

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 36582 of 2015 (W)

PETITIONERS : -

1. M. NARAYANAN, AGED 64 YEARS,
S/O. APPA, MALANKANDI HOUSE, KOYYAM P.O.,
CHENGALAYI VILLAGE,
TALIPARAMBA TALUK, KANNUR DISTRICT.
2. VARGHESE P.V., AGED 52 YEARS,
S/O. VARGHESE, PARIYATHVEEDU,
NADUVIL AMSOM, TALIPARAMBA TALUK, KANNUR DISTRICT.
3. UTHUP PUTHUSSERIYIL, AGED 49 YEARS,
S/O. CHACKO, SREEKANDAPURAM AMSOM, CHERIKODE P.O.,
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADVS. SRI. P. NARAYANAN
SRI. NICHOLAS JOSEPH

RESPONDENTS : -

1. STATION HOUSE OFFICER,
KUDIYANMALA POLICE STATION, KANNUR DISTRICT - 670 582.
2. THE DEPUTY EXCISE COMMISSIONER,
EXCISE DIVISION OFFICE, KANNUR 670 001.
3. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM 695 001.
4. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT, EXCISE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM 695 001.

BY SR. GOVERNMENT PLEADER SRI. K.C. VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 36582 of 2015 (W)

APPENDIX

PETITIONERS' EXHIBITS : -

EXHIBIT P1 : COPY OF THE FIR IN CR. NO.240/2013 OF KUDIYANMALA POLICE STATION AND ITS ENGLISH TRANSLATION.

EXHIBIT P2 : COPY OF THE COMMUNICATION NO.C1.556/2015 DATED 26/11/2015 ISSUED BY THE PUBLIC INFORMATION OFFICER, KANNUR EXCISE DIVISION AND ITS ENGLISH TRANSLATION.

EXHIBIT P3 : COPY OF THE REPORT DATED 16/9/2014 SUBMITTED BY THE 1ST RESPONDENT BEFORE THE COURT TO INCORPORATE THE OFFENCE AGAINST THE ACCUSED AND ITS ENGLISH TRANSLATION

EXHIBIT P4 : COPY OF THE ORDER NO.XA8-23602/14 DATED 17/11/2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P5 : COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONERS BEFORE THE THIRD RESPONDENT.

EXHIBIT P6 : COPY OF THE PETITION DATED 19/11/2014 FILED BEFORE THE COURT FOR SENDING THE 2ND SAMPLE FOR CHEMICAL ANALYSIS.

EXHIBIT P7 : COPY OF THE PROPERTY LIST DATED 3/12/2014 PRODUCING THE B SAMPLE BEFORE THE COURT BY THE 1ST RESPONDENT AND ITS ENGLISH TRANSLATION.

EXHIBIT P8 : COPY OF THE ORDER NO.XA8-23602/14 DATED 25/11/2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 36582 of 2015

Dated this the 04th day of December, 2015

JUDGMENT

The petitioners, the licensees of Toddy Shop Nos. 40, 41, 42, 46, 48, 57 and 59 in Group No.VII of Sreekandapuram Excise Range, had a sample taken from one of their shops by the first respondent on 13.09.2013. In the face of the crime registered by the police, the third respondent, on 17.11.2014, issued Exhibit P4 show cause notice-cum-order of suspension. Having submitted their Exhibit P5 explanation, the petitioners, thereafter, filed W.P. (C) No. 31190/2014.

2. This Court on 27.01.2015 issued an interim order directing the authorities to renew the petitioners licence for the Abkari year 2015-2016. In the course of time, as a matter of subsequent development, the third respondent passed Exhibit P8 order of cancellation essentially based on the findings of the B sample, as well as A sample, obtained on 13.09.2013. Now assailing Exhibit P8, the petitioners have filed the present writ petition.

3. The learned counsel for the petitioners has contended that the order of suspension was initially issued concerning the

licence for the year 2014-2015. According to him, that licence came to an end. When the petitioners were enjoying a new licence for the year 2015-2016 granted by the authorities in the light of the direction given by this Court, the third respondent has passed Exhibit P8 order without any notice, much less hearing the petitioners.

4. The learned counsel has also submitted that Exhibit P8 suffers from the vice of violating the principles of natural justice.

5. The learned Government Pleader, on instructions, has submitted that the third respondent has passed Exhibit P8 based on Exhibit P5 explanation submitted by the petitioners. He has, to his credit, submitted that apart from considering Exhibit P5 objection, the third respondent has of course not put the petitioners on notice. In fact, the learned Government Pleader has justified the course of action adopted by the third respondent contending that since the petitioners defence had already been on record, the third respondent was not obligated to issue another notice, much less hear the petitioners.

6. The learned counsel for the petitioners, in reply, has contended that Exhibit P5 explanation was given in the context

of Exhibit P4 show cause notice, which was concerning the Abkari licence for the year 2014-2015.

7. Be that as it may, I am of the considered opinion that the third respondent ought to have offered an opportunity to the petitioners before passing Exhibit P8 order. Though there is an element of justification in the contention of the learned Government Pleader that the order was passed based on Exhibit P5 explanation, incontrovertibly much water has flowed since then.

In the facts and circumstances, this Court, apart from setting aside Exhibit P8 directs the third respondent to issue a fresh notice to the petitioners calling for their objections and, then, pass appropriate orders after affording an opportunity of hearing to the petitioners. Needless to observe that the petitioners are at liberty to raise all legally permissible contentions available to them before the third respondent.

DAMA SESHADRI NAIDU
JUDGE

DMR/-