(2010) 12 KL CK 0110

In the High Court Of Kerala

Case No : W.A. No. 2054 of 2010

The Excise Commissioner APPELLANT

Vs

K. Rajendran RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2010) 12 KL CK 0110

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; No Appearance, for the Respondent

Judgement

Ramachandran Nair, J.—Writ Appeal is filed by the Excise Commissioner challenging interim order issued by the learned Single Judge directing him to comply with earlier interim orders dated 4.11.2010 and 22.11.2010, failing which to appear in court on 8.12.2010. We have heard Government Pleader appearing for the Appellants. Since we do not find any merit in the Writ Appeal, we proceed to dispose of the Writ Appeal without issuing notice to the Respondent.

2. The issue raised in the Writ Petition is on the legality and propriety of the action proposed by the Excise Commissioner after inspection. The Respondent running the Bar Hotel has effected some modification of the Bar room and the Restaurant in the form of construction of additional counter in the Bar and sub-division of the Restaurant with a space with Air Condition facility. The Commissioner is of the view that these modifications are violation of the licence conditions justifying penalty on the Respondent and if required, even cancellation of Bar licence. We do not want to consider whether additional counter constructed could be treated asviolative of the Rule or other allegations made by the Government Pleader in the Writ Appeal are true and even if true, whether the same justify cancellation of Bar licence. These are matters to be considered by the learned Single Judge during final hearing. During pendency of the W.P.(C) the learned Single Judge by interim order dated 4.11.2010granted a conditional stay

against all action proposed by the Commissioner on the Respondent remitting Rs. 50,000/-. The Respondent complained in this Court that the Excise Commissioner disobeyed the court order by not issuing achalan for remittance of the amount. A petition is filed by the Excise Commissioner before the learned Single Judge for modification of the earlier interim orders, which was rejected by the impugned order appealed in this Writ Appeal.

3. The Writ Appeal is filed for the reason that the findings by the Excise Commissioner during his inspection of the Bar Hotel justify the action proposed by him. As already stated, the Appellants cannot get the W.P.(C) finally decided by the Division Bench by filing Writ Appeal against an interim order. In our view, the learned Single Judge issued the interim order only on being satisfied that the Respondent has a prima facie case for continuing business in the Bar Hotel. We do not want to disturb this finding of the learned Single Judge at this stage. It is for the Appellants to file counter affidavit in the W.P.(C) explaining the position so that all the issues are considered when the matter is finally heard and decided. The refusal of the Excise Commissioner to issue chalan is a clear violation of the order of the learned Single Judge and we do not find any justification to interfere with the said order. However, we grant two weeks time from today to the Appellants to comply with the order of the learned Single Judge, failing which the Excise Commissioner will appear before the learned Single Judge in terms of his order on the working day following expiry of two weeks from today. Writ Appeal is closed as above.

