

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 22002 of 2014 (A)

PETITIONER(S):

**DR.BIJI. P.
PROPRIETOR OF M/S. P.M. PHARMACY
PATTERYIL PUTHEN VEEDU, AMPALAKARA.P.O., VALAKOM
KOTTARAKKARA.**

**BY ADVS.SRI.S.P.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE, NANDAVANAM
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM-695033.**
- 3. DEPUTY EXCISE COMMISSIONER,
EXCISE DIVISION OFFICE, THIRUVANANTHAPURAM,
FORT.P.O., PIN-695023.**
- 4. CIRCLE INSPECTOR OF EXCISE,
EXCISE CIRCLE OFFICE, ATTINGAL, ATTINGAL.P.O.
THIRUVANANTHAPURAM-695101.**
- 5. EXCISE INSPECTOR,
EXCISE RANGE OFFICE, KILIMANOOR, KILIMANOOR.P.O.
THIRUVANANTHAPURAM-695601.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE REGISTRATION CERTIFICATE AS MEDICAL PRACTITIONER.**
- P2. TRUE COPY OF THE LICENCE IN FOR 25 D.**
- P3. TRUE COPY OF THE CERTIFICATE OF RENEWAL OF LICENCE IN FOR 26 D.**
- P4. TRUE COPY OF THE LICENCE IN FORM L-2.**
- P5. TRUE COPY OF THE CERTIFICATE OF GOOD MANUFACTURING PRACTICE (G.M.P.) NO. 287 ON 13-5-2005.**
- P6. TRUE COPY OF THE LICENCE IN FORM SP VII(B).**
- P7. TRUE COPY OF THE REPRESENTATION DATED 9-8-2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**
- P8. TRUE COPY OF THE LETTER NO.T8-851/2013 DATED 17/12/14 OF THE PUBLIC INFORMATION OFFICER.**
- P8(A). TRUE COPY OF THE CHEMICAL ANALYSIS CERTIFICATE NO.6671/2014 DATED 6/11/14**
- P9. TRUE COPY OF THE LETTER NO.K-C-21/2014 DATED 15/11/14 OF THE PUBLIC INFORMATION OFFICER.**
- P9(A). TRUE COPY OF THE LETTER NO.K.O-5/14 DATED 24/9/14 OF THE EXCISE CIRCLE INSPECTOR.**
- P9(B). TRUE COPY OF THE INSPECTION REPORT DATED 24/9/14 OF THE EXCISE CIRCLE INSPECTOR TO THE DEPUTY EXCISE COMMISSIONER KOLLAM.**

RESPONDENT(S)' EXHIBITS & ANNEXURES

ANNEXURE R3(A). A TRUE OF THE CHEMICAL EXAMINATION REPORT SUBMITTED BY THE JUNIOR SCIENTIFIC OFFENDER ATTACHED WITH MOBILE TESTING LAB.

/ TRUE COPY /

P.S. TO JUDGE

PJ

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 22002 of 2014

Dated this the 03rd day of February, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner being the proprietor of a Pharmacy manufacturing Ayurvedic drugs has approached this Court with a grievance that his shop was closed abruptly without any notice. According to the learned counsel, on 07.08.2014, the Excise Officials in charge of the Mobile Testing Laboratory, Thiruvananthapuram, conducted a surprise check in the petitioner's licenced premises and took samples of certain drugs kept on display and subjected them to chemical analysis in the Mobile Testing Laboratory. When traces of CANNABINOIDS were allegedly found, the very next day the petitioner's shop was closed.

3. According to the learned counsel, despite the receipt of Exhibit P8(a), a certificate from the Chemical Examiners Laboratory Department, Government of Kerala, wherein the result was negative on second sample, the authorities suppressed the same despite its receipt in the month of November, 2014 and persisted with the closure of petitioner's shop. According to the learned counsel, the petitioner nevertheless collected Exhibit P8(a) under the provisions of Right to Information Act, 2005. Eventually, the learned counsel would contend that since the second sample revealed that no contamination is found in the drugs manufactured by the petitioner, the authorities ought to have permitted the petitioner to carry on his business.

4. The learned Government Pleader, in tune with the statement filed on behalf of the third respondent, has submitted that the petitioner is a habitual offender and that so far about forty cases have been registered against him for manufacturing the spirituous preparations in the name of Ayurvedic Drugs.

5. Be that as it may, the authorities have absolute

liberty to take appropriate action against the petitioner including cancellation of his licence and other consequential measures, if at all the petitioner is found guilty of any malpractices in any of those offences, most of which are said to be at the stage of trial or investigation. It appears in the present instance the shop was closed on the ground that the surprise check conducted on 07.08.2014 revealed that the petitioner had once again involved in spirituous preparations, which in any event stood belied in the light of Exhibit P8(a) issued by the Assistant Chemical Examiner to Government of Kerala. It is axiomatic that any amount of suspicion would not amount to an iota of proof, which the authorities are required to act before they could take appropriate action against the petitioner.

6. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader, the respondent authorities are directed to take Exhibit P8(a) into account and pass appropriate orders thereon on Exhibit P7 representation, as expeditiously as possible, at any rate, within

a period of 15 days from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-