

(2015) 03 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No. 410 of 2015 (A)

C.R. Sasidharan

APPELLANT

Vs

The Deputy Excise Commissioner, Alappuzha and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 149

Citation : (2015) 3 ILR Ker 363 : (2015) 2 KLT 182

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : S. Sanal Kumar, Bhavana Velayudhan and T.J. Seema, for the Appellant; Justin Jacob, Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dama Seshadri Naidu, J.—On 04.12.2014 by draw of lots the issue of granting the privilege to vend toddy in Shop Nos. 59, 62 to 65 and 85 in Group No. 13 of Alappuzha Excise Range was determined. The petitioner, having not applied for Shop No. 85, was declared the successful bidder for the rest of the shops through Exhibit P1 proceedings, dated 10.12.2014.

2. Since the petitioner was required to comply with the statutory provisions to carry on with his trade of vending toddy, he executed an agreement on 11.12.2014. Though the licence was granted for Shop Nos. 59, 62, 63 and 65, no licence however was granted for Shop No. 64. Under those circumstances, the petitioner is said to have submitted Exhibit P3 application, in response to which nothing has been communicated by the respondent authorities. The petitioner, however, has been given to understand that in the face of certain agitations and protests from the public of the area, the petitioner's request could not be considered.

3. It is evident from the record that as the fourth respondent, the District Collector, is the competent authority to adjudicate on the issue of the public

protest and temporary closure of any toddy shop, the petitioner submitted Exhibit P4 application to the said authority, apart from submitting Exhibit P5 before the third respondent, the Excise Commissioner. Complaining of in-action on the part of the respondents 3 and 4, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner has strenuously contended that Shop No. 64 had been in operation from 1984 till July 2014, as could be seen from Exhibit P6 certificate issued by the Excise Circle Office. Indeed, a perusal of Exhibit P6 shows that the shop at the present place has been in operation since 1999 though.

5. It is the singular contention of the learned counsel for the petitioner that no statutory impediment can be seen for granting the necessary licence to the petitioner concerning Shop No. 64. In elaboration of his submissions he has submitted that, in terms of Section 24 of the Abkari Act (the "Act" for brevity) read with Rules 5(7), (15) and (16) of the Kerala Abkari Shops Disposal Rules, 2002 (the "Rules" for brevity), unless the petitioner complete the statutory requirements expeditiously and obtains the licence, there is every danger of his losing the privilege to vend toddy on the ground of default on his part. The learned counsel has also submitted that to this day he has paid all the requisite fees, apart from complying with every requirement under law to be given the necessary licence.

6. Referring to what is said to be the public agitation in the area, the learned counsel has drawn my attention to a judgment of this Court in *Kora Abraham v. State of Kerala and Others* [2008 (1) KHC 894]. He has contended that though the shop in the same place has been run for many decades, no untoward incident has happened.

7. In the alternative, the learned counsel has submitted that the fourth respondent ought to have taken an appropriate decision concerning the alleged objections, if any, from the public. Accordingly, the learned counsel has urged this Court to allow the writ petition as prayed for.

8. The learned counsel for additional 5th and 6th respondents has strenuously contended that, initially the petitioner's wife was running the shop in the same location, but that shop was closed by the authorities on a grave charge of adulteration of toddy to the detriment of the consumers' health. In elaboration, the learned counsel has contended that it was the petitioner who effectively carried on the business all through, initially in the name of his wife, and presently on his own name.

9. Drawing my attention to Ext. R5(a) to R5(c) photographs, the learned counsel contends that the protest in the area is spontaneous cutting across all barriers such as age, caste, and community. It is the singular contention of the learned counsel for the additional respondents 5 and 6 that giving the public outcry and given the fact that in the area where the present shop is situated there are many

educational and other institutions of public importance, the 4th respondent ought to have taken an expeditious decision concerning the public protests.

10. Adverting to Section 54 of the Act, the learned counsel has contended that the 4th respondent has got plenary powers to interdict any business being carried on in any particular place, once he comes to a subjective satisfaction that the business is deleterious to public interest. In support of his submissions the learned counsel has placed reliance on C.K. Pushkaran and Others Vs. The Asst. Excise Commissioner and Others--> , Aneesh Kumar Vs. District Collector, and on Kora Abraham v. State of Kerala and others (2008 (1) KHC 894), on which incidently even the petitioner has placed reliance.

11. Eventually the learned counsel has submitted that this Court may issue a direction to the 4th respondent to take appropriate decision on the petitions pending before the said authority. In the end, he has also submitted that it will serve the interest of justice if the 4th respondent undertakes the hearing, after affording an opportunity to all the parties concerned.

12. The learned Government Pleader, on his part, has submitted that the 4th respondent is willing to take an appropriate decision expeditiously based on the representations submitted by the public, including the additional respondents 5 and 6, as well as the representations said to have been submitted by the petitioner.

13. Heard the learned counsel for the petitioner and the learned counsel for the additional respondents 5 and 6, as well as the learned Government Pleader, apart from perusing the record.

14. Indeed the issue in the present writ petition runs in a narrow compass. The petitioner is a successful bidder, who has been conferred the privilege of vending the toddy in a group of shops including shop No. 64. In the absence of any public protest, the petitioner has already been given license for shop Nos. 59, 62, 63 and 65, but not for shop No. 64, regarding which there seems to be some stiff opposition in the locality from the public at large.

15. When statutory scheme is examined, I find that Section 54 empowers the 4th respondent to require any shop in which liquor or any intoxicating drug is sold to be closed at such times or for such period as he may think necessary for the preservation of the public peace.

16. It is essential to examine the scope and ambit of Section 54, since much turns upon the said provision, which reads as follows:-

"54. Closing of shop for the sake of public peace:- It shall be lawful for the District Magistrate by notice in writing to the licensee, to require that any shop in which liquor or any intoxicating drug is closed at such times or for such period as he may think necessary for the preservation of the public peace.

If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such

shop, it shall be lawful for any Magistrate, or for any Police Officer who is present, to require such shop to be kept closed for such period as may be necessary."

17. A perusal of the above extracted provision makes it manifestly clear that the 4th respondent, the District Magistrate, has the power to require any shop vending any intoxicating drug or liquor, such as toddy to be closed at such times or for such period as he may think necessary with a view to preserving the public peace. Further, if a riot or unlawful assembly is apprehended in the vicinity of any such shop, it is also lawful for any Magistrate or for any police officer to require such shop to be kept closed for such period as is necessary.

18. A plain reading of the above provision leaves no manner of doubt that the District Magistrate can exercise the power of temporary closure of a shop which is being run under a due license. In the present case, we are at the stage where the license is yet to be issued. As could be seen, even before license could be issued, there seems to have been some public protest either against the establishment or against the continuation of the shop in the present place.

19. I am of the considered opinion that issuance of license is entirely different from the licensee actually carrying on business based on the said license. Unless the preliminary step of issuance of license is completed, the question of the petitioner carrying on the business does not arise. If the eventuality of the petitioner is carrying on the business has not materialized, the 4th respondent exercising his powers under Section 54 in turn may also not arise. Thus examined the flow of events, I discern that for granting the actual license to the petitioner following the statutory mandate under the Abkari Act and the relevant Rules framed thereunder, the exercise of powers by the 4th respondent under Section 54 of the Act may not be a hindrance.

20. As such, this Court is inclined to direct the 1st respondent to process the petitioner's request for granting the license, provided he fulfills the necessary statutory requirements in that regard.

21. In so far as the issue of considering the objections of the public by the 4th respondent in terms of Section 54 of the Act is concerned, firstly it has to be observed that the District Magistrate is to arrive at a conclusion, subjective though, regarding the complaints said to have been made by the public. Once he has made up his mind in that regard, the decision the said authority takes is required to be communicated to the authorities concerned who in turn can act on it. At that juncture, if the petitioner as a licensee, is aggrieved, he is at liberty to take recourse to all possible remedial measures, including recourse to a court of law, if he is of the opinion that the facts do not warrant the 4th respondent to arrive at such a conclusion.

22. In fact, this Court in *Kora Abraham* (supra) has observed thus:

"5. The statutory duty of the police under S. 149 of the Code of Criminal

Procedure and S. 29 of the Kerala Police Act 1961 to prevent the commission of cognizable offences, if the police is notified, is not a duty that can be washed off. Such empowerment of the police is as part of the police power of the State and it is part of the police duty to ensure that none takes the law into his hands...The state and the police cannot stand as mute spectators, if one exceeds his limit in the matter of exercising his fundamental right to freedom of expression in terms of the Constitution. Therefore, if the private respondents, in the process of holding the "dharnas", lead to any situation where a cognizable offence is likely to be committed and if there is a reasonable apprehension that a cognizable offence is about to be committed, it is the bounden duty of the police to prevent the commission of such offences..." 23. In the present case, I am constrained to observe that it is quite premature to make any observation with regard to the decision likely to be taken by the 4th respondent. Needless to observe that the 4th respondent has been clothed with plenary powers under Section 54 to take an appropriate decision for the preservation of the public peace. Once license is granted to the petitioner, the 4th respondent, after affording an opportunity of personal hearing to the persons who have raised objections with regard to the said license and also the petitioner, may take an appropriate decision with regard to the desirability of issuing any directions for the the closure of shop for any reasonable period as he may think fit.

24. In the facts and circumstances, having observed in the manner indicated above, this Court disposes of the writ petition with a direction firstly to the 1st respondent to process the petitioner's request for issuing the license to shop No. 64 as expeditiously as possible, at any rate within a period of 15 days from the date of receipt of a copy of the judgment; secondly directing the 4th respondent to consider objections of the public, including those of respondents 5 and 6, if any, and pass appropriate orders thereon, after affording an opportunity to all concerned, as soon as the petitioner has been issued with the necessary license.

The writ petition stands disposed of. No orders as to cost.