

(2002) 01 KL CK 0059

High Court Of Kerala

Case No: O.P. No. 38486 of 2001

Kodungallur Kalluchethu
Vyavasaya Thozhilali Sahakarana
Sangom Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Jan. 7, 2002

Acts Referred:

- Kerala Toddy Depot Licence Rules, 1965 - Rule 1

Hon'ble Judges: K.A. Abdul Gafoor, J

Bench: Single Bench

Advocate: M.K. Damodaran and P.K. Vijayamohanan, for the Appellant; George Mecheril, Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

K.A. Abdul Gafoor, J.

Petitioner is a Co-operative Society managing all the toddy shops in Kodungallur range. The petitioner has to store toddy, according to the petitioner, petitioner thereupon applied for a depot licence in accordance with the Toddy Depot Licence Rules issued in S.R.O. No. 649/75 dated 31.5.1975 in the Kerala Gazette This application was directed to be considered in accordance with the rules as per Ext. P2 judgment. Thereupon, the Assistant Excise Commissioner, Thrissur issued Exts. P4 order rejecting the application. The only reason stated in Ext. P4 is that the Circle Inspector of Excise, Kodungallur has reported that the Toddy Depot Licence application put in by Sri. T.S. Gopinathan has not fulfilled the Toddy Depot Licence Rule No. 1 and Toddy Depot Licence Condition No. 2. Accordingly the application had been rejected. Ext. P4 was challenged by the petitioner before this Court. Ext. P6 is the judgement. This Court in Ext. P6 judgment adverted to the decision in Ayyappan v. Assistant Excise Commissioner (1998 (2) KLT 849) wherein the implication of the word "ordinarily" appearing in Rule 1 of Toddy Depots Licence

Rules had been explained. In para 8 of Ext. P6 judgment, this Court found as follows:

"The petitioner is the licensee of 86 toddy shops of Kodungalloor Range which would show that the petitioner has taken all the toddy shops of the said range en bloc. The respondents have also no case that the petitioner has not taken all the shops of the Kodungalloor range en bloc. The only other contention taken by the respondents is that the building No. IV/3700 of Sree Narayanapuram Panchayat in Kodungalloor Taluk suggested by the petitioner for issuing depot licence is not centrally located. The condition No. 2 of the licence form provides that toddy depot shall be established in a central place in the tapping area en route to the toddy shops. According to the petitioner, the said building is located in a central place. From the sketch furnished by the petitioner also, it would appear that it is located by and large in a central place. However, it is not a matter to be determined with any precision but only approximately".

Therefore, the debated question before this Court while dealing with that Original Petition was whether the place was a centrally located place or not. Anyhow, this Court quashing the said order, directed the first respondent to consider the issue afresh in accordance with the rules, the relevant circular and the observations contained in the judgment. The circular referred to is Ext. P1 herein. Considering the entire facts another detailed order Ext. P7 was passed again rejecting the application for licence. That is the order impugned in this Original Petition.

2. Assailing Ext. P7, it is contended by the petitioner that his application ought to have been allowed, as the Rule 1 of Toddy Depot Licence Rules provides that:

"Toddy Depot Licences shall ordinarily be issued to persons who have taken all the toddy shops of a Range or Ranges en bloc".

The petitioner has taken the entire toddy shops of Kodungalloor Range en bloc. Therefore, he shall be issued with a licence. The meaning of the word "ordinarily" appearing in the said rule is interpreted by this Court in Ayyappan's case (cited supra). Therefore, unless there are any exceptional or extraordinary circumstances, the first respondent is bound to issue a Toddy Depot Licence to the petitioner who had admittedly taken the entire shops in Kodungalloor range. No exceptional circumstances are pointed out in Ext. P7 the impugned order. Therefore it is bad.

3. I am unable to agree with this contention. Even in Ayyappan's case, this Court has made it clear that the word "ordinarily" appearing in Rule 1 of the said rules cannot mean "always". This Court also found that it does not mean "invariably". This Court also found in para 6 of the said judgment that:

"We have to understand the scope of Rule 1 on the basis of the above mentioned principles, since the word "ordinarily" tones down the force of "shall" which immediately precedes it. Rule 1 is only directory and can be departed from on extraordinary or exceptional circumstances for good reasons."

Therefore, what has to be examined in this case is while rejecting the application whether any good reason sufficient to import an extraordinary or exceptional circumstances is there which had struck the administrative authority to reject the application.

4. The petitioner does not have a dispute with regard to the arithmetics regarding the toddy collected, transported and sold in each of the shops as mentioned in Ext. P7. The relevant details as contained in Ext. P7 are as follows:

"There are eighty six toddy shops in Kodungallur Range. On a rough estimate, the total quantity of toddy that can be tapped and measured in a toddy shop is only about 92.4 B.L. per day as shown below.

(1) Toddy tapped in Kodungallur per day	4300	6450 B.L
x 1.5 B.L.		
(2) Toddy transported from Chittur per day		1500 B.L.
		7950 B.L.
(3) Total number of toddy shops		86 Nos.
(4) Toddy available for each shop		7950 B.L./86
		9240 B.L.

It can be seen that a meagre quantity of 92.400 B.L. of toddy is seen available to be stored in each toddy shop, per day, and this can very well be stored in toddy shops itself and can be sold out in the same day itself."

This is the available toddy including the toddy transported which is almost less than 1/4th of the toddy collected in the range, and the entire quantity of toddy is sold every day from each of the shops. In such circumstances, the authority concerned namely the first respondent, while considering the application has adverted to a good reason for rejecting the application. According to the authority, even though the petitioner had bid the entire toddy shops of Kodungallur range enbloc, same "extraordinary or exceptional circumstances for good reasons" exist to reject the application. Thus, the rejection is in accordance with what is permissible in terms of the dictum laid by this Court in Ayyappan's case, when the petitioner does not dispute the details regarding the toddy.

5. The petitioner also cannot improve the case for the grant of depot licence based on Ext. P1 guidelines. Ext. P1 had been issued based on this Court's judgment. The

guidelines issued by the Government in Ext. P1 has to be understood within the circumstance of the meaning of the word "ordinarily" appearing in Rule 1. Ext. P1 has to be understood subject to the statutory provisions in Rule 1. The reasons stated in Ext. P7 are sufficient and good reasons to reject the application. Original Petition fails, dismissed.