IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 30763 of 2014 (U)

PETITIONER:

SHAIJU S., S/O SIVADASAN,
CHARUVILA VEEDU, PERUNKUZHY,
AZHOOR, CHIRAYINKIL TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.LIJU. M.P

RESPONDENT(S):
----

1. STATE OF KERALA, REPRESENTED BY
   THE SECRETARY, EXCISE DEPARTMENT,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM-695001.

2. THE COMMISSIONER OF EXCISE,
   OFFICE OF THE COMMISSIONER OF EXCISE,
   THIRUVANANTHAURAM-695001.

3. THE DEPUTY COMMISSIONER OF EXCISE,
   THIRUVANANTHAPURAM DIVISION,
   THIRUVANANTHAPURAM-695001.

4. THE CIRCLE INSPECTOR OF EXCISE,
   THIRUVANANTHAPURAM DIVISION,
   THIRUVANANTHAPURAM-695001.

5. SUB INSPECTOR OF POLICE,
   VALIYATHUR POLICE STATION,
   THIRUVANANTHAPURAM CITY,
   THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 30763 of 2014 (U)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE NOTICE DATED 8.3.2012 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE NOTICE DATED 18.1.2013 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE ORDER NO.XA1-1111/2014/TVPM DATED 25.6.2014 PASSED BY THE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE NOTICE DATED 26.6.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE RENTAL DEED DATED 7.6.2014.

EXHIBIT P6: TRUE COPY OF THE F.I.R. IN CRIME NO.885/14 OF VALIYATHUR POLICE STATION, THIRUVANANTHAPURAM CITY.

EXHIBIT P7: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER BY THE WELFARE INSPECTOR, KERALA TODDY WORKERS WELFARE SCHEME, 1969.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A.TO JUDGE

mbr/

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 30763 of 2014

Dated this the 20th day of January, 2015

<u>JUDGMENT</u>

The petitioner, a registered toddy tapper, apart from being the Convenor of Group-II Toddy Workers Committee of Thiruvananthapuram Excise Range, has a grievance that notwithstanding the granting of privilege through Exhibit P3, dated 25.06.2014, and consequential communication from the second respondent through Exhibit P4, dated 26.06.2014, he has not been permitted by the respondent authorities to execute the necessary agreement in furtherance of the privilege granted, so that he could commence his business for the years 2014-2017.

2. As there is not much factual controversy, in a conspectus, it is to be stated that the petitioner has been granted licence for five shops in Thiruvananthapuram Excise Range, from 2011 onwards. As has been done earlier, this

time, too, the respondent authorities, on the petitioner's compliance with the statutory requirements, issued Exhibit P3 privilege, which was followed by Exhibit P4 communication issued by the second respondent. However, soon thereafter, on 29.06.2014, a crime was registered against the petitioner under Sections 55(a) and (i) of the Kerala Abkari Act for the alleged offence of the petitioner possessing and selling five litres of toddy, as could be seen from Exhibit P6 First Information Report. It further transpires that the petitioner filed Crl. M.C. No. 5308/2014 and obtained a stay on 20.09.2014. Though no material has been filed to establish this factum, it has nevertheless not been seriously disputed by the respondents.

3. In the light of the persistent denial on the part of the respondent authorities to have the necessary agreement executed and the licence granted to the petitioner, he has approached this Court.

4. In the above factual backdrop, the learned counsel for the petitioner has strenuously contended that what governs the position insofar as the petitioner is concerned is Rule 7 (33) of Kerala Abkari Shops Disposal Rules, 2002

('Rules' for brevity). According to him, unless the crime has culminated in conviction, the petitioner cannot be penalized, much less deprived of his right to carry on his business. The learned counsel has also brought to my notice Rule 5 (3) of the Rules to underline the fact that the disability would have come into picture in the way of the petitioner carrying on the business, had it been an instance of sale of illicit liquor. In elaboration of his submissions, the learned counsel would contend that the allegation admittedly is that the petitioner has been possessing and vending five litres of toddy, which cannot be termed as illicit liquor.

5. Meeting the defence set up by the respondents, the learned counsel has further contended that Rule 5 (1) (a) does not have any application. In furtherance of the said submission, the learned counsel has stated that the limitation imposed under the said Rule applies during the period prior to the actual grant of privilege. According to him, in the present instance through Exhibits P3 and P4, the petitioner has already been granted privilege and as such the only provision that governs the case is Rule 7 (33) of the Rules which mandates that unless a crime has resulted in

conviction, there shall be no disability or impediment in the petitioner's way of his carrying the business in toddy. In support of his submissions, the learned counsel has placed reliance on **Anilkumar v. State of Kerala** [2013 (3) KLT 358]. Summing up his submissions, the learned counsel has urged this Court to allow the writ petition.

6. *Per contra*, the learned Government Pleader has strenuously opposed the claims and contentions of the petitioner. She has submitted that in terms of Rule 5 (1) (a) there is an absolute embargo against the petitioner carrying on his business since a crime has been registered in terms of Exhibit P6. She has further submitted that Exhibits P3 and P4 proceedings do not conclusively establish that privilege has been granted to the petitioner, and in fact it is contingent upon the petitioner's executing an agreement, which has not been done so far. In other words, unless the agreement is executed and licence is granted it cannot be stated that the petitioner has been granted the privilege in the fullest sense of the term and as such the limitation imposed under Rule 5 (1) (a) that registration of a crime is a disqualification for granting the privilege comes into

operation with full force. The learned Government Pleader has submitted in the alternative that so far the petitioner has not come forward to execute a statutory agreement in terms of Rule 5 (16).

7. The learned Government Pleader has also drawn my attention to sub-rule (19) of Rule 5 to underline that the Commissioner of Excise may cancel any licence issued under these Rules at any time on valid grounds. In support of her submissions, the learned Government Pleader has placed reliance on **State of Kerala v. Komalan** [2010 (2) KLT 190].

8. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record.

9. Indeed, the issue lies in a narrow compass, inasmuch as whether through proceedings in Exhibits P3 and P4 privilege has already been granted to the petitioner so as to conclude that the limitation imposed under Rule 5 sub-rule (1) (a) regarding registration of a crime does not have any application.

10. Since much depends on the interpretation of Rules, especially Rule 5 (1) (a) and Rule 7 (33) of the Rules, it is profitable to extract the statutory provision in that regard, which is as follows:

> **"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 [2006-07, 2007-08 and 2008-09], 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 [2002-03 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 preference."
>
> ....
>
> **7 (33)** – If any licensee is convicted of any offence under any law for the time being in force during the currency of his contract period, the Commissioner of Excise may declare his licence forfeited. If any grantee of privilege had been

convicted of any offence before a licence is actually issued to him, the Commissioner of Excise may cancel his privilege and refuse the issue of licence. If after the issue of licence to a grantee should it transpire that previous to such issue he was convicted under any law or was disqualified to hold a shop under Rule 5(3), such conviction or disqualification shall render him liable to forfeiture of the licence and also the forfeiture of his deposit/annual rental. When a licence is forfeited under this sub-rule the privilege shall be resold or otherwise disposed of at the risk of the licensee."

11. Upon a thorough reading of both the provisions extracted above, it is evident that the limitation imposed under Rule 5 (1) (a) regarding registration of a crime comes into play prior to granting of the privilege. In the present case, it is not in dispute that through Exhibit P3 the privilege has already been granted, and in fact, it has been effectively communicated to the petitioner through Exhibit P4.

12. It is axiomatic that while interpreting any provision especially having penal consequences, more particularly having the potential of depriving the livelihood of a citizen, the said provision is required to be interpreted strictly.

13. Here it is essential to observe that it is beyond cavil that the trade in liquor of whatever nature does not have the protective cover of Art.19 (1) (g) of the Constitution. On the contrary, dealing in spirits of any description is much pilloried, yet, ironically, much depended profession, be it for the state or the citizen, who may be granted this *privilege.* Any provision regarding the regulation of this trade, short of putting it with the gloss of Art.19 (1) (g) of the Constitution, is required to be interpreted like any other statutory provision. Obnoxious as the trade is, so long as the State has not proscribed it, the dispensation of statutory interpretation of the regulatory provisions concerning the said trade cannot be any different.

14. In the present instance, going by the plain expression of Rule 5 (1) (a), once privilege has been granted, as has been apparent from Exhibits P3 and P4, the limitation imposed thereunder cannot affect the right of the petitioner to carry on his business on the ground that crime has been registered against him.

15. It is further evident from sub rule 33 of Rule 7 that a person who has already been granted privilege can have

his business interdicted by the authorities only when a crime that came to be registered resulted in conviction, which is not the case here.

16. Before proceeding further, I may have to refer to the alternative submission made by the learned Government Pleader that the petitioner has not come forward to execute a statutory agreement in terms of Rule 5 (16) of the Rules. I am afraid the said submission is a contradiction in terms. On one hand, the respondents contend that the petitioner is not at all entitled to any privilege or licence in the face of a crime having been registered against him; on the other, it is the contention that the petitioner has not come forward to execute the necessary agreement in furtherance of Exhibits P3 and P4. These submissions, in my considered view, do not gel together. Accordingly the submission of the learned Government Pleader has only been stated to be rejected. At any rate, the learned counsel for the petitioner, across the bar, has represented that the petitioner has always been ready and willing to come forward and execute the necessary documents. He has further submitted that the petitioner has already remitted the necessary fee in that

regard.

17. In **Komalan** *(supra)* the learned Division Bench of this Court has observed that under Rule 5 (1) (a) the privilege can be granted only if no Abkari case for an offence other than one under Section 56 of the Act is registered against the person who seeks the licence. In the facts and circumstances of the said case, their lordships have found that before privilege could be granted to the respondent therein, a crime came to be registered against him and accordingly the rejection of privilege has been upheld. Without much cogitation it can be held that Komalan's case does not have any application to the present factual matrix.

18. At this juncture, the learned Government Pleader has submitted that on this issue, even the Supreme Court has held that mere registration of a crime is a bar. Clichetic as the expression is, I cannot have any quarrel with the proposition of law laid down by the learned Division Bench in Komalan's case or for that matter the decision said to have been rendered by the Honourable Supreme Court, as has been submitted by the learned Government Pleader. The fact, however, remains whether the facts of the present case

accord with the cases which have been decided by the learned Division Bench and the Honourable Supreme Court respectively.

On account of this writ petition, I may have to state that the privilege has already been granted and as such Rule 5 (1) (a) does not have any application. In the facts and circumstances, the writ petition stands allowed. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-