011 ISSUED TO THE PETITIONER.**

EXHIBIT P2 : TRUE COPY OF TODDY TRANSPORT PERMIT DATED 25.03.2014.

**EXHIBIT P3 : TRUE COPY OF UNDATED STOP MEMO ISSUED BY THE 1ST
RESPONDENT**

**RESPONDENT(S)' EXHIBITS :
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**EXT.R1(a): COPY OF THE COMPLAINT DT 17/6/2014 OF THE LOCAL RESIDENTS
TO THE R1.**

**EXT.R1(a)(1): COPY OF THE COMPLAINT DT 17/6/2014 OF THE WORKERS OF THE
ASSOCIATION TO THE R1.**

**EXT.R1(b): COPY OF THE LETTER OF THE R1 TO VILLAGE OFFICER, KAPPUR,
DT 23/6/2014.**

**EXT.R1(b)(1): COPY OF THE LETTER OF THE R1 TO THE VILLAGE OFFICE, KAPPUR,
DT 8/7/2014.**

EXT.R1(b)(2): COPY OF THE LETTER OF THE R1 TO THE KAPPUR, DT 17/7/2014.

**EXT.R1(c): COPY OF THE LETTER TO THE R1 BY THE VILLAGE OFFICER,
KAPPUR, DT 14/7/2014.**

**EXT.R1(d): COPY OF THE LETTER OF THE R1 TO THE OWNERS OF LAND,
DT 22/7/2014.**

EXT.R1(e): COPY OF THE STOP MEMO BY R1 TO THE PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 19340 of 2014

Dated this the 04th day of March, 2015

JUDGMENT

Briefly stated, the petitioner, a licensee having the privilege to vend toddy, is aggrieved by Exhibit P3 stop memo issued by the first respondent Grama Panchayat. In fact, the respondent Grama Panchayat has issued the said stop memo directing the petitioner not to carry on with his trade in toddy on twin grounds: that the shop has been causing obstruction to the public; that petitioner has been running the shop within the territorial limits of the Grama Panchayat without licence. Aggrieved thereby, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has contended that the petitioner has got Exhibits P1 and P1(a) Abkari licences to carry on the trade. He has further contended that the petitioner is not required to take any licence from the Grama Panchayat. In support of his contentions, the learned

counsel has drawn my attention to the statement filed by the second respondent, the Government.

3. The learned counsel for the respondent Grama Panchayat has, however, made strenuous efforts to counter the contentions of the petitioner. He has submitted that it is obligatory on the part of the petitioner to obtain a licence from the respondent Grama Panchayat in terms of Section 232 of the Kerala Panchayat Raj Act (the 'Act' for brevity), read with Rule 3 of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 (the 'Rules' for brevity).

4. In support of his submissions that obtaining licence from Grama Panchayat is *sine qua non*, the learned counsel has also placed reliance on **Bosco Antony v. State of Keala and Others** [2007 (4) ILR 357], a judgment rendered by a learned Division Bench of this Court.

5. In reply, the learned counsel for the petitioner has contended that, since by way of an amendment Section 232 of the Act has been diluted, the question of a precondition compelling the petitioner to have the necessary licence does not arise.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, as well as the learned Government Pleader, apart from perusing the record.

7. Indeed, the issue raised in the writ petition lies in a narrow compass: whether the petitioner is required to take D&O licence from the respondent Grama Panchayat? The question of law that involves is whether Section 232 (1) read with item 139 of Schedule I annexed to the Rules mandates that the petitioner, as a licensee to vend toddy, is required to take the necessary licence.

8. Since much depends on the interpretation of Section 232, it is profitable to extract the same which is as under:

“232. Purpose for which places may not be used without a licence – (1) The Village Panchayat may notify that no place in the Panchayat area shall be used for any of the purposes specified in the rules made in this behalf being purposes which, in the opinion of Government, are likely to be offensive or dangerous to human life or health or property, without a licence issued by the (Secretary) and except in accordance with the conditions specified in such licence:

Provided that no such notification shall take effect until the expiry of thirty days from the date of its publication.”

9. It is not in dispute that through an amendment with effect from 24.03.1999 Sub-sections 2 to 4 and explanation appended to Section 232 stood omitted. Since the entire controversy has arisen subsequently, it suffices if I take into account only Section 232 (1) without reference to those that had been omitted way back in 1999.

10. A close scrutiny of the provision makes it clear that notifying the trade is different from notifying the area. The statute assigns the duty of notification concerning the trade to the Government; that of the area, to the Grama Panchayat. In fact, pursuant to the power conferred through Section 232 (1) of the Act, the Government has issued the Rules, of which Section 3 is relevant. It is beneficial for our purpose to extract Rule 3, which runs as under :

“3. Description of dangerous and offensive trades
- The Government may, for the purposes of Section 232, specify in the First Schedule appended to these rules, the matters which, in the opinion of Government, are likely to be offensive or dangerous to human life, health or

property.”

11. Indeed, the Government has appended the First Schedule to the Rules in terms of Rule 3. Now the trades having been identified, it is the duty of the respondent Grama Panchayat to notify the territorial limits concerning establishment of any business, which has been specified in the Schedule I to the Rules.

12. The learned counsel for the respondent Grama Panchayat could not bring to my notice any notification having been issued by the respondent Grama Panchayat. Variably expressed, Section 232 only enables the Grama Panchayat to act on the notification of the Government in terms of Rule 3 of the Rules regarding the dangerous and offensive trades, and then further notify within the limits of Panchayat any areas where any specific trade or activity to be carried on only with prior permission or licence. Illustratively, an area may be assigned for meat market; another area for vegetables, etc. Needless to observe that in the absence of any such notification by the Grama Panchayat, Section 232, even for that matter Schedule I

annexed to the Rules, could not be said to apply.

13. At this juncture, it is essential to refer to the decision of the learned Division Bench of this Court in **Bosco Antony** (*supra*). Taking into account the omission of Sub-sections (2), (3) and (4) of Section 232, the learned Division Bench has observed that it is essential for any licensee to obtain the licence from the respondent Grama Panchayat to establish any trade. It is well to extract the observation of the learned Division Bench on that count, which is as under :

"4. [A]s long as Exhibit P1 licence remains in force, the petitioner may be entitled to run the shop, subject to satisfying the other statutory requirements, if any. For running any business included in Schedule I of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996, licence under the said Rules is required. "Abkair Shops – Storing and Selling" is item No. 139 in Schedule I of the above said Rules. So, the petitioner is bound to take licence under the said rules for running the shop. But, learned counsel for the petitioner pointed out that earlier there were express provisions under sub-section (2), (3) and (4) of Section 232 of the Kerala Panchayat Raj Act, concerning grant of permission for running toddy shops within the jurisdiction of a Grama

Panchayat. Since those provisions were later deleted with effect from 24.03.1999, the learned counsel points out that the above Rules in so far as they concern toddy shops, have no efficacy. But we notice that even in the absence of sub-sections (2), (3) and (4) of Section 232, the remaining provisions contained in sub-section (1) of the said section of the Kerala Panchayat Raj Act support the inclusion of abkari shops under the Schedule to the Rules. Therefore, the contention of the learned counsel for the petitioner is plainly untenable. So, even though the petitioner has got Exhibit P1 licence, he can run the toddy shop in the Panchayat area only after getting licence under the above said rules from the said Panchayat."

14. Their lordships have observed that even in the absence of sub-section (2), (3) and (4) of Section 232, the remaining provision contained in sub-section (1) of the said section of the Kerala Panchayat Raj Act support the inclusion of abkari shops under the Schedule to the Rules. Having observed thus, the learned Division Bench has negated the contention of the learned counsel for the petitioner therein that there was no need to obtain any licence from the Grama Panchayat to run the toddy shop within its limits.

15. At any rate, any reference to the need of having a notification issued by the Grama Panchayat in terms of Section 232 (1) has been conspicuously absent. While culling out the ratio from any precedent, it is too well established to be caviled about that a decision becomes a precedent to the extent what it actually decides, rather than what could follow as a matter of logical inference.

16. In the present instance, I am of the considered opinion, with humble deference to the wisdom of the learned Division Bench, that the very issue of the necessity of the respondent Grama Panchayat issuing the notification has not fallen for consideration and to that extent the decision remains *sub silentio*.

17. The Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Gurnam Kaur**, (AIR 1989 SC 38) has observed thus:

"In *Gerard v. Worth of Paris Ltd. (K)*, (1936) 2 All ER 905 (CA) nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents *sub silentio* and without argument are of no moment. This rule has ever

since been followed."

18. A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass *sub silentio*. (Professor P.J. Fitzgerald, editor of *Salmond on Jurisprudence*, 12th Edn. At page 153, as quoted in **Municipal Corporation of Delhi v. Gurnam Kaur** (1989) 1 SCC 101)

19. It may also have to be observed that the respondent Grama Panchayat in Exhibit P3 has pointed out that the business being carried on by the petitioner is

causing obstruction to the public. I am afraid; it has not been specific in what manner the obstruction is caused. It is further observed that if there is any obstruction being caused, the respondent Grama Panchayat is always at liberty to take remedial steps to ensure that no inconvenience or hardship is caused to the public. Nevertheless, such action on the part of the Grama Panchayat cannot result in total negation of the right of the petitioner to carry on his business.

20. In the facts and circumstances, I am of the considered opinion that Exhibit P3 cannot be sustained and is accordingly set aside.

With the above observation, this writ petition stands allowed. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-