
(1987) 09 KL CK 0003

In the High Court Of Kerala

Case No : Criminal Appeal nos 495/86 and connected cases

Executive Officer Atholi Panchayat

APPELLANT

Vs

Sreedharan and . Others

RESPONDENT

Date of Decision : 26-09-1987

Acts Referred:

Kerala Panchayat Act, 1960 — Section 110

Citation : (1987) KLJ 1416

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : K. P. Dandapani, for the Appellant; P. M. Mohammed Ali and N. P. Samuel, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan J.

1. In all these appeals the Executive Officer, Atholi Panchayat, is the appellant. The respondents in these appeals are ration shop dealers having ration shops within the jurisdiction of the appellant-panchayat. They were served with a notice u/s 96 of the Kerala Panchayats Act 1960 demanding them to take licence for conducting ration shops. The respondents did not comply with the request made by the Panchayat and they were prosecuted for violation of section 96 and 97 of the Kerala Panchayats Act. The respondents were tried before the Judicial First Class Magistrate's Court, Quilandy and the Learned Magistrate acquitted all of them stating that they are entitled to get exemption u/s 110 of the Act. Aggrieved by the trial court's judgment these appeals have been filed. The respondents are authorised retail ration dealers and they have been given authorisation for conducting ration shops in the buildings specified by the Kerala rationing authorities as per the provisions of the Kerala Rationing Order 1966. They have also been given permission to conduct ration shops as per the provisions of the Kerala Food Grain Dealers Licensing Order 1967. Admittedly these respondents have not taken licence as per the provisions of the Kerala

Panchayats (Licensing of Dangerous and Offensive Trades and Practises) Rules, 1963.

1A. All these respondents have been acquitted by the learned Magistrate on the basis that they have been conducting shops in the buildings where the Government has got authority and control and therefore no licence is required, since it is exempted u/s 110 of the Panchayats Act. Section 110 of the Kerala Panchayats Act 1960 reads as follows:-

110. Government and market committees not to obtain licences and permissions.- Nothing in this Act or in any rule, bye-law or a regulation made thereunder shall be construed as requiring the taking out of any licence or the obtaining of any permission under this Act or any such rule, bye-law or regulation in respect of any place in the occupation or under the control of the Central or State Government or of a market committee established under the Madras Commercial Crops Markets Act, 1933, or any other law or in respect of any property of the Central or the State Government or of any property belonging to such market committee.

2. The learned counsel for the respondents Shri Samuel contended that the respondents have been conducting the ration shop in the buildings specified by the Government and they have been given orders of appointment as authorised retail distributors under clause 44B of the Kerala Rationing Order 1960, and therefore the place of business of the respondents is under the control of the State Government and so section 110 has no application. I am unable to accept this contention. It is true that the respondents are conducting business in a building which is approved by the concerned department of the State Government. This approval is given since the retail dealer is expected to store the food stuffs in hygiene condition and he could not be allowed to keep the food stuff in a damp or obnoxious place. The building is under the control of the ration shop dealer and is in no way under the occupation or control of the State Government. The fact that the officials of the State Government have got authority to come and inspect the ration shop does not in any way mean that have they got control over the place of business. Therefore, the ration shops where the respondents are doing their business are not exempted u/s 110 of the Kerala Panchayats Act.

3. The next contention urged by the learned counsel for the respondents is that the respondents have been selling rationed articles such as rice and sugar. Selling of rice or sugar is not specifically included in the schedule I of the Kerala Panchayats (Licensing of Dangerous and Offensive Trades and Factories) Rules. 1963. Under serial No. 57 selling wholesale or storing for wholesale trade of grains is included. Selling of rice by retail distributor is not included in the schedule. So also under serial No. 112 packing, cleansing, preparing or manufacturing by any process whatever of sugar is included. But the storing and selling of sugar is not specifically mentioned in the schedule. If the respondents have been selling or dealing in sugar and rice they need not take any licence

under the Kerala Panchayats (Licensing of Dangerous and Offensive Trades and Factories) Rules, 1963. The counsel for the appellant contended that the respondents are also selling kerosene and therefore they are liable to take licence under the Panchayats Act. The notice issued to the respondents only mentions that they had been unauthorisedly conducting ration shops. At the time of evidence also PW. 1 has no case that the respondents were selling kerosene in the shops. The notice issued to the respondents should have been more precise and the evidence also should have been adduced to that effect. In the absence of proper notice and supporting evidence the respondents cannot be prosecuted for violation of the provisions of the Act and the Rules.

The respondents have been rightly acquitted by the trial court and I see no reason to interfere with the finding. The criminal appeals are dismissed.