
(1995) 08 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 1038 of 1995

Pushkaran and Others

APPELLANT

Vs

The Assistant Excise Commissioner and Others

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Kerala Abkari Act, 1077 — Section 54

Citation : (1995) 08 KL CK 0016

Hon'ble Judges : M.M. Pareed Pillay, C.J.;P. Shanmugam, J

Bench : Division Bench

Advocate : K.P. Ashok Kumar and K.V. Sohan, for the Appellant; Lal George, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, C.J.—The Original Petition filed by the Appellants (Petitioners in the O.P.) to quash Ext. P-4 order of the second Respondent was dismissed by the learned Single Judge. Appellants were granted licence to conduct arrack shop in A.S. No. 8 of Mala Range, Thrissur District during 1995-96. While they were doing business they were requested to take immediate steps to shift A.S. No. 8 to another non-objectionable place under intimation to the second Respondent (District Collector, Thrissur). The learned Judge held that sufficient grounds have not been made out to challenge Ext. P-4 which was passed bona fide and in public interest.

2. Relying on Ext. P-2 Appellants counsel contended that as the shop was auctioned by the Excise Department it cannot be treated as unauthorised and hence it cannot be directed to be shifted from the existing premises. It is argued by him that para 4 in Ext. P-2 makes it clear that even if the shop is functioning in a "prohibited area" the only restriction is that the same will not be auctioned next year and therefore there is no legal justification for Ext. P-4 order. On the other hand, contention of the Government Pleader is that Ext. P-4 cannot be assailed as it is passed by the second Respondent u/s 54 of the Kerala Abkari Act.

3. The question that arises for consideration is whether the second Respondent was justified in ordering shifting of the shop from the present premises to a non-objectionable premises. Section 54 of the Act provides that the District Magistrate by notice in writing to the licensee can direct him to close the shop in which liquor or intoxicating drug is sold for the preservation of the public peace. As such wide power is given to the District Magistrate to close down any shop he can certainly by the exercise of that power direct shifting of the shop from an objectionable place to a non-objectionable place. The licensee cannot challenge the direction on the sole ground that he has been given licence by a competent authority with respect to a particular premises. Merely on the strength of a licence the licensee cannot continue the business in a particular shop if there is threat to public peace in the locality. A perusal of Ext. P-4 reveals that it was issued on the basis of the complaint petition of Janakiya Madya Virudha Samithy, Annamanada. Though the District Collector is vested with ample power to direct closure of the shop, he has not chosen the draconian step. What was done is only to direct shifting of the shop from the objectionable place to a non-objectionable one. In view of Section 54 the jurisdiction of the second Respondent in passing Ext. P-4 cannot be challenged. Contention of the Appellants that the second Respondent has no jurisdiction to pass Ext. P-4 in view of Ext. P-3 cannot be sustained as he is very well competent to act u/s 54. As already indicated when the District Magistrate is invested with power to close any shop in a situation where he thinks it necessary for the preservation of the public peace, he can certainly direct shifting of the shop from an objectionable place to a non-objectionable one.

4. The learned Single Judge was justified in dismissing the Original Petition. We see no reason to interfere. Writ Appeal is dismissed.

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