(2017) 05 KL CK 0002

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 34672 of 2016 and 10041 of 2017

Susy APPELLANT

Vs

Commissioner of Excise RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:
Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 6

Citation : (2017) 05 KL CK 0002

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : C.S. Manilal, S. Nidheesh, Advocates, for the Petitioners; Senior Government Pleader, V. Manu, Advocate, for the Respondent Nos. 1 to 2.; C.S. Manu, Advocate, for the Respondent No.3.

Final Decision : Dismissed

Judgement

P.B. Suresh Kumar, J.—The question falls for consideration in these matters pertains to the scope of the definition of ''Educational Institution'' contained in the Kerala Abkari Shops Disposal Rules, 2002 (''the Rules'').

2. The petitioners in W.P.(C).No.34672 of 2016 are residents of Ward No.51 of Kottayam Municipality. Their grievance in the writ petition concerns the permission granted to the third respondent in the said writ petition by the authorities under the Rules to establish a toddy shop in the vicinity of the residences of the petitioners. Sub-rule (2) of Rule 7 of the Rules prohibits establishment of toddy shops within 400 meters from educational institutions. According to the petitioners, an Anganwadi is functioning within 200 meters from the building where the toddy shop is permitted to be established; that Anganwadi would fall within the definition of ''Educational Institution'' contained in the Rules and therefore, establishment of the toddy shop in the said building would be contrary to the Rules. The petitioners, though preferred a representation pointing out the said aspect before the Commissioner of Excise, the same was rejected by the Commissioner holding that Anganwadi would not

come within the scope of the definition of ''Educational Institution'' contained in the Rules. The petitioners, therefore, seek among others, a declaration that Anganwadi would come within the definition of ''Educational Institution" contained in the Rules.

3. The petitioners in W.P.(C).No.10041 of 2017 are office bearers of two residents associations functioning at Ponnurunni, within the limits of the Corporation of Kochi. Their grievance in the writ petition concerns the Foreign Liquor-1 shop established by the fifth respondent at Ponnurunni. Sub-rule (2) of Rule 7 of the Rules prohibits establishment of Foreign Liquor-1 shop within 200 meters from educational institutions. According to the petitioners, an Anganwadi is functioning within 100 meters from the building where the Foreign Liquor-1 shop has been established; that Anganwadi would fall within the definition of ''Educational Institution'' contained in the Rules and therefore, establishment of the Foreign Liquor-1 shop in the said building would be contrary to the Rules. The petitioners, therefore, seek among others, a declaration that the establishment of the Foreign Liquor-1 shop in the building referred to in the writ petition is illegal.

4. Statements have been filed in these matters by the official respondents and counter affidavits have been filed by the party respondents. The uniform stand taken by the official as also the party respondents in their pleadings is that Anganwadi would not come within the definition of ''Educational Institution'' contained in the Rules.

5. Heard the learned counsel on either side.

6. Sub-rule (2) of Rule 7 of the Rules prohibits establishment of toddy shops within 400 meters and Foreign Liquor-1 shops within 200 meters, from educational institutions. This fact is not disputed. The fact that an Anganwadi is functioning within 200 meters from the building where the toddy shop is proposed to be established by the third respondent in W.P.C.No.34672 of 2016 and the fact that an Anganwadi is functioning within 100 meters from the building where the Foreign Liquor-1 shop has been established by the fifth respondent in W.P.C.No.10041 of 2017 are also not in dispute. The question, therefore, is whether an Anganwadi would fall within the definition of ''Educational Institution'' contained in the Rules.

7. Going by the plain meaning of the words used in the clause defining ''Educational Institution'' as contained in the Rules, an Anganwadi would not fall within the said clause. The learned counsel for the petitioners do not dispute this fact. However, they contend that since Rule 2 of the Rules which defines the various words and phrases starts with the expression ''unless the context otherwise requires'', a contextual interpretation has to be given to the phrase ''Educational Institution''. According to the learned counsel for the petitioners, Anganwadi is an institution established by the Central Government under its Integrated Child Development Service Programme for creating a base for proper

mental, physical and social development of children of tender age; that functioning of toddy shops and Foreign Liquor shops in its vicinity would certainly affect the psychological and social well-being of such children and therefore, since the rule-makers have intended to prohibit toddy shops and Foreign Liquor-1 shops within a specified distance from Educational Institutions, the definition of ''Educational Institution'' contained in the Rules has to be interpreted to include Anganwadies as well.

8. Per contra, the learned Government Pleader contended that in the similar provision contained in sub-rule (2) of Rule 6 of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974, the expression ''schools'' was used and the said expression has been interpreted by this Court in the context of the said Rules to include even Sunday Schools run by Churches. According to the learned Government Pleader, the expression ''schools'', contained in the Kerala Abkari Shops (Disposal in Auction) Rules, 1974, has been subsequently substituted with the phrase ''Educational Institutions'' and later, the phrase ''Educational Institution'' has also been defined in the said Rules as the said phrase is defined in the present Rules by giving a restrictive meaning to the phrase to weed out all institutions other than schools and colleges under the control of the State Education Department or Central Board of Education and which have been duly recognised by the Government from the purview of the definition. According to the learned Government Pleader, it is the said definition of the phrase ''Educational Institution'' has been reproduced in the Rules when the Rules have replaced the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 with the very same objective of giving a restrictive meaning to the said phrase. It is also pointed out by the learned Government Pleader that since a restrictive definition is given to the phrase ''Educational Institution'' in the Rules, there is no scope for interpreting the said phrase, having regard to the object of the Scheme/ Programme of the Central Government under which the Anganwadies are established.

9. It is trite that when the language used in a statute is plain, simple and unambiguous, there is no scope for any interpretation of the provisions contained therein. Recourse to construction or interpretation of the provisions contained in a statute becomes necessary only when there is ambiguity, obscurity or inconsistency therein. In other words, statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified, unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. The purpose of interpretation is to give effect to the intention of the legislature or rule-makers, as the case may be, and not to frustrate the same. [See Bhavnagar University v. Palitana Sugar Mill (P) Limited [(2003) 2 SCC 111]. Coming to the facts of the case, the relevant portion of Rule 2 of the Rules dealing with the definition of ''Educational Institution'' reads thus:

"2. Definitions.- In these rules, unless the context otherwise requires,-

xx xx

xx xx

(i) "Educational Institution" means Schools or colleges under the control of the State Education Department or Central Board of Education and which has been duly recognised by the Government;

xx xx

xx xx"

As noted above, going by the plain meaning of the words used in the clause defining ''Educational Institution'' contained in the Rules, an Anganwadi would not fall within the said clause. The petitioners have no case that the definition clause extracted above suffers from any ambiguity, obscurity or inconsistency with the remaining provisions contained in the Rules. They have also no case that the phrase contained in the definition clause needs to be interpreted differently to prevent the same from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. In the circumstances, according to me, there is absolutely no scope for interpreting the definition of ''Educational Institution'' contained in the Rules differently as contended by the petitioners. Further, as contended by the learned Government Pleader, it is seen that the expression ''schools'' had not been defined in the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 originally and in the context of sub-rule (2) of Rule 6 of the said Rules, prohibiting establishment of Abkari shops within a specified distance from schools, the expression ''school'' has been interpreted by this Court in St.George Jacobite Syrian Church v. State of Kerala (1975 KLT 660) to include even Sunday Schools run by Churches. It is also seen that later, the expression ''Schools'' contained in sub-rule (2) of Rule 6 of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 has been substituted with the phrase ''Educational Institutions'' by virtue of the provisions contained in the Kerala Abkari Shops (Disposal in Auction) Amendment Rules, 1979. It is further seen that thereafter, by virtue of the Kerala Abkari Shops (Disposal in Auction) Amendment Rules, 1986, a definition was also introduced to the phrase ''Educational Institution'' in Rule 2 of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 as Rule 2(ga). In the explanatory note to the Kerala Abkari Shops (Disposal in Auction) Amendment Rules, 1986, it is stated that in the absence of any definition for the phrase ''Educational Institution'', the Excise Department of the State is finding it difficult to issue licences on account of objections from several quarters. As rightly pointed out by the learned Government Pleader, it is the said definition that has been given in Rule 2(i) of the Rules for the phrase ''Educational Institution''. The contention advanced by the learned Government Pleader that the rule-makers have consciously substituted the expression ''schools'' in the identical provision contained in the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 with the phrase ''Educational Institutions'' and gave a restrictive meaning to the said phrase to weed out all institutions other than schools and colleges under the control of the State Education Department or Central Board of Education and which has been duly recognised by the Government from the purview of the definition of ''Educational Institution'' and it is the very same definition that has been given in the Rules for the phrase ''Educational Institution'' with the object of giving to the phrase a restrictive meaning, appears to be plausible. If that be so, the court cannot expand the scope of the definition of a phrase which would frustrate the said intention of the rule-makers. There is absolutely no scope for interpreting the definition of ''Educational Institution'' contained in the Rules differently, as contended by the petitioners, on that ground as well.

10. It is settled by a long line of decisions that when a word or phrase has been defined in a statute, prima facie, that definition governs whenever that word or phrase is used in the body of the statute. But, where the context makes the definition inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the definition. It is on account of this reason that all definitions in the statutes are normally enacted subject to the qualification ''unless the context otherwise requires''. Even in the absence of an express qualification to that effect, such a qualification is always implied. [See Sales Tax Commissioner, Gujarat v. Union Medical Agency (AIR 1981 SC 1)]. The petitioners could not demonstrate as to how the present context makes the definition of ''Educational Institution'' contained in the Rules inapplicable, warranting interpretation of the said phrase differently. On the other hand, a perusal of the Rules as a whole would indicate that the definition is provided for in the Rules solely in the context of Rule 7(2) of the Rules which prohibits establishment of toddy shops and Foreign Liquor-1 shops within a specified distance from educational institutions.

11. There is, therefore, no merit in the writ petitions and the same are, accordingly, dismissed.