
(2004) 12 KL CK 0015
In the High Court Of Kerala
Case No : W.A. No. 1188 of 2004

Subin K. Valsan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Foreign Liquor Rules — Rule 24

Kerala Abkari Act, 1077 — Section 18A

Kerala Abkari Shops Disposal Rules, 2002 — Rule 3(1), 3(2), 4(4), 4(5)

Citation : (2005) 1 KLJ 217

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Sudhi Vasudevan and Bindu K. Nair, for the Appellant; P.C. Iype, for Respondents 1 to 4 and K.P. Dandapani, for Respondents 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Writ petition was preferred by the Appellant herein seeking a writ of certiorari to quash Ext. P-2 notification dated 7-5-2004 issued by the Government in exercise of the powers conferred u/s 18A of the Abkari Act 1 of 1077 read with Sub-rule (1) of Rule 3 and Sub-rules (4) and (5) of Rule 4 of the Kerala Abkari Shops Disposal Rules, 2002 by which foreign liquor retail shop 106 run by the Kerala State Beverages Corporation at Ravipuram within the Ernakulam range was ordered to be transferred to premises at Poothotta within the Tripunithura range in Udayamperoor Panchayat. Writ Petitioner is aggrieved by the said order since he is the licensee of toddy shop No. 17 which is located close to the location where FL-1 shop is sought to be transferred. In the writ petition, writ Petitioner stated as follows:

It is respectfully submitted that if the said Foreign Liquor Retail Shop is shifted to Poothotta, the business in the said Toddy Shop will get adversely affected. It is humbly submitted that even now the business in the toddy shop is very low.

Petitioner will be constrained to close down the toddy shop due to loss in the business in the event of the said shifting of Foreign Liquor retail shop. The Petitioner will be deprived of his only source of livelihood in such an event. Apart from this the shifting of the said Foreign Liquor retail shop to Poothotta is grossly illegal and violative of the relevant provisions of Foreign Liquor Rules.

Statement was filed by the Beverages Corporation stating that the writ Petitioner has no locus standi to challenge the shifting of the shop to Poothotta, since he is not a competitor to FL-1 licence and the complaint that by shifting of the FL-1 shop the business in the toddy shop would be affected is not a genuine reason. It is also stated that Government has got the power to pass such a notification.

2. In the writ appeal Government filed counter-affidavit stating as follows:

The Managing Director, Kerala State Beverages Corporation by his letter dated 23-9-2003 reported that the average sale of shop No. 106 is only Rs. 65,000 per day. There was no chance for improvement of sales in the present location. It was also reported that a foreign liquor shop could be viable run at Poothotta in Udayamperoor Panchayat in Tripunithura Excise Range.

It is submitted that the Commissioner of Excise by his letter dated 13-10-2003 recommended that the request of the Kerala State Beverages Corporation might be considered favourably, Government examined the issue in detail and issued notification G.O. (P) No. 70/2004/TD, dated 7-5-2004.

It is pointed out that the Government have shifted the shop under Rule 4(5) of the Kerala Abkari Shop Disposal Rules, 2002. Learned Single Judge dismissed the writ petition holding as follows:

The main contentions raised against Exhibit P-2 are that it has been issued in violation of Rule 4(4) of the Kerala Abkari Shops (Disposal) Rules and Rule 24 of the Foreign Liquor Rules. Sub-rule (5) of Rule 4 specifically authorises the Government to issue notifications at any time of the year. The contention of the learned Counsel for the Petitioner that it must be issued before 1st of April of that year as provided in Rule 4(4) of the Abkari Shops (Disposal) Rules cannot be accepted. I am of the view that what is ordered under Exhibit P-2 is not a shifting of a shop and therefore Rule 24 of the Foreign Liquor Rules will not apply.

On the question of law we find it difficult to support the reasoning of the learned Single Judge. It is the specific case of the State Government that they have issued notification in exercise of the powers conferred under Rule 4(5) of the Kerala Abkari Shops (Disposal) Rules 2002. For easy reference we may extract Sub-rules (4) and (5) of Rule 4.

(4) The number of independent Foreign Liquor-1 shops in each of the Range or Taluk and also the limits within which such shops are to be located, the period for which the privilege of vending, selling or supplying foreign liquor in such shops is to be granted shall be notified by Government in the gazette before the first day of April every year.

(5) If the Government are satisfied that the number of Foreign Liquor-1 shops notified under Rule 4(4) are not sufficient, they may notify additional number of Foreign Liquor-1 shops in each Range or Taluk at any time during the financial year, as provided in the Rule.

It is evident from Rule 4(4) that the Government is obliged to notify the number of independent Foreign Liquor 1 shops in each of the Range or Taluk and also the limits within which such shops are to be located, the period for which the privilege of vending, selling or supplying foreign liquor in such shops is to be granted. Rule 3(2) states that the privilege of vending foreign liquor for any period in any or all of the independent Foreign Liquor-1 shops as may be decided by the Government from time to time within the range or taluk as may be notified in the gazette, shall be given only to the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited and the Kerala State Co-operative Consumer Federation Limited for a fixed annual rental as may be fixed by the Commissioner for Excise with the approval of the Government.

3. Government have issued the notification allowing the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited and the Kerala State Consumer Federation Limited to locate shops and to sell or supply foreign liquor in such shops to be granted by the Government before the first day of April every year. Kerala State Beverages Corporation has now located the shop No. 106 within the limits of Ernakulam Range. The stand of the Corporation is that unless the shop is shifted from the present location to Poothotta, the Corporation cannot profitably run the business. The question to be considered in this case is whether such a plea can be raised by the Corporation after having located the shop in the area earmarked in the gazette notification. Sub-rule (5) of Rule 4 stipulates that if the Government are satisfied that the number of Foreign Liquor 1 shops notified under Rule 4(4) are not sufficient, they may notify additional number of Foreign Liquor 1 shops in each range or taluk at any time during the financial year. The power can be exercised only after having satisfied that the number of foreign liquor shops are not sufficient within the range. Insufficiency of FL-1 shop in the area already notified is a pre-condition for invoking Rule 4(5). Such a contingency has not happened in this case. The only reason stated by the Government for invoking Rule 4(5) is that the shop 106 cannot be profitably run in the present area already notified. We are of the view the same is not a reason for invoking Rule 4(5). Ext P-2 order therefore cannot be legally sustained. However, we find it difficult to grant the prayer since the Petitioner is not a FL-1 licence holder.

4. Petitioner is conducting toddy shop at Poothotta. Contention of the Petitioner is that if FL-1 shop is opened at Poothotta his toddy shop business would be adversely affected cannot be sustained. Counsel placed reliance on the decision of this Court in *Jayaraj v. Commissioner of Excise* 2000 (3) KLT 820 and contended that Petitioner has locus standi to challenge the notification. We are of the view, principle laid down in the said decision does not apply to the facts of

this case. We have already indicated that the Petitioner is not a foreign liquor 1 licence. He is conducting toddy shop and not a competitor as far as foreign liquor is concerned. That being the situation, contention of the counsel for the Petitioner if foreign liquor shop is located at Poothotta his business in the toddy shop would be adversely affected cannot be sustained. In such circumstances, this appeal lacks merits and it is accordingly dismissed.