

(2012) 11 KL CK 0190

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26051 of 2012 (F)

P.C. Bose, Roy K. Thomas and Mrs. Bharathi Sreedharan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Citation : (2012) 11 KL CK 0190

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : M.G. Karthikeyan, Sri. Nireesh Mathew and Sri. C.C. Thomas, for the Appellant; K. Sunitha Vinod, Government Pleader for R1-R4, for the Respondent

Final Decision : Allowed

Judgement

Justice K. Surendra Mohan

1. Petitioners, along with the fifth respondent, have been allotted the privilege of conducting toddy shop Nos. 8 to 12 in Group No. II of

Ettumanoor Excise Range for the period from 01-08-2012 to 31-03-2013. They had been conducting the said toddy shops from 01-04-2007 to

31-07-2012. Therefore, the toddy shops were allotted to them on preferential basis. The allotments were confirmed as per Ext.P1. Pursuant to the

allotment of the shops, permanent agreements have to be executed by the petitioners and the fifth respondent with the second respondent.

However, the fifth respondent did not execute the permanent agreement for the reason that he was in Ireland. Therefore, the petitioners sought

extension of time for executing the permanent agreement. The petitioners were permitted to run the toddy shops initially on their executing

temporary agreements, but, they were directed to close down the shops, when

the permanent agreements were not executed. Thereupon, they approached this Court by filing W.P. (C) No. 20561/2012. They contended that they would undertake the responsibility for all the financial liabilities that may arise from the conduct of the toddy shops in question. They also assured that they would undertake the entire responsibility including criminal liability, if any, that may arise from the conduct of the shops by them, during the financial year. They further undertook to execute permanent agreements as stipulated by the Rules. After considering the contentions of the petitioners, the second respondent was directed by this Court to consider the matter and to take a decision thereon within a period of two weeks from the date of the said order. The said interim order is Ext.P4. The petitioners were also permitted to conduct the toddy shops pending the decision of the second respondent. Pursuant to Ext.P4, the matter was considered by the second respondent and, by Ext.P5 proceedings, the petitioners were granted two months' time to execute the permanent agreement. It has been provided in Ext.P5 that the petitioners are solely responsible for all the responsibilities/liabilities for the conduct of the shops during the said period. Apart from the above, it has also been stipulated in Ext.P5 that, if no permanent agreement is executed within the period of two months stipulated by Ext.P5, the allotment of the shops would be cancelled without any further notice. Ext.P5 is dated 10-09-2012. Therefore, the period of two months granted by Ext.P5 would expire only on 10-11-2012.

2. In the above circumstances, as per Ext.P11, the allotment of the toddy shops has been cancelled by the second respondent. Ext.P11 has been issued pursuant to a complaint submitted by the fifth respondent to the third respondent. The said complaint is Ext.P12. In his complaint, the allegation of the fifth respondent is that, he suspected the petitioners to be bringing spurious toddy from Palakkad and selling it in the toddy shops. He has also expressed his unwillingness to continue to conduct the shops along with the petitioners. Therefore, he has sought for the cancellation of the licence. It is for the said reason that Ext.P11 has been issued. The petitioners have filed this writ petition challenging Exts.P5 and P11.

3. According to the senior counsel Sri. C.C. Thomas, who appears for the petitioners, Ext.P11 has been issued without any notice to the

petitioners and without hearing them. It is pointed out that they have paid the entire amount that is due to the Government and that Exts.P9 and

P10 toddy transport permits have been issued to them, which are valid up to 31-03-2013. They have also executed the necessary permanent

agreements. Therefore, after having received the entire amount payable by the petitioners, it is inequitable to have passed Ext.P11, relying only on

the complaint made by the fifth respondent.

4. An affidavit has been filed on behalf of the third and fourth respondents. It is stated in the affidavit that, Rule 5(16) of the Kerala Abkari Shops

Disposal Rules, 2002 (hereinafter referred to as the "Rules" for short) requires the successful bidders to execute a permanent agreement within the

period stipulated by the third respondent. In Group No. II of Ettumanoor Excise Range, one of the persons in whose favour the allotment has been

made, has not executed such a permanent agreement in compliance with the said provision. The petitioners had applied for extension of time for

the said purpose. The time was also extended in favour of the petitioners. However, it is submitted that in the meantime, the fifth respondent has

made a complaint to the effect that he was unwilling to execute the permanent agreement or to continue to conduct the toddy shops along with the

petitioners. He has also sought for cancellation of the privilege granted to the petitioners and the fifth respondent. It has also been stipulated by

Ext.P5 that, on failure to execute the permanent agreement within the extended period of time stipulated by the order, the privilege would be

cancelled without any further notice. Therefore, no further notice is necessary. Pursuant to Ext.P11, it is pointed out that the shops have been

brought under departmental management as per order dated 02-11-2012. A fresh auction has thereafter been scheduled to be conducted on 15-

11-2012. The privilege in favour of the petitioners has been cancelled and the fresh auction having been scheduled, it is contended that the

petitioners are not entitled to any of the reliefs claimed in this writ petition.

5. According to the counsel for the fifth respondent, his client is a person who often goes out of the country. The allegation that his client is residing

permanently at Ireland is denied by the counsel. He contends that he has the right to claim the privilege that has been granted to him in the matter of

allotment of toddy shops, under the provisions of the Rules. It is also contended

that complaint of the fifth respondent is fully justified.

6. I have heard the counsel appearing for the contesting parties at length. I have also perused the records of the case.

7. Having considered the rival contentions advanced, what is evident is that there are disputes in existence between the petitioners and the fifth

respondent. Be that as it may, the facts admitted by both sides are summarised below:-

The petitioners and the fifth respondent were licensees of the toddy shops in question for the period from 01-04-2007 to 31-03-2008. On the

basis of the said licences, they have been claiming privilege during the subsequent years. They were allotted the concerned toddy shops for the

period from 01-08-2012 to 31-03-2013. The auction was confirmed in their names. Temporary agreements were executed by them. On the basis

of the temporary agreements, they also started conducting the toddy shops. However, a permanent agreement has not been executed by the fifth

respondent though the petitioners have executed the permanent agreements.

8. Rule 5(16) of the Rules stipulates execution of a permanent agreement. Since the fifth respondent had not executed a permanent agreement as

stipulated, orders were issued directing them to close down the toddy shops. It was in the said circumstances that this Court was moved by the

petitioners by filing W.P. (C) No. 20561/2012. At that time, the petitioners also had not executed permanent agreements. As per Ext.P4 interim

order, the second respondent was directed to consider whether permission could be granted to the petitioners to conduct the toddy shops on their

own responsibility. The petitioners were also permitted to execute the permanent agreements by Ext.P4. They were permitted to conduct the

toddy shops on the basis of the temporary agreements executed by them and the second respondent was directed to take a decision in the matter

within a period of two weeks therefrom. It was pursuant to the said direction that Ext.P5 proceedings were issued.

9. As per Ext.P5, the petitioners were made responsible for all the liabilities; civil, criminal as well as others, for the conduct of the toddy shops in

question during the period that they were permitted to conduct them. An extension of two months was also granted to them to execute the

permanent agreement. Since the petitioners have already executed the

permanent agreement, what remained was only for the fifth respondent to execute the permanent agreement. It has been stipulated in Ext.P5 that, if such permanent agreement was not executed by the fifth respondent within the extended time, the privilege granted shall be cancelled without notice. It is in the above background that the fifth respondent has submitted Ext.P12 complaint. It is clear that the complaint is intended only to put pressure on the petitioners.

10. A perusal of Ext.P12 shows that the allegation made, though grave, is not said to be on the basis of any tangible material. What is stated in Ext.P12 is only that, he suspects that spurious toddy is being sold in the toddy shops. The basis of such suspicion is not disclosed. However, it is mentioned in Ext.P12 that he does not wish to conduct the toddy shops jointly with the petitioners. Therefore, in Ext.P12, it is made clear that the fifth respondent has no intention to execute the permanent agreement as stipulated in Ext.P5. It is not in dispute that the shops can be auctioned only as a group and not as individual toddy shops. Therefore, if the fifth respondent is unwilling to conduct the shops jointly with the petitioners, the auction would have to be cancelled.

11. Ext.P11 mentions that on the basis of Ext.P12 complaint, an enquiry is in progress into the genuineness of the allegation made. However, Ext.P11 does not disclose what was the result of such enquiry. Ext.P11 also does not disclose what would be the effect of the unwillingness of the fifth respondent to execute the permanent agreement, on the privilege that he is enjoying along with the petitioners, by virtue of his previous experience in conducting the toddy shops. It is to be noticed that there are no complaints against the manner of conduct of the toddy shops by the petitioners. Since the allegation in Ext.P12 is grave in nature, it was absolutely necessary for the petitioners to have been put on notice thereof and their explanations sought, before acting on the said complaint. It is to be borne in mind that the petitioners have already complied with the terms of the auction, executed the necessary agreements and deposited all the amounts as stipulated by the authorities. The authorities could also have conducted a surprise inspection of the toddy shops. None of the above appears to have been done before issuing Ext.P11. The second respondent appears to have passed Ext.P11 placing implicit reliance on Ext.P12.

The complaint of the petitioners that the same is issued in violation of the principles of Natural Justice is, therefore, well founded. Hence, Ext.P11 is unsustainable.

12. I notice, however, that the shops in question are under departmental management as evident from order No. K.C.2(b) dated 02-11-2012 of the Circle Inspector of Excise, Kottayam, a copy of which is handed over to me by the counsel for the petitioners. The period of departmental management is only for the period, 02-11-2012 to 08-11-2012. The extended period of two months stipulated by Ext.P5 expires on 10-11-2012.

13. The learned Government Pleader submits that an auction of the toddy shops is scheduled to be conducted on 15-11-2012. However, before such an auction is conducted, it is necessary that a proper order is passed by the second respondent on the basis of Ext.P12 complaint submitted by the fifth respondent, after hearing all interested parties and a decision as to whether the privilege granted to the petitioners should be cancelled or not is taken. An auction of the right to conduct the toddy shops in question, without deciding the entitlement of the fifth respondent to participate in the auction is also uncalled for. It is to be borne in mind that the fifth respondent is a person, who has refused to execute the permanent agreement, after having been granted the privilege to conduct the shops in the auction conducted and after having executed a temporary agreement. It is obvious from the sequence of events and the context in which Ext.P12 has been submitted that, the same is motivated by the disputes or differences subsisting among the privilege holders.

14. For the forgoing reasons, this writ petition is allowed on the following terms:-

(i) Ext.P11 is quashed. The second respondent is directed to consider the matter afresh, taking into account Ext.P12 complaint submitted by the fifth respondent, as well as all other attendant circumstances including the investigation/enquiry that is stated to have been ordered into the allegations in Ext.P12, after hearing the petitioners as well as the fifth respondent, as expeditiously as possible and at any rate, within a period of two weeks of the date of receipt of a copy of this judgment.

(ii) The auction that is scheduled to be conducted on 15-11-2012 shall be deferred and the toddy shops in question shall continue to be under

departmental management, until final orders are passed in compliance with the above direction.