

Omanakuttan Vs. the Commissioner of Excise

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Court : Kerala

Decided On : Jan-30-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Omanakuttan

Respondent : The Commissioner of Excise

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN THURSDAY, THE 30^H DAY OF JANUARY 2014 10TH MAGHA, 1935 WA.No. 508 of 2011 IN WP(C).18842/2010
----- AGAINST THE

ORDER

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JUDGMENT

IN WP(C) 18842/2010 of HIGH COURT OF KERALA DATED 29-03-2011

APPELLANTS/PETITIONERS: ----- 1.
OMANAKUTTAN.C, S/O.CHANDRAN, AGED 50 YEARS, RESIDING AT ODAYIL VADAKETHIL, CANTONMENT NORTH, KOLLAM P.O., KOLLAM DISTRICT.

2. UPENDRA BABU, S/O.YESODHA, AGED 47 YEARS, RESIDING AT CHETTIYARUVILA VEEDU, VADAKEVILA PO, KOLLAM DISTRICT.

3. KAMALASANAN, S/O.NARAYANAN, AGED 60 YEARS, RESIDING AT VAYALIL PUTHENVEEDU, ASRAMAM P.O, KOLLAM DISTRICT. BY ADVS.SRI.K.RAMAKUMAR (SR.) SRI.T.RAMPRASAD UNNI SMT.SMITHA GEORGE RESPONDENTS : RESPONDENTS : -----

1.THIRUVANANTHAPURAM EXCISE, KERALA, THE COMMISSIONER OF 695102. 2.KOLLAM THE DEPUTY COMMISSIONER OF EXCISE, - 691 510. 3.KOLLAM THE EXCISE INSPECTOR, EXCISE CIRCLE OFFICE, 691 510.

4. THE EXCISE RANGE OFFICER, KOLLAM 69151. BY SR.GOVERNMENT PLEADER SRI.S.JAMAL THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 3001-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

----- W.A.No.508 of 2011
----- Dated this the 30th day of
January, 2014

JUDGMENT

ANTONY DOMINIC, J.

The appellants filed W.P.(C).No.18842 of 2010, challenging Ext.P3 order issued by the first respondent cancelling licences issued to them to run Toddy Shop Nos.7 to 11 in Group II of Kollam Excise Range. By the Judgment under appeal, rejecting the contentions raised, the Writ Petition was dismissed. It is challenging that judgment, this appeal is filed.

2. The main contention raised is that the seizure of spirit from the premises of one particular shop cannot be a reason to cancel licences of other toddy shops in the Group. The second contention raised is that, Section 26(b) of the Abkari Act and Rules 5(19) and 7(31) of the Kerala Abkari Shops Disposal Rules are not attracted to the case in hand.

3. Insofar as the first contention regarding the cancellation of the licence in respect of other shops in the W.A.No.508 of 2011 2 Group is concerned, the issue is covered against the appellants in the judgment of this Court in Rarichan George

Vs. Commissioner of Excise [2008(2)KLT726. We fully accept the reasoning in that judgment and therefore, do not find any substance in this contention.

4. Insofar as the second contention regarding the inapplicability of the provisions of the Act and Rules is concerned, that contention also cannot be accepted in favour of the appellants. As it is evident from Rule 5(19), the Rule enables the Commissioner of Excise to cancel a licence issued under the rules on valid grounds. Rule 7(31), as rightly noted by the learned Single Judge, stipulates that infraction of any of the rules or conditions of the licence either by the licensee or by any person in his employment shall entail on the forfeiture of deposit/annual rental and cancellation of licence. Similarly under Rule 7(38) licensee is bound to obey all rules made under the Act or under any law covered. It has been found that there is infraction of Rules. Consequence of infraction of W.A.No.508 of 2011 3 the Rules is the cancellation of licence. Such cancellation can only be in respect of not only the shop in question but also other shops covered by the licensee. In the light of the above, we do not find any reason to disagree with the conclusions arrived at by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. ANTONY DOMINIC, JUDGE ANIL K.NARENDRAN, JUDGE skj True copy P.A. To Judge

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