

Sarasan Vs. the Excise Commissioner

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Court : Kerala

Decided On : Feb-24-2014

Judge : Honourable Mr.Justice C.T.Ravikumar

Appellant : Sarasan

Respondent : The Excise Commissioner

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR MONDAY, THE 24TH DAY OF FEBRUARY 2014 5TH PHALGUNA, 1935 WP(C).No. 5040 of 2014 (D) ----- PETITIONER(S): ----- SARASAN, AGED 49 YEARS S/O.SANKARAN, NEDUPARAMBIL HOUSE, VENDOOR DESOM AMBALLOOR VILLAGE, MUKUNDAPURAM TALUK THRISSUR DISTRICT. BY ADVS.SRI.M.G.KARTHIKEYAN SRI.NIREESH MATHEW RESPONDENT(S): ----- 1. THE EXCISE COMMISSIONER COMMISSIONERATE OF EXCISE THIRUVANANTHAPURAM-695033.

2. THE DEPUTY COMMISSIONER OF EXCISE THRISSUR-688001.

3. THE CIRCLE INSPECTOR OF EXCISE IRINJALAKKUDA, THRISSUR DISTRICT-680121.

4. THE DISTRICT COLLECTOR THRISSUR, 688001. BY GOVERNMENT PLEADER SMT.C.K.CHERIN THIS WRIT PETITION (CIVIL) HAVING COME UP

FOR ADMISSION ON 24.02.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 5040 of 2014 (D) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT-P1: PHOTOCOPY OF THE

ORDER

DATED 19.2.2013 IN CRL.M.C.NO.873/2013 PASSED BY THIS HON'BLE COURT. EXHIBIT-P2: PHOTOCOPY OF THE PETITION DATED 18.2.2014 SUBMITTED BEFORE THE 3D RESPONDENT. EXHIBIT-P3: PHOTOCOPY OF THE RECEIPT DATED 18.2.2014 ISSUED BY THE 3D RESPONDENT. EXHIBIT-P4: PHOTOCOPY OF THE PREFERENCE CERTIFICATE DATED 7.2.2014 ISSUED TO ONE M.V.BIJU BY THE 3D RESPONDENT. RESPONDENT(S)' EXHIBITS: NIL //TRUE COPY// P.A. TO JUDGE. dlk C.T.RAVIKUMAR, J ----- W.P.(C) No. 5040 of 2014 ----- Dated this the 24th day of February, 2014

JUDGMENT

The petitioner was the licensee of toddy shop Nos. 39, 63, 66, 69 and 71 in Group IX of Irinjalakkuda Excise Range from 2007 onwards till 30.6.2011. The license in respect of the said shops were not extended owing to the registration of C.R.No. 43/2011 of Excise Range, Irinjalakkuda under sections 57(a) and 56(b) of the Abkari Act on the allegation that sample of toddy collected from the toddy shop No.71, on 19.10.2009 contained 8.13% v/v of ethyl alcohol which is in excess of the permissible limit. After the submission of final report in the said case the petitioner has challenged the final report itself before this Court in Crl.M.C.No. 873/2013. As per Ext.P1 this Court allowed the Crl.M.C. and quashed the final report in C.R.No. 43/11 of Irinjalakkuda Range and all further proceedings pursuant thereto, against the petitioners. Ext.P1 is the judgment dated 19.2.2013 in Crl.M.C.No.873/2013, and admittedly, the said judgment has become final. The contention of the petitioner is W.P.(C) No. 5040 of 2014 2 that it is only because of the registration of CR.No.43/11 the licences in respect of the said toddy shops were cancelled. It is therefore, submitted that in the light of Ext.P1 judgment quashing the final report in C.R.No. 43/11 of Irinjalakkuda Excise Range there is no impediment in granting the preferential right in the matter of allotment of shops

for the subsequent years, to the petitioner in terms of the provision under Rule 5(1)(a) of the Kerala Abkari Shops Disposal Rule,2002 (for short the Rules 2002).

2. Having heard the learned counsel for the petitioner and also the learned Government Pleader I am of the view that this writ petition itself can be disposed of. The fact that the final report in C.R..No. 43/11 of Irinjalakkuda Excise Range and all further proceedings pursuant thereto were quashed by this Court as per Ext.P1 judgment is not in dispute. In fact it is evident that going by the contention of the petitioner the registration of the C.R..No.43/11 of Irinjalakkuda Excise Range was the sole reason for non-extension of the licences in favour of the petitioner and virtually for their cancellation. It is the W.P.(C) No. 5040 of 2014 3 contention that in view of the quashment of C.R..No. 43/11 as per Ext.P1 the petitioner is entitled to raise preferential claim under Rule 5(1)(a) of the Rules. In the said circumstances, the petitioner has submitted a petition before the third respondent for issuance of certificate declaring his preferential claim in terms of the aforesaid provisions, as per Ext.P2. It is submitted that the said application is still pending. In the said circumstances this writ petition is disposed of with a direction to the third respondent to consider the same and pass appropriate orders, in accordance with law. It is made clear that in the light of Ext.P2 the registration of C.R..No.43/11 of Irinjalakkuda Excise Range shall not be a reason for rejecting the claim for preference, if the petitioner is otherwise eligible. Sd/- C.T.RAVIKUMAR,JUDGE. dlk

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