

## Surendran, P. Vs State of Kerala and Others

**Court:** High Court Of Kerala

**Date of Decision:** Dec. 22, 2009

**Acts Referred:** Constitution of India, 1950 " Article 226, 47

Foreign Liquor Rules " Rule 13(3)

Kerala Building Tax Act, 1975 " Section 3(1)

**Citation:** (2010) 1 ILR (Ker) 311 : (2010) 1 KLJ 29 : (2010) 1 KLT 204

**Hon'ble Judges:** Thottathil B. Radhakrishnan, J

**Bench:** Single Bench

**Advocate:** K.P. Dandapani, Millu Dandapani and Althea Edwina Rozario, for the Appellant; V. Manu, Government Pleader for 1st and 2nd Respondents, C.C. Thomas M.G. Karthikeyan and Sarvothaman for 4th Respondent and A. Azhar, for 5th Respondent, for the Respondent

**Final Decision:** Dismissed

### Judgement

Thottathil B. Radhakrishnan, J.

The Petitioner, in the first among the captioned matters, filed an application for FL-3 license in terms of the

Foreign Liquor Rules. The Circle Inspector of Excise reported to the Assistant Excise Commissioner that the site is an unobjectionable one, though

there is a thycavu (niskarapally), which is not a place where Juma prayers are being offered. Accordingly, the Assistant Commissioner forwarded

the application with the recommendation that the licence could be granted as applied for. However, the Deputy Commissioner of Excise reported

to the Joint Commissioner that though not mentioned in the petition by the President of the Karamana Juma-Ath, a hostel housing the students of

the Ayurveda College is at a distance of 140 metres from the proposed site for the Bar and the distance from the Hotel to the main gate of the

Panchakarma Hospital is 230 metres and that the main gate of the Panchakarma Hospital is generally used by the public. The Joint Commissioner

thereafter personally inspected the proposed site and noted that though the distance of the proposed Bar from the Poojapura Ayurveda Research

Institute is 230 metres, and the distance from the gate on the eastern side of the compound, which is for entry to the hostel is only 140 metres. It

was reported that the so-called thycavu is in a land which stands in the name of one Mohanan Nair and therefore there is no material to hold that it

is a public place. With the aforesaid materials, the Commissioner of Excise issued the order impugned in these writ petitions on 7-9-2009 holding

that the applicant is ineligible for FL-3 license in the site in question which is within the prohibited distance of 200 metres from an educational

institution, viz. Ayurveda College Hostel in Poojappura. The Commissioner held that the Niskarappally at Poojappura is not an objectionable

structure for the purpose of grant of FL-3 license to the applicants. Hence these writ petitions.

2. Though faintly, it was suggested by the learned Counsel for the Petitioner in W.P. (C) 27360 of 2009 at the time of final hearing that the

impugned order is revisable. If that argument is to be accepted, then all these writ petitions may have to go. But, the parties have addressed

arguments even on merits and a Commissioner's report is also on record touching the controversy between the parties.

3. The Petitioner in W.P. (C) 27007 of 2009, who hereinafter is referred to as the "applicant", contends that the findings in the impugned order

that the Ayurveda College Hostel is an educational institution and is within the prohibited distance of 200 metres from his hotel is unsustainable in

law and on facts. On the basis of his pleadings, it is argued that the Government Ayurveda College is not situated anywhere near Poojappura and

the Panchakarma Ayurveda Hospital and Research Centre in Poojappura are situated in about 25 acres and the distance between its main gate

and the applicant's hostel is 230 metres. It is contended that though there are four gates for the said hotel compound, the gate to be taken note of

is the main gate, which is generally used by the general public. In support of the applicant's contentions, his learned senior counsel argued that the

decision of this Court in *State of Kerala v. Sukumaran* 1988 (2) KLT 261 laying down that the hostel is part of an educational institution, has no

application because of the indisputable fact that the educational institution viz., Government Ayurveda College, Thiruvananthapuram, is situated far

away from Poojappura and the mere facility for the students to stay, does not make the so-called hostel at Poojappura, part of the educational

institution--The Government Ayurveda College. To drive home this point, the learned Counsel relied on the decision of this Court in *Josegiri*

*Hospital v. Government of Kerala* 2008 (3) KLT 627 wherein it was held that dormitory, boarding house and hostel of students do not form part

of the integral, immediate and proximate activities of education of students. It is argued that in terms of Rule 13(3) of the Foreign Liquor Rules, the

application for license has to be submitted to the Assistant Commissioner and it is that officer who is duty bound to look into the factual aspects

and report the relevant matters for consideration of the Commissioner and in that statutory process, the intermediary Abkari Officers including

Deputy Commissioner and the Joint Commissioner have no say.

4. The learned Counsel appearing for the objectors, the Petitioners in W.P. (C) 27360 of 2009 and W.P. (C) 29594 of 2009, argued that thycavu

is a place where muslims offer prayers and that this issue is covered by the judgments of this Court Thilakan Vs. Commissioner of Excise, . It was

thus contended that the findings in the impugned order that thycavu in the locality is not an objectionable structure in relation to the site in question

is unreasonable and liable to be interfered with.

5. The learned Government Pleader argued that the impugned order does not warrant interference and contains findings of facts which have not

been pleaded or proved to be vitiated by illegality, irrationality or procedural impropriety. The decision of this Court in Tiroorangadi Muslim

Orphanage Committee v. Government of Kerala and Anr. 2007 (2) K.H.C. 822 rendered referring to Council of Civil Service Unions v. Minister

for Civil Service 1985 A.C.C. 374 was referred to.

6. Before proceeding further, it needs to be noted that one of the objectors, viz. the Petitioner in W.P. (C) 27360 of 2009 has filed O.S. No. 933

of 2008 before the MunsifPs Court, Thiruvananthapuram seeking perpetual injunction against the applicant from vending liquor in the hotel.

7. First, I shall deal with the contentions of the objectors in relation to the finding to the extent that the so-called thycavu is no objection for granting

the license in question. The materials on record before the Commissioner tend to suggest that the building, which is shown as a thycavu stands in

the name of one Mohanan Nair. With the materials and additional materials being placed before this Court, the Petitioner in W.P. (C) 29594 of

2009, one of the objectors, essentially, tries to demonstrate that the title to the said property vests in a Jama-Ath or a Trust and the Commissioner

ought not to have decided otherwise. That issue is also the subject-matter of the suit noted above. Leaving aside that the present fact situation

appears to be that even if there was transfer of title, the revenue records and the Corporation assessment records are yet to be appropriately

modified. With all this, is the contention of the applicant that the documents shown by the objectors relate to yet another parcel. These disputed

questions of fact are not to be gone into in these writ petitions. They cannot be resolved on the basis of affidavits. Not only that, the resolution of

that dispute, in this case, will not by itself, terminate this litigation in favour of the objectors. On the basis of the materials then available on record,

the Commissioner cannot be treated to have acted illegally, irrationally, improperly or irregularly in arriving at the decision that so-called thycavu is

not a structure, which could be treated as within the objectionable distance from the site in relation to which the license is sought for. The findings in

that regard are neither perverse nor totally unavailable on records that were available before the Commissioner. Those findings do not therefore,

warrant interference under Article 226 of the Constitution of India.

8. In so far as the question relating to the educational institution is concerned, it needs to be noted that the decision in Josegiri's case (supra) was

rendered by this Court on the question whether dormitory, boarding house and hostel of students form integral, immediate and proximate activities

to education, to fall within the expression, "educational purpose" as enjoined by Section 3(1)(b) of the Kerala Building Tax Act, 1975. Firstly, that

is a fiscal legislation. More importantly, the question that was considered was as to exemption from a fiscal license. Interpretations placed on fiscal

legislations, particularly exemptions therefrom, cannot be imported into the domain of abkari laws and interpretation thereof.

9. The Division Bench in Sukumaran's case (supra) held that the purpose of keeping the student community away from the vicinity of the liquor

vending premises is a matter of prime concern. This principle has been adopted by the Division Bench in State of Kerala v. Vijayakumar 2009 (1)

K.L.T. 578. That decision was unsuccessfully challenged by the State before the Apex Court. In Sukumaran's case (supra), the Bench held that

the object of the rule prescribing the prohibited distance is to ensure that the student community is not exposed to the vice of consumption of

liquor. That consumption of liquor is constitutionally recognized as a vice is clear from the fact that it is one of the Directive Principles contained in

Article 47 of Part IV of the Constitution. The State is required to strive to reach this constitutional goal and not function in a reverse direction. The

Bench went on to state that even otherwise, there would be no hesitation to take the view that hostel attached to educational institution being an

integral part of education must be reckoned as part and parcel of the educational institution, and that is a reasonable interpretation, having regard to

the object of the rule under consideration, which obviously is that the student community shall not be exposed to the vice of consumption of liquor.

Applying that principle, it does not matter even if the situs of the hostel which is the house of residence for students is away from the place where

education is imparted, that is the College. It would be incongruous to the requirement of insulating an educational institution, if it is to be held that

there could be a liquor vending point near a hostel which is away from the College, though the students to whom instructions are imparted in the

College, stay in the hostel in question. The nexus between the hostel and the College where instructions are imparted, is not to be measured by the

distance to be traversed by the student, from the college to the hostel. The proximity between the hostel and the college is to be understood with

reference to the purpose for which a hostel is provided in relation to a college. The hostel is where the student lives what is expected of an orderly

life of a student, in connection with his undergoing the course of study imbibing the instructions that are imparted in the college. Whatever be the

physical distance between the building which houses the college and the building which houses the hostel, the content of the activities of the hostel is

part of the sublime activities of the college, which is nothing but imparting instructions as part of education. Therefore, it cannot but be held that a

hostel is an integral part of the educational institution even if it is away from the college building in the mundane materialistic sense. This is only the

manner in which the concept of educational institution could be understood in relation to a college and its hostel, for the purpose of the prohibitions

contained in the Foreign Liquor Rules.

10. Turning to the facts of the case in this regard, the Commissioner has found in the impugned order that the report of the Joint Commissioner

shows that there is a men's hostel within the Panchakarma Ayurveda Medical College Complex. The students of the Government Ayurveda

Medical College Hostel, Thiruvananthapuram stay in that hostel. Though the entire land housing the Panchakarma Ayurveda Medical College is

about 25 acres, the hostel is at one extreme corner, "having separate fencing and gate on the eastern side opening to the tarred public road in front

of it". The Commissioner also found that the "hospital compound and the remaining part of the hospital complex are connected by a wicket gate

which of course is not motorable". Annexure C-1 sketch produced by the Advocate Commissioner, along with his report dated 6-10-2009 filed in

WP(C) 27007 of 2009 shows that the Poojappura-Thirumala Road branches off towards Mudavanmughal and the proposed site (Hotel Sabari

Park) is aside that road. The main gate of the hotel opens on to the Poojappura-Mudavanmughal Road. Kesavan Nair Road branches off from

that road and gate G5 in that road is shown as the gate to the hostel building. In his additional report dated 20-10-2009, following subsequent

inspection in terms of the order of this Court, the Advocate Commissioner has stated, in paragraph 5 thereof, that the hostel faces east and there is

a board in the east west direction, fixed in Kesavan Nair Road outside the gate on the southern side. The undisputed Ext. R-4(a) photographs

clearly show the gate, which is G-5 in the aforesaid Annexure C-1 sketch. Those photographs vividly demonstrate that a separate gate is provided

for the hostel and that the hostel is meant for the students of the Government Ayurveda College. From that gate, the distance to the applicant's

hostel site is 177 metres as found by the Advocate Commissioner. The findings on facts, in that regard, in the impugned order therefore remains

unassailable.

11. For the aforesaid reasons, there is no ground to interfere with the impugned order on this issue also.

In the result, these writ petitions fail. They are accordingly dismissed. No costs.