

(2014) 03 KL CK 0114
In the High Court Of Kerala
Case No : WP (C) . No. 7989 of 2014 (W)

R. Reghu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 KL CK 0114

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : M.G. Karthikeyan and Sri Nireesh Mathew, for the Appellant; Anitha Ravindran, Government Pleader for R1 to R5, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Abdul Rehim, J.—The petitioner is seeking a declaration to the effect that the Bar Hotel conducted by him is not liable to be closed on 24-03-2014 and on 25-03-2014, in connection with the festival of Kottamkulangara Devi Temple at Chavara. Inter alia the petitioner is seeking direction to command respondents 4 & 5 not to pass any order u/s 54 of the Abkari Act directing to close down his Bar Hotel in connection with the said festival. Apprehension of the petitioner is that prohibitory order will be issued exercise of power vested u/s 54 of the Abkari Act. It is averred that the Excise authorities have orally instructed the petitioner to close sale of liquor on 24-03-2014 and on 25-03-2014. The petitioner points out Ext. P1 circular issued by the State Government prescribing guidelines with respect to exercise of power vested u/s 54 of the Abkari Act. It is further stated that, during previous year the petitioner had approached this court apprehending issuance of prohibitory order and Ext. P4 judgment was rendered. On the said basis the above said relief is sought for.

2. Exercise of power vested u/s 54 is a statutory function for which the 4th respondent is the competent authority. Exhibit P1 is a circular issued by the State Government prescribing guidelines with respect to exercise of such power. This

court cannot presume or anticipate that the 4th respondent, who a quasi-judicial authority, exercising the statutory powers will act in any manner violative of the guidelines prescribed. It is true that during the previous year the petitioner had approached this court anticipating action of closure. From Ext. P4 judgment it is revealed that no order was issued as apprehended by the petitioner. Therefore this court disposed of that writ petition recording the submission made by the Government Pleader and further directing that if any such order is issued the same shall not be implemented without permission from this court.

3. While considering the issue, this court is of the considered opinion that a relief prohibiting exercise of power vested u/s 54 cannot be granted from this court, accepting apprehension expressed by the petitioner that the authority vested with the power may act illegally or in violation of the guidelines. Such an anticipatory relief cannot be granted in exercise of power vested under Article 226 of the Constitution of India. Therefore the writ petition fails and the same is accordingly dismissed. Further, it is made clear that the petitioner will be at liberty to challenge the adverse order, if any passed, to the extent if he is aggrieved in any manner.