

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C) .No. 21414 of 2015 (B)

PETITIONER(S) :

MANOJ, S/O.APPU AGED 44 YEARS
MULLANATTU HOUSE, KOTTAPPADY P.O, MAMMIYOOR
GURUVAYOOR, THRISSUR DISTRICT.

BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW
SRI.NIJU MATHEW
SRI.N.P.PRAJEESH
SRI.VIVEK VENUGOPAL

RESPONDENT(S) :

1. THE EXCISE COMMISSIONER
COMMISSIONERATE OF EXCISE
THIRUVANANTHAPURAM-695 033.

2. THE DEPUTY COMMISSIONER OF EXCISE
THRISSUR.

3. THE EXCISE INSPECTOR
EXCISE RANGE OFFICE, CHITTUR, PALAKKAD DISTRICT.

R1-R3 BY SR. GOVERNMENT PLEADER MR. M. MOHAMMED SHAFI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20-08-2015 ALONG WITH W.A.No.1776 OF 2015, , THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

WP(C).No. 21414 of 2015 (B)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - PHOTOCOPY OF THE CRIME AND OCCURRENCE REPORT IN CR NO.54/2015
REGISTERED BY THE 3RD RESPONDENT.

P1(A) - ENGLISH TRANSLATION OF EXT.P1

P2 - PHOTOCOPY OF THE ORDER DATED 3.6.2015 IN WPC.NO.17168/2010 PASSED
BY THIS HON'BLE COURT.

P3 - PHOTOCOPY OF THE ORDER DATED 3.3.2015 IN WPC. NO.6654/2015 PASSED
BY THIS HON'BLE COURT.

P4 - PHOTOCOPY OF THE ORDER DATED 28.1.2015 IN WPC. NO.952/2015 PASSED
BY THIS HON'BLE COURT.

RESPONDENT(S) ' EXHIBITS

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
**W.P.(C)No.21414 OF 2015
&
W.A.No.1776 OF 2015**
.....

Dated this the 20th day of August, 2015

J U D G M E N T

P.R. Ramachandramenon, J:

The appeal arises from the interim order 29.07.2015 passed by the learned single Judge , whereby the clarification sought to be made by filing I.A.10770 of 2015 in respect of the interim order passed on 15.07.2015, was virtually answered against the State/Department . The issue mainly relates to taking of sample and further proceedings pursuant to registration of Crime and Occurrence Report (Ext.P1 - Crime No.54 of 2015) to the effect that the toddy involved was an adulterated one. Further steps were pursued by way of prosecution proceedings, though report of chemical analysis was still to be obtained. The proceedings were sought to be challenged by the respondent/writ petitioner mainly contending that, for proceeding with further

steps, chemical analysis report was essential by virtue of mandate of Rule 8(3) of the Kerala Abkari Shops Disposal Rules 2002. The said version was sought to be rebutted by the State/Department, pointing out that Rule 8(3) of the Rules was having application only if the sample was taken from the premises (toddy shop), which is not the position involved herein, as the sample was taken from a coconut grove, where toddy tapping was being conducted. This being the position, it was not at all necessary or obligatory for the State/Department to have obtained the report of chemical analysis as a prerequisite to proceed with further steps, as it was not an instance to cancel the licence.

2. When the matter came up for consideration before the learned Single Judge, an interim order was passed on 15.07.2015 granting stay of all further proceedings. This was sought to be clarified by the State/Department by filing I.A.No.10770 of 2015, to make it clear that the interim order passed by this Court will not preclude the State/Department from proceeding

with prosecution proceedings. The point was answered against the State/Department as per order dated 29.07.2015, which hence is sought to be intercepted by filing this appeal preferred by the State.

3. Heard both the sides in detail.

4. The learned Counsel appearing for the respondent/writ petitioner submits that the matter has become infructuous, as chemical analysis report has already been obtained and that nothing further remains to be considered in view of the limited extent of reliefs sought for .

5. The prayers raised in the writ petition are in the following terms:

“i) declare that the petitioner and other accused in Ext.P1 are not liable to be proceeded with for any offence under the Abkari Act before getting the result of the chemical analysis as per Rule 8(3) of the Kerala Abkari Shops Disposal Rules 2002 held by this Hon'ble Court in various final orders and Exts.P2 to P4 interim orders.

ii) issue a writ of mandamus or other

appropriate writ, order or direction commanding the respondents to keep in abeyance all further proceedings in pursuance to Ext.P1(CR.No.54/2015 registered by the 4th respondent) including the suspension and cancellation of the licences of the toddy shops in Group No.XI in Chavakkad excise range in Thirssur division till the receipt of the chemical analysis report of the toddy (contraband) seized; and

iii) grant such other and further relief as this Hon'ble Court may deem fit and proper in the interest of justice. ”

The fact that the samples taken have already been subjected to chemical analysis and a report has been obtained, stands confirmed. The learned Government Pleader submits that, as per the report obtained , the version of the State/Department stands vindicated and that further proceedings are to be taken including by way of prosecution, in accordance with law.

6. In view of the submission made by the learned Counsel for the petitioner that nothing further remains to be considered

in the writ petition and since it is open for the writ petitioner to contest the matter by way of appropriate proceedings in respect of the chemical analysis report and the proceedings proposed to be taken, this Court does not find it necessary to express any opinion in this regard, particularly as to the merits involved .

7. The submission made by the learned Counsel for the writ petitioner is recorded and the writ petition is dismissed as infructuous. As a natural consequence, the appeal as well. The rival contentions with regard to the scope and applicability of the relevant provisions of law is left open.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**