
(2002) 04 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 16139 of 2001

Modern Hotel

APPELLANT

Vs

Commissioner of Excise

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Constitution of India, 1950 — Article 47
Kerala Foreign Liquor Rules, 1953 — Rule 13A

Citation : (2002) 04 KL CK 0022

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : C.C. Thomas, for the Appellant; Khadir Kunju, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Challenge in this Original Petition is against Exts. P4 and P5. The counsel submits that challenge against Ext. P5 is not pressed. Ext. P5 is an amendment to the Foreign Liquor Rules introducing proviso to Rule 13A to the following effect:

"Provided further that no defaulter of Abkari arrears due to the Government shall be permitted to renew the licence unless he produces from the Excise Department a certificate to the effect that he has cleared 50% of the akari arrears pending at the time of renewal of the licence."

When this provision is on statute, no licence shall be granted unless the defaulter produces from the Excise Department a certificate to the effect that he had cleared at least 50% of the abkari arrears pending at the time of renewal of licence. When challenge against Ext. P5 is not pressed necessarily Ext. P5 has to be taken as valid.

2. The petitioner is a partnership firm. The partnership firm obtained Ext. P1 licence. Later the licence was transferred from the name of one partner to

another. It was also on behalf of the partnership firm. The licence granted is existing for and on behalf of the petitioner partnership firm is not in dispute even though one Sulekha is named in the licence for statutory purpose. Thus the petitioner, the firm is the licensee.

3. One among the partners of the firm is one Sasikumar. Before he was admitted to the partnership, he had been a member of another partnership firm which had conducted abkari business in 1981-82. Admittedly that partnership firm which conducted abkari business in the year 1981-82 committed default in payment of abkari arrears to the extent of Rs. 70 lakhs. It is admitted that it is still pending payment. It is also admitted that the said partner Sasikumar was admitted to the petitioner partnership after the abkari arrears had fallen due from the partnership in which he was a partner. Now the Excise Commissioner has refused renewal of the licence of the petitioner firm for the year 2001-2002, as per Ext. P4, on the ground that the said Sasikumar, one among the partners of the petitioner firm, is a defaulter and has not remitted at least 50% of the total abkari arrears in accordance with the last proviso to Rule 13A of Foreign Liquor Rules as introduced by Ext. P5 amendment.

4. The petitioner submits that this attitude of the Excise Commissioner is wrong on several grounds. First ground is that the liability of abkari dues in respect of Sasikumar cannot be tagged on to the petitioner firm which is a separate licensee and entity. It is further contended that the liability of Rs. 70 lakhs had been incurred in the year 1981-82 by a firm. The pro rata liability of Sasikumar is only to nearly Rs. 40 lakhs. When he remits 50% of that amount, the proviso introduced as per Ext. P5 is not attracted.

5. I am unable to accept both these contentions. No one has got the fundamental right to deal with spirituous substances. The licence granted in that respect shall be regulated by the restrictions and limitations contained in the Abkari Act and Rules framed thereunder including the Foreign Liquor Rules. These Rules have to be strictly construed. It cannot be liberally construed especially when those Rules are enforced in order to effectuate the constitutional policy envisaged in Article 47 of the Constitution of India that "the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health". It is in that respect strict constrains and restrictions are made as per the relevant rules. The proviso introduced to Rule 13A is one among the restrictions so imposed for issuing or renewing the licence. No defaulter shall be granted licence, if he had not remitted at least 50% of the dues. Admittedly Sasikumar, a partner of the petitioner firm, is in default of abkari dues as a partner of another abkari firm which conducted abkari business in the year 1981-82. The liability of the partner in respect of the abkari dues defaulted by the partnership firm is always joint and several. Therefore, the liability of said Sasikumar runs to the total Abkari arrears payable by the firm in which he was a partner during the year 1981-82. He cannot contend that he need remit only the prorata share. When proviso to Rule

13A is strictly construed, every partner has to clear the arrears in accordance with the proviso to Rule 13A introduced as per Ext. P5. Firm is the totality of every partners. The liability or disqualification of each of the partners of the firm shall be attributed to the firm. That shall be the correct application of the last proviso to Rule 13A. When it is so construed, necessarily the licence of the petitioner firm cannot be renewed so long as the liability of one among the partners, Sasikumar, still subsists. He has not remitted at least 50% of the total liability of the firm. Necessarily challenge against Ext. P5 fails. The remittance of Rs. 20 lakhs shall always be credited to the dues payable. He shall have to pay 50% of the liability now existing after deducting that Rs. 20 lakhs to get the licence renewed.