

(2010) 02 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 54 of 2010

Venu T.D.

APPELLANT

Vs

The Commissioner of Excise, Trivandrum

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 2 ILR (Ker) 624 : (2010) 1 KLJ 364 : (2010) 1 KLT 771

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Jai George, for the Appellant; T.K. Vipindas (G.P.), for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—The writ petitioner is the appellant. He was granted the privilege to vend toddy in shop Nos. 36 to 40 in Group No. VIII of Kodungallur Excise Range, for the year 2009-10. But, he was not granted licence to run toddy shop No. 36, for the reason that the building, wherein it is proposed to be housed, comes within the objectionable distance prescribed under Rule 7(2) of the Kerala Abkari Shops Disposal Rules, 2002(for short, "the Rules"). The appellant's claim for licence was rejected by the Deputy Commissioner of Excise, Thrissur, by Ext.P5 order dated 11.8.2009. His revision against Ext.P5 order was dismissed by the Excise Commissioner, by Ext.P8 order dated 27.10.2009. The relevant portion of Ext.P8 reads as follows:-- Until 2007-08, the Toddy Shop was licensed in Building No. X/434 under the protection of 2nd proviso of rule 7(2) of Disposal Rules, 2002. But during 2008-09, the above toddy shop was not licensed in the same building. As per the 2nd proviso of rule 7(2) of Disposal Rules, 2002, the toddy shop functioned in the objectionable site can be located at the same place only if it was licensed in the same place in previous years including the immediate previous year.

Records of the T.S. No. 36/09-10 in Group No. VIII of Kodungallur Range show that it was not licensed in the same place in 2008-09 and hence the petitioner is

not eligible for the benefit of 2nd proviso of rule 7(2) of Disposal Rules, 2002 and the order, issued by Deputy Commissioner of Excise, Thrissur is legal and as per rules. The Appeal Petition is hereby rejected.

It is common ground that the toddy shop concerned was licensed in the same premises, where the appellant moved for licence, during the years 2006-07 and 2007-08. The appellant claims that during earlier years also, the shop was housed in that building. But, the shop remained unlicensed in the year 2008-09. Therefore, according to the appellant, he is entitled to get the protection of the second proviso to Rule 7(2) of the Rules. The relevant portion of Rule 7(2) reads as follows:--

7. The licences of Toddy or Foreign Liquor-1 shops shall be subject to the following General Conditions, namely:--

(1) xxxx

(2) No Toddy or Foreign Liquor-1 shop notified in the Gazette under rule 4 shall be located outside the notified limits, but with the previous sanction of the Assistant Excise Commissioner, it may be removed from one place to another within such limits. However no such shop shall be located in or removed to a place within an area declared as a project area- No toddy shops shall be located within 400 metres and no Foreign Liquor-1 shops shall be located within 200 metres from an Educational institution. Temple. Church. Mosque. Burial ground and Scheduled Caste/Scheduled Tribes Colonies. In calculating distance the basis will be the shortest pathway/lane/street road generally used by the public and the same shall be measured from gate to gate:

Provided that if any Educational Institution, Temple, Church, Mosque, Burial ground or Scheduled Caste/Scheduled Tribe Colonies come into existence subsequent to the grant of licence, it shall not dis-entitle such shops for continuance.

Provided further that the restrictions regarding distance from an Educational Institution, Temple, Church, Mosque, Burial ground and Scheduled Caste/Scheduled Tribes Colonies for locating toddy shops shall not apply to those shops which remained unlicensed for want of unobjectionable site and which are for that reason sought to be located at the same place where they were licensed in previous years availing of the exemptions given to them by notifications/Government orders in this regard.

(Emphasis supplied)

According to the appellant, in view of the second proviso to Rule 7(2) quoted above, he is entitled to get the licence. But, the first respondent took the view that the appellant was entitled to get the licence, only if the shop was functioning in the same premises during the year 2008-09 also. The said stand of the first respondent was upheld by the learned Single judge. Hence, this Writ Appeal.

2. We heard the learned counsel on both sides. They reiterated the respective contentions, which we have mentioned above. If the contentions of the respondents are correct, the appellant can get the licence, if only the shop was functioning in the same premises all throughout, including the immediately preceding year. If that be so, the words "which remained unlicensed for want of unobjectionable site" in the said proviso would become redundant. The rule could have been drafted to read that if a shop was functioning in the premises for the last few years, including the immediately preceding year, then the shop can be located there, even if the site is objectionable. When a rule is interpreted, every word used in it should be given the normal meaning assigned to it. No word could be taken as redundant or superfluous. This is one of the settled principles of interpretation. So, having regard to the facts of the case, we think, the appellant is entitled to get the protection of the second proviso to Rule 7(2) of the Rules. That means, the prohibition regarding location of the shop within 400 meters of Temple, Church, etc. will not apply to the appellant, if the shop is housed in the building wherein the shop was licensed upto the year 2007-08, It is declared so. In the result, we quash Exts.P5 and P8. The second respondent is directed to reconsider the application of the appellant for licensing toddy shop No. 36 in the aforementioned premises, in accordance with law, in the light of the declaration of law made by us above, within two weeks from the date of production of a copy of the judgment.

The Writ Appeal is allowed as above.