

**(2005) 1 ILR (Ker) 495 : (2005) 1 KLT 562**

**High Court Of Kerala**

**Case No:** W.A. No. 735 of 2004 and connected cases

Sukumaran Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision:** Dec. 20, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 19(6), 47
- Kerala Abkari Act, 1077 - Section 18A, 56
- Kerala Abkari Shops Disposal Rules, 2002 - Rule 3, 3(1), 5, 5(3)

**Citation:** (2005) 1 ILR (Ker) 495 : (2005) 1 KLT 562

**Hon'ble Judges:** M.N. Krishnan, J; K.S. Radhakrishnan, J

**Bench:** Division Bench

**Advocate:** K. Reghu Kottappuram, K. Gopalakrishna Kurup, S. Manu and P.B. Suresh Kumar, for the Appellant; M.A. Vaheeda Babu, Government Pleader and B. Krishna Mani, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

K.S. Radhakrishnan, J.

Booking of abkari offences under Abkari Act, 1077 except offence u/s 56 would make a licensee ineligible for extension of privilege of vending toddy is the question that has come up for consideration in these cases.

2. Writ petitioners were conducting toddy shops for the year 2003-2004 on the basis of the licences issued by the Excise Department in various Ranges. They have applied for the renewal of their licences for the year 2004-05. Requests for renewal of licences were turned down by the Excise Department on the ground that cases were booked against them for various offences under the provisions of the Abkari Act and Rules framed thereunder. Petitioner in WP(C) No. 11485 of 2004 was the licensee in respect of toddy shop No. 33/03-04 of Kanjirappally Excise Range. Inspector of Excise registered Crime No. 6 of 2004 arraying the "employee, the petitioner and one Devasia as accused for the

offence u/s 55(i) of the Abkari Act. Writ petitioner in WP(C) No. 11275 of 2004 was the licensee of toddy shop No. 34 of Kuravilangad Range. A case was registered him as crime No. 5 of 2000 u/s 8(1) read with Section 55-A of the Abkari Act. Writ petitioner in WP(C) No. 13159 of 2004 was the licensee of toddy shop No. 16/03-04 of Chathannur Range. Crime No. 477/03 was registered against him by Chathannur Police u/s 55(a) of the Abkari Act.

3. Government of Kerala in exercise of the powers conferred u/s 18A of the Abkari Act, 1 of 1077 and Sub-rule 3 of Kerala Abkari Shops Disposal Rules, 2002 issued a notification, G.O.(P) No. 35/2004/TD dated 24th March, 2004 notifying that the period of licence for vending toddy shall be extended or sold for a further period of one year from 1st April, 2004 to 31st March, 2005 subject to the various conditions laid down therein, of which we are concerned with condition No. 4(vii) which reads as follows:

"4. The licensee is eligible for the extension of privilege of Toddy Shops, if;

XXX                      XXX                      XXX

(vii) no Abkari offence other than an offence falling u/s 56 of Abkari Act, 1 of 1077 is booked against him".

The auction form notified stated as follows:

Petitioners made requests for renewal of their licence, but the requests were turned down based on condition No. 4(vii) in the notification dated 24th March, 2004 as well as on the basis of first proviso to Rule 3(1) of the Kerala Abkari Shops Disposal Rules, 2002 since cases were booked against them. Petitioners are aggrieved by the refusal to renew their licences..

4. Counsel appearing for the Writ Petitioners Sri.K.Gopalakrishna Kurup, K.Reghu Kottappuram and Sri.P.B.Suresh Kumar submitted that the action of the department in not renewing the licence on the ground that cases have been booked against them is illegal and the notification dated 24th March, 2004 is inconsistent with Rr.5(3)(i) and 5(3)(ii) of the Kerala Abkari Shops Disposal Rules, 2002 and they are ultravires and liable to be quashed. Counsel submitted notification cannot amend, add or subtract anything from the provisions contained in Rule 5(3)(i) which was enacted by the Government in exercise of the powers conferred under Sections 18A and 29 of the Abkari Act 1 of 1077. Counsel submitted Rule 5(3)(i) and 5(3)(ii) specifically deals with the eligibility of persons to obtain licences and it is impermissible for the State to impose condition like condition No. 4 (vii) by notification which encroaches upon the statutory rules. Counsel submitted only if the licensee is charged with offence relating to illicit liquor or if prosecution proceedings are pending against such individual before a Court of law the authorities could deny renewal of licence. Since the licensee have not been charged with any offence relating to illicit liquor and no prosecution proceedings are pending against them the mere fact that excise authorities have booked certain cases against them is not a

ground for not renewing their licences. Counsel further submitted that they have been implicated in various offences with ulterior motive to see that they are ousted from the business. Counsel appearing for the writ petitioner in WP(C) No. 11485 of 2004 Sri. Gopalakrishna Kurup also submitted that even if the entire allegations in Ext.P2 are assumed as correct, it will not constitute an offence u/s 55(1) of the Abkari Act and at best it constitutes only an offence punishable u/s 56 of the Act.

5. Learned Government Pleader on the other hand, submitted that the rule making authority has got power to issue notification dated 24th March, 2004 imposing fresh conditions for the renewal of licence. Counsel submitted, the notification was issued in exercise of the powers conferred u/s 18A read with Sub-rule(1) of Rule 3 and hence has got statutory force. Learned Government Pleader submitted that Chapter IV of the Rules deals with general conditions applicable to sale of toddy shop. At the same time, the first proviso to Rule 3 (1) deals with renewal of licence for which Government have got power to impose such conditions which they deem fit taking into consideration the manner in which the Hcencee conducted the shop in the previous years.

6. It is well settled by a catena of decisions of the Apex Court such as the decision in [State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.](#), that the right to trade in liquor is not a fundamental right guaranteed to a citizen under Art.19(1)(g) of the Constitution of India. But the contention, as we have already indicated, is that the notification dated 24th March 2004 issued by the rule making authority in exercise of the powers conferred u/s 18A of the Abkari Act, 1 of 1077 read with Sub-rule(1) of Rule 3 of the Kerala Abkari Shops Disposal Rules, 2002 goes contrary to Rule 5(3)(i) and 5(3)(ii) of the rules and therefore the mere fact that cases have been booked against for various offences under the Abkari Act is not a ground for not renewing the licence unless and until cases have been charged against them as per Rule 5(3)(i) and (ii) of the Rules. For easy reference we may extract Rule 5(3)(i) and (ii):

"5. The Grant of privilege of vending Toddy Shops shall be subject to the following conditions, namely:--

(3) No individual is eligible for the privilege of any shop if he --

(i) is charged with an offence relating to illicit liquor or prosecution proceedings are pending against such individual before a Court of law.

(ii) is convicted under any Abkari offence or any other Criminal offence and sentenced to imprisonment for more than three years after 1st April, 1992".

(underline supplied)

Counsel submitted that petitioners are not charged with any offence relating to illicit liquor and no prosecution proceedings are pending against them before a Court of law and that they have not been convicted under any Abkari offence or any other criminal offence and

sentenced to imprisonment for more than three years after 1st April, 1992 and therefore, according to the counsel, they are entitled to have their licence renewed and that the condition imposed under condition No. 4(vii) by notification dated 24th March, 2004 that no Abkari offence other than an offence falling u/s 5.6 of Abkari Act, 1 of 1077 is booked against them cannot be enforced. The above mentioned condition is imposed by the rule making authority in exercise of the powers conferred u/s 18A of the Abkari Act which reads as follows:

"18A. Grant of exclusive or other privilege of manufacture etc., on payment of rentals:- (1) It shall be lawful for the Government to grant to any person or persons, on such conditions and for such period as they may deem fit, the exclusive or other privilege-

(1) of manufacturing or supplying by wholesale; or

(ii) of selling by retail; or

(iii) of manufacturing or supplying by wholesale and selling by retail, any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration of the grant of such privilege. The amount of rental may be settled by auction, negotiation or by any other method as may be determined by the Government, from time to time, and may be collected to the exclusion of, or in addition, to the duty or tax leviable u/s 17 and 18.

(2) No grantee of any privilege undersub-s.(1) shall exercise the same until he has received a licence in that behalf from the Commissioner.

(3) In such cases, if the Government shall by notification so direct, the provisions of Section 12 relating to toddy and toddy producing trees shall not apply".

The above mentioned provision would indicate that it is lawful for the State Government to impose such conditions as they may deem fit before granting the exclusive privilege for selling toddy by retail. Section 18-A therefore empowers the Government to lay down various terms and conditions while granting the exclusive privilege for selling toddy. Rule 3(1) enables the State Government to grant privilege of vending toddy to any independent toddy shops for a fixed annual rental as licence fee as may be decided by the Government. The first proviso to Rule 3(1) says that it shall be lawful for the Government to extend by notification in the Official Gazette the period of privilege sold under Sub-rule(1) for any further period, subject to such conditions as the Government may impose. It is on the strength of Section 18A read with first proviso to Rule 3(1) that the Government have issued notification dated 24th March, 2004 laying down condition No. 4(vii).

7. We are of the view Rule 5 as well as Rule 3 and the notification dated 24th March, 2004 are applicable to different fact situations. Rule 5 comes under Chapter IV which deals with general conditions applicable to the sale of toddy shops. Rule 5 deals with the

case where the privilege granted for the first time and applies for licence for selling toddy. So far as the Writ Petitioners are concerned those conditions have already been satisfied. Question remains to be considered is whether at the time of renewal, if any case has been booked against the licensee, the excise authorities could deny the renewal of the licence. Question to be decided is as to whether the State Government has got right to lay down such conditions as well. We are of the view, it is always open to the State Government to lay down such conditions for renewal. Rule making authority thought that a licensee against whom a case has been booked shall also not seek renewal of licence. For charging a criminal case various formalities have to be complied with. The Investigating Officer has to collect several materials, cross-examine the witnesses and to gather other evidence before charging the offence, while a case can be booked against a person, the moment an offence is detected. Even without further enquiry or investigation, if an officer found that a person is involved in some offences case can be booked against him and he shall not be eligible for the extension of the privilege of running the toddy shop. Such a condition may perhaps, put many of the licensees out of the business but that is what the State is striving for so as to achieve the goal envisaged under Article 47 of the Constitution of India. In *Krishna Kumar Narula v. State of J & K*, (1967) 3 SCR 50, the Apex Court held that the trade and business in intoxicating liquors can be restricted, severally curtailed or even prohibited. The Apex Court held that the fact that Article 47 of the Constitution expressly speaks of the obligation of the State to endeavour to bring about prohibition of the consumption of intoxicating liquor is to achieve the directive principle adumbrated in Article 47. Such a course merits to be treated as a reasonable restriction within the meaning of clause (6) of Article 19. The Apex Court in [Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy](#), has held as follows:

"So far as the trade in noxious or dangerous goods is concerned, no citizen can claim to have trade in the same and intoxicating liquor being a noxious material, no citizen can claim any inherent right or privilege to sell intoxicating liquor, by retail. Therefore, any restriction which the State brings forth, must be a reasonable restriction within the meaning of Art.19(6) and reasonableness of the restriction would differ from trade to trade and no hard and fast rule concerning all trades can be laid down".

Rule making authority in their wisdom felt that once its Officers book a case against the licensee for any of the offences other than the offence u/s 56 of the Abkari Act the licence need not be renewed. In our view such a condition can even be treated as a reasonable restriction within the meaning of Article 19(6) of the Constitution of India.

8. Right to sell liquor is not a fundamental right. State while parting with the privilege could lay down whatever conditions which the rule making authority in their wisdom thought fit, so that the persons against whom cases have been booked for the offences under the Abkari Act shall also be treated as a disqualification for renewal of their licences. We may add, the notification has been issued in exercise of the powers conferred under Sub-rule(1) of Rule 3 and therefore condition No. 4(vii) was laid down by the authorities in exercise of the powers conferred u/s 18A of the Abkari Act, 1 of 1977

read with Rule 3(1) of the Abkari Shops Disposal Rules, 2002 have got statutory force. That being the legal position we find no infirmity in the condition imposed by the State Government.

9. Counsel for the petitioners submitted that cases have been booked against them due to extraneous reasons. This is not a matter for this Court to probe into at this stage of the proceedings. A complaint filed by the petitioner in WP(C) No. 1 1485 of 2004 against some of the officers an enquiry is going on and ultimately it is found that the case has been forged against him, it is always open to the petitioners to seek renewal of the licence. We are not expressing any opinion with regard to those contentions for disposal of these cases. We are also not prepared to accept the contention of the petitioners that even if offence is taken out in its entirety the same would fall only u/s 56 of the Abkari Act. We also find no reason to express any opinion with regard to that contention since those are all matters primarily for the authorities as well as for the Criminal Court to decide. Under such circumstance all. these Writ Petitions dismissed. So also the Writ Appeals.