

(2017) 05 KL CK 0003

High Court Of Kerala

Case No: W.P.(C) Nos. 16647, 16700, 16705, 16706 and 16707 of 2017

Hotel Astiya Grande,
Represented By Its Proprietor P.
Surendran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: May 19, 2017

Acts Referred:

- Constitution of India, 1950 - Article 142
- National Highways Authority of India Act, 1988 - Section 11

Hon'ble Judges: Devan Ramachandran, J.

Bench: Single Bench

Advocate: Sri. Santhosh Mathew, Sri. Arun Thomas, Sri. Jennis Stephen, Sri. Alphin Antony, Sri. Vijay V. Paul, Smt. Maria Roy, Smt. Veena Raveendran, Advocates, for the Petitioners; Sri. S. Kannan, Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

Devan Ramachandran, J.—In these batch of cases, the petitioners assert to be holding validly renewed FL-11 licences under the provisions of the Kerala Abkari Act for the year 2017-18. The petitioners have approached this Court because the authorities have, on account of the directions of the Hon"ble Supreme Court in **State of Tamil Nadu v. V.K.Balu (2017 (1) KHC 26 (SC))**, restrained them from operating their shops/Bars to vend liquor. They say that they are not hit by the rigor of the directions of the Hon"ble Supreme Court, since their shops/Bars are not situated on National/State Highways, are not visible from such highway, do not have direct access from such highways and that they are over 500 metres away from the most proximate National/State Highway.

2. I notice the specific averment of the petitioners that the authorities have refused to allow them to operate under the renewed licences on account of the fact that the

petitioners" shops/Bars are situated on roads which are either part of Cherthala-Oachira-Thiruvananthapuram road between 379.100 to 551.900 kms or are situated in close proximity to it. The authorities, the petitioners assert, seem to be under the impression that since this stretch of road is a National Highway, the rigor of the directions of the Hon"ble Supreme Court in V.K. Balu (supra) would apply to the petitioners also. The petitioners avouch, on the strength of certain notifications, that this stretch of road is no longer a National Highway and on such avowal, they have filed these writ petitions seeking directions against the respondents to permit them to continue their business on the strength of the renewed licences.

3. I have already delivered a judgment on 12.05.2017 in certain other matters, wherein I have set forth the basic parameters and protocol, which the authorities have to follow, while causing the examination or evaluation of the factors prescribed by the Hon"ble Supreme Court. Before I go forward, it will be fructiferous to read the directions of the Hon"ble Supreme Court, which are as under:

"(i) All states and union territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;

(ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but not later than 1 April 2017;

(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

(vi) All States and Union Territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the state revenue and home departments. Responsibility shall be assigned inter alia to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(VII) These directions issue under Article 142 of the Constitution."

4. In my earlier judgment, the parameters and protocol of general application to all the authorities under the Abkari Act have been set out as under:

"Since this judgment is intended to operate generally in empowering the various Deputy Commissioners of Excise in the State, I deem it apposite and necessary, in order to obtain a certain amount of uniformity in consideration by the various Officers and in order to avoid any cause of possible confusion in enforcement of the factors prescribed by the Hon"ble Supreme Court, to lay down the basic parameters and protocol to be followed while making the evaluation and examination, as directed herein, by the competent authority.

The singular and acme intent and purpose behind the Hon"ble supreme Court in issuing the directions afore, being to exterminate the bane of drunken driving from the Highways of this country and for such purpose, to asphyxiate the sources and availability of liquor from the National/State Highways, the respective Deputy Commissioners shall, while acting under the terms of this judgment, abide by the said directions in its letter and spirit, imbibing the obvious concern of the Hon"ble Court and clearly recognising the mischief sought to be remedied in the judgment in V.K. Balu (supra) rather than in a pedantic and formalistic manner.

The respective Deputy Commissioners shall ensure that no shop/Bar to vend liquor is sanctioned or authorised to operate on a National/State Highway or within the prohibited distance of 500 metres from it, as prescribed by the Hon"ble Supreme Court. The Deputy Commissioners are, for this purpose, obligated to verify keeping in mind the specific purpose behind the directions of the Hon"ble Supreme Court, the nature of the roads, on which petitioner's shops/Bars are situated, to the either notified National or State Highways or are now being used as such, under valid notifications.

I notice that some of the petitioners assert that the roads, on which their shops/Bars are situated, though notified as a highway in the past, have lost such character on account of later notifications or on account of new roads and bye-passes being constructed, to cater to the Highway traffic, thus effectively and permanently reducing it, operationally, to be mere district or city/town roads. These submissions and assertions would be pertinent if they are supported by valid certification or documents issued by the competent authorities under the various statutes relating to notifications of National/State highways. The respective Deputy Commissioners of Excise would certainly have to consider these factual contentions in its proper perspective and if the petitioners are able to show and establish, to his satisfaction, by cogent, valid and reliable evidence, materials, documents or certificates issued by the competent authorities, that the roads referred to by the petitioners are not notified National/State Highways or are not now being issued to cater to long distance traffic, akin to such National/State Highway, on account of construction of new roads/bye-passes for such traffic, or on account of further notifications/orders denotifying it as Highways or notifying other roads as Highways in its earlier place, the Deputy Commissioners will be at liberty, for reasons to be recorded, to accord permission to operate and grant/renew licence of shops/Bars to vend liquor.

However, only such orders, if any, de-notifying the roads, as highways, issued prior to the date of the judgment in V.K. Balu (supra), namely 15.12.2016, will be taken into account for the purposes of these cases.

The petitioners will, therefore, be at liberty to place before the respective Deputy Commissioners all such additional materials, documents or certifications issued by competent authorities to prove their assertions and the officer will be obligated to consider all such as also the documents produced in the various writ petitions, to arrive at an appropriate conclusion.

Quod hoc the issue of prohibited distance of 500 metres, if a measurement is sought for by the petitioners or found required to be taken by the Deputy Commissioners, it shall be done from the edge of the National/State Highway or its service lane, through the shortest motorable route or road till the entrance of the shops/bars. While doing so, all illogical and artificial deviations, detours and deflections meant solely to increase the distance, shall strictly be disregarded by the Deputy Commissioners and the measurement shall be of the shortest, logical and normal motorable route/road. This is the best way to implicitly adhere to the spirit of the directions of the Hon"ble Supreme Court to eliminate the availability of liquor to the driver of a vehicle plying the Highway.

The above have been stated only as the basic parameters and protocol and the respective Deputy Commissioners may, if it is required, cause such additional evaluation or examination in order to implicitly comply with the Hon"ble Supreme Court's directions.

Finally, the fourth direction afore extracted regarding signages and advertisements shall be implemented without any reservation or exception.

I make it clear that with regard to those shops/Bars of the petitioners seen to be not in variance or in dissonance to the directions of the Hon"ble Supreme Court, after the examination/evaluation of the factors as directed herein, the Deputy Commissioners, subject to the other provisions of the Abkari Act, will be obligated to grant/ renew the licence or to issue orders permitting operation on the strength of already renewed licences, as the case may be, as applied for by the various petitioners within the time of three weeks fixed in this judgment."

5. In the cases at hand, it is true that the Cherthala-Oachira-Thiruvananthapuram road between 379.100 to 551.900 kms were originally notified as a National Highway by the Government of India under the powers invested with them by Section 11 of the National Highways Authority Act of India, 1988. The said notification, namely, S.O. 485(E) dated 26.02.2010, has been produced by the petitioners in some of these writ petitions as an exhibit (Exhibit P3 in W.P.(C) Nos. 16075/2017, 16076/2017, 16077/2017, 16078/2017 and 16079/2017). The effect of the said notification is, of course, to statutorily notify the said road as a National Highway and if that be so, the rigor of the directions of the Hon"ble Supreme Court would have normally

applied to the case of the petitioners also. However, what is pertinent in these batch of the cases is that, by a subsequent notification, namely S.O. 675(E) dated 05.03.2014, the Government of India, in exercise of the powers under Section 11 of the National Highways Authority Act of India, 1988, amended the earlier notification thereby expressly omitting the Cherthala-Oachira-Thiruvananthapuram road between 379.100 to 551.900 kms from the list of National Highways. The effect of this notification ineluctably is that this road between the stretch mentioned in the said notification ceases to be a National Highway from the date of such notification, namely 05.03.2014. The directions of the Hon"ble Supreme Court were issued on 15.12.2016. The petitioners assert, which assertion appears to be justified from the notification, that since the Cherthala-Oachira-Thiruvananthapuram road between 379.100 to 551.900 kms had already ceased to be a Highway at the time when the Hon"ble Supreme Court had delivered its judgment, the authorities are not justified in interdicting them from operating their shops/Bars on the strength of validly renewed licences, since the rigor of the directions of the Hon"ble Supreme Court would apply only to notified National/State Highways.

6. I find considerable force in the submissions of the petitioners. The subsequent notification omitting the stretch of road from the list of Highways, namely S.O. 675(E) dated 05.03.2014 is produced as Exhibit P4 in these writ petitions. This notification irrefragably indicates that the road mentioned therein, namely Cherthala-Oachira-Thiruvananthapuram road between 379.100 to km 551.900 is no longer a National/State Highway and therefore, subject to the other parameters as have been set out by the Hon"ble Supreme Court in V.K.Balu (supra), the authorities would not be justified in stopping the operation of the petitioners" shops/Bars merely because they are situated on or in proximity to this road. The Cherthala-Oachira-Thiruvananthapuram road between km 379.100 to km 551.900 being no longer a Highway, I am sure that the rigor of the directions of the Hon"ble Supreme Court in V.K.Balu (supra) would not be applicable to the said road. However, the other directions relating to distance from any other National/State Highway and direct access from any other National/State Highway would obviously be relevant.

7. These issues are of course one which will have to be considered by the competent authorities in terms of law and in terms of the directions contained in V.K.Balu (supra).

In such circumstances, I order these writ petitions directing the Deputy Commissioner of Excise, having jurisdiction over the area in which the petitioners" shops/Bars are situated, to consider the claim of the petitioners to continue to vend liquor based on the renewed licences they are holding strictly in terms of the parameters set forth in V.K. Balu (supra) and in my earlier judgment extracted above as expeditiously but not later than two weeks from the date of receipt of a copy of this judgment. I fix the time this short because I see that in some of these cases this

Court had already granted interim orders allowing the petitioners to continue their operation.

I make it clear that the authorities shall take into account Exhibit P4 notification issued by the Government of India omitting the Cherthala-Oachira-Thiruvananthapuram road between km 379.100 to km 551.900 specifically while arriving at a conclusion as to whether the petitioners can be allowed to operate the shops/Bars.