

(1994) 02 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 8693 of 1993

K. Krishna Kumar and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Kerala Abkari Act, 1077 — Section 3(13)

Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 6(2)

Citation : (1994) 1 KLJ 534

Hon'ble Judges : P. Krishnamoorthy, J

Bench : Single Bench

Advocate : C. P. Sudhakara Prasad, for the Appellant; Mohammed Yousuff, M. Krishnan Nair and M. Ajay Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Krishnamoorthy, J.—When the C.M.P came up for bearing it was agreed that the original petition itself may be disposed of. The question Involved in this original petition is as to whether a beer parlour will come within the purview of Rule 6(2) of Abkari Shops (Disposal In Auction) Rules hereinafter referred to as Disposal In Action Rules. Role 6(2) prohibits among other the location of a foreign liquor shop within the prohibited distance of 400 meters from an educational institution, temple and certain other Institutions mentioned therein. The question to be decided Is as to whether a foreign liquor shop will Include a beer parlour.

2. Foreign Liquor Shop as such Is not defined in the Kerala Abkari Shops (Disposal In Auction) Rules. But ft Is mentioned in rule 2(1) that all other words and expressions used therein and not defined in those rules Shall have the meaning respectively assigned to them the Abkari Act and other rules framed therein. Section 3 (13) of the Abkari Act defines "Foreign Liquor as including all liquor other than country liquor and Section 3(10) defines liquor as including beer as well. Accordingly beer shop will also be a foreign liquor shop in

accordance with Kerala Abkari shops (Disposal in Auction) Rules 1974 and the distance rule mentioned in 6(2) will apply to them as well. The counsel for the petitioners contended that the licence (FL It) to the beer parlour is granted under the foreign liquor rules and as such the Disposal in Auction rules cannot have any application. I am not Inclined to agree with ibis contention. Rule 3(1B) of Disposal in Auction Rules provides that Kerala Tourism Development Corporation Limited shall have the exclusive privilege to. obtain FL 11 licence for the purpose of running a beer parlours. It is clear from the above that Disposal in Auction Rules deal with beer parlours (FL 11 license) as well and the provisions of Rule 6 (2) will apply to such shop also.

It is absolutely clear that rule 6(2) of Disposal In Auction Rules applies to all kinds of foreign liquor adopts I have already held that a beer parlours is also a foreign liquor shop and accordingly rule 6(2) small apply to such shops also. Counsel for the, petitioners relied on a Division Bench decision of this Court in O. P. 4924 of 1981 and other connected cases in regard -to the issue of a Hotel (Restaurant) license. So far as such licenses are concerned, there is a specific provision In the foreign liquor rules regarding the distance to be maintained from certain institutions. Rule 13 (3) of Foreign Liquor Rules provides that such Hotels shall be located beyond 200 meters from an educational institution, temple etc. When there is a special rule in regard to a particular matter that will prevail over the general rules. But there is no such provision in the Foreign Liquor Rules in regard to Beer Parlours. Accordingly the genial rule contained in Rule 6 (2) of the Disposal in Auction Rules in regard to Foreign Liquor Shop applies to Beer Parlours as well.

The Government was right in Issuing Ext. P7 order. There is no merit in this original petition and it is dismissed. No costs.