

Lucka Vs. State of Kerala

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Court : Kerala

Decided On : Jul-29-2015

Judge : Honourable Mr. Justice Dama Seshadri Naidu

Appellant : Lucka

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU WEDNESDAY, THE 29^H DAY OF JULY 2015 7TH SRAVANA, 1937 WP(C).No. 6332 of 2009 (J)

----- PETITIONERS:

1. LUCKA, AGED 50 S/O. LATE KURIAKOSE, PAZHAYAMADAM HOUSE, VALLAKAM KARA, VAIKOM, KOTTAYAM DISTRICT.

2. SURAJKUMAR, S/O. MANIKANTAN NAIR, LAKSHMI NIVAS, VAIKOM, KOTTAYAM DIST. REP. BY POWER OF ATTORNEY HOLDER HIS FATHER SRI. K.G. MANIKANTAN NAIR, LAKSHMI NIVAS, VAIKOM, KOTTAYAM DISTRICT. BY ADV. SRI.M.G.KARTHIKEYAN RESPONDENTS:

1. STATE OF KERALA REP. BY SECRETARY, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE EXCISE COMMISSIONER, COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.
3. THE DEPUTY COMMISSIONER OF EXCISE, KOTTAYAM.
4. THE CIRCLE INSPECTOR OF EXCISE, VAIKOM, KOTTAYAM DISTRICT.
5. THE TAHSILDAR, TALUK OFFICE, VAIKOM, KOTTAYAM DISTRICT.
6. THE CATHOLIC SYRIAN BANK LTD., REPRESENTED BY THE BRANCH MANAGER, VAIKOM BRANCH, KOTTAYAM DISTRICT. R1 TO R5 BY GOVT. PLEADER SRI.BOBBOY JOHN PULICKAPARAMBIL R6 BY SRI.R.S.KALKURA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 2907-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: APPENDIX IN WPC63322009 PETITIONER'S EXHIBITS: EXT. P1 PHOTOCOPY OF THE

JUDGMENT

DATED 118.2000 IN OP827194 OF THIS HON'BLE COURT EXT. P2 PHOTOCOPY OF THE

ORDER

DATED 192.2008 IN CIVIL APPEAL NOS.4976-4987 OF 2002 PASSED BY THE HON'BLE SUPREME COURT OF INDIA EXT. P3 PHOTOCOPY OF THE GOVERNMENT

ORDER

GO (MS) 108/08/TD DATED 265.2008 ISSUED BY THE GOVT. OF KERALA EXT. P4 PHOTOCOPY OF THE DCB STATEMENT ISSUED BY THE THIRD RESPONDENT EXT. P5 PHOTOCOPY OF THE LETTER DATED 26.2008 ISSUED BY THE FOURTH RESPONDENT EXT. P6 PHOTOCOPY OF THE APPLICATION DATED 297.2008 SUBMITTED BY THE SECOND PETITIONER BEFORE THE THIRD RESPONDENT EXT. P7 PHOTOCOPY OF THE LETTER DATED 1710.2008 ISSUED BY THE ASST. EXCISE COMMISSIONER, KOTTAYAM EXT. P8 PHOTOCOPY OF THE

ORDER

DATED812.2008 IN SLP(C) NO.24565/2008 PASSED BY THE HON'BLE SUPREME COURT OF INDIA EXT. P9 PHOTOCOPY OF THE

JUDGMENT

DATED2111.2006 IN OP276922001 PASSED BY THIS HON'BLE COURT EXT. P10 PHOTOCOPY OF THE

JUDGMENT

DATED126.2007 IN WPC154982007 PASSED BY THIS HON'BLE COURT EXT. P11 PHOTOCOPY OF THE LETTER DATED158.2008 ISSUED BY THE SIXTH RESPONDENT TO THE FIRST PETITIONER EXT. P12 PHOTOCOPY OF THE APPLICATION DATED141.2009 SENT TO THE ASST. EXCISE COMMISSIONER, KOTTAYAM BY THE FIRST PETITIONER EXT. P13 PHOTOCOPY OF THE APPLICATION DATED141.2009 SENT TO THE ASST. EXCISE COMMISSIONER, KOTTAYAM BY THE FATHER OF THE SECOND PETITIONER EXT. P14 PHOTOCOPY OF THE APPLICATION DATED92.2009 SENT TO THE THIRD RESPONDENT WITH COPIES TO OTHERS EXT. P15 PHOTOCOPY OF THE

JUDGMENT

DATED32.2009 IN WA16952007 PASSED BY THE LEARNED DIVISION BENCH OF THIS HON'BLE COURT EXT. P16 PHOTOCOPY OF THE

ORDER

GO (MS)NO.266/2010/TD DATED1211.2010 ISSUED BY THE GOVT. OF KERALA EXT. P17 PHOTOCOPY OF THE

JUDGMENT

DATED242.2010 IN WPC318442009 PASSED BY THIS HON'BLE COURT EXT. P18 PHOTOCOPY OF THE LETTER DATED197.2010 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM EXT. P19 PHOTOCOPY OF THE

ORDER

GO(MS)NO.181/13/TD DATED2510.2013 PASSED BY THE GOVT. OF KERALA EXT. P20 PHOTOCOPY OF THE LETTER DATED1311.2013 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, KOTTAYAM EXT. P21 PHOTOCOPY OF THE

JUDGMENT

DATED242.2010 IN WPC318442009 PASSED BY THIS HON'BLE COURT EXT. P22 PHOTOCOPY OF THE LETTER DATED197.2010 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM TO THE PRINCIPAL SECRETARY TO GOVT. & OTHERS EXT. P23 PHOTOCOPY OF THE

ORDER

GO(MS)NO.64/2015/TD DATED214.2015 ISSUED BY THE GOVT. EXT. P23(A) ENGLISH TRANSLATION OF EXT. P23 EXT. P24 PHOTOCOPY OF THE PETITION DATED296.2015 SUBMITTED BEFORE THE SECOND RESPONDENT RESPONDENT'S EXHIBITS: NIL. /TRUE COPY/ P.S. TO JUDGE Dama Seshadri Naidu, J.

----- W.P.(C)No.6332 of 2009 J
----- Dated this the 29th day of July, 2015

JUDGMENT

Facts: The petitioners, two in number, along with two other persons, who are no more, obtained licence for running toddy shops in Group No.1 of Vaikom Excise Range for the year 1993-94. However, in August 1993, the licence was cancelled for the default committed by the petitioners; as a result, the shops were put under departmental management.

2. Once the period of licence was over, the Government quantified the loss suffered on account of the cancellation of licence and issued a demand notice. In fact, in the said demand notice no credit was given to the revenue generated from Group No.1 shops while they were under departmental management. Under those WPC633209 2 circumstances, assailing the said demand notice, the petitioners filed O.P. No.8271/1994 and invited Exhibit P1 judgment, which is a common judgment involving many other original petitions filed by similarly placed persons,

whose licences, too, were cancelled for one reason or another.

3. Though the Government took the matter in appeal, the Honourable Supreme Court dismissed it through Exhibit P2 order.

4. As things stood thus, the Government came up with Exhibit P3 Amnesty Scheme, since in most instances the dues from the defaulting licencees had become unrealisable. In the context of Exhibit P1 judgment, the respondent department issued Exhibit P4 Demand Collection Balance Sheet (DCB), a statement of account, to the petitioners, apart from issuing Exhibit P5 notice intimating them that they could avail themselves of the WPC633209 3 benefit under Exhibit P3 Amnesty Scheme. The amount was quantified at ` 54,10,910/-, payable in four equal monthly instalments, if the benefit were to be extended to the petitioners.

5. It is evident from Exhibit P4 DCB statement that the interest was charged up to 2008 and no credit was given to the revenue collected for the period when the shops were under the departmental management. Under those circumstances, the petitioners submitted Exhibit P6 request to the respondent department for extending the benefit of the Amnesty Scheme and also for giving credit to the amounts collected during the period, when the shops were under departmental management. The department, however, issued Exhibit P7 reply dated 17.10.2008 reiterating that since the petitioners could not replenish the security when the defaulted licence fees were adjusted from the security amount, they would not be entitled to the WPC633209 4 benefit of crediting to the account of the petitioners the revenue generated during the period of departmental management. Assailing Exhibit P7, the petitioners filed the present writ petition. Submissions: Petitioners':

6. The learned counsel for the petitioners has strenuously contended that the issue regarding adjustment of the sale proceeds when the shops were under the departmental management stands expressly concluded under Exhibit P1 judgment. In elaboration of his submissions, the learned counsel would further contend that though the respondents took the matter in appeal before the Honourable Supreme Court, they could not succeed, as is evident from Exhibit P2, whereby the Honourable Supreme Court on merits has declined to interfere with

Exhibit P1 judgment. WPC633209 5 7. The learned counsel has drawn my attention to Exhibit P7 reply issued by the third respondent in response to the petitioners' application for having the benefit of the Amnesty Scheme extended, as also that of Exhibit P1 judgment. According to him, the third respondent, in Exhibit P7, has observed that the petitioners' claim could be considered only after the disposal of the Special Leave Petition pending before the Honourable Supreme Court involving a similar issue, at the instance of some other person.

8. The learned counsel has further placed reliance on Exhibit P8 interim order of the Honourable Supreme Court in the Special Leave Petition referred to in Exhibit P7 and has contended that a direction was given therein to the effect that the licencees would be entitled to deposit the amounts admitted by them without prejudice to the rights and contentions of the parties at the time of hearing of the WPC633209 6 Special Leave Petition. According to the learned counsel, though the Honourable Supreme Court has admitted the matter, it has, in fact, facilitated the petitioners therein to take advantage of the Amnesty Scheme in terms of Exhibit P1 judgment.

9. The learned counsel has also drawn my attention to Exhibit P21 to contend that another defaulting licencee, who was also a party to Exhibit P1 judgment, approached this Court when the benefit of Exhibit P1 judgment as well as that of the Amnesty Scheme was denied to him. This Court through Exhibit P21 judgment, contends the learned counsel, has brushed aside all the objections of the respondent department concerning the pendency of the Special Leave Petition and directed the authorities to extend the benefit of Exhibit P1 judgment. Consequently, as per Exhibit P22, the department, according to the learned counsel, has extended the benefit. WPC633209 7 10. In sum and substance, it is the contention of the learned counsel for the petitioner that since similarly placed persons have been extended the benefit of not only the Amnesty Scheme but also the Exhibit P1 judgment, the petitioners cannot be discriminated against.

11. The learned counsel has further submitted that one Mr. Ajith Kumar, who is also similarly placed, wanted to take advantage of Exhibit P1 judgment, as he was a party to the common judgment. Accordingly, he sought the benefit of adjusting

the revenue generated while the shops were under departmental management. Eventually the matter reached the Honourable Supreme Court, which rendered a judgment in *Excise Commissioner and Others v. Ajith Kumar and Another*.¹² According to the learned counsel, the Honourable Supreme Court has repelled all the contentions ¹ 2008 (2) KHC684(SC) WPC633209 ⁸ of the respondent authorities and has conclusively held that in terms of Exhibit P1 judgment the respondents shall raise a fresh demand. He has also drawn my attention to the ratio laid down therein that a party to the lis cannot take advantage of his own wrong and if the State, in law, was liable to adjust the said amount, a valid demand could have been raised only in respect of the balance sum.

13. Summing up his submissions, the learned counsel has submitted that there is no justification on the part of the respondents in refusing to extend the benefit of Exhibit P1 judgment, the ratio of which has already been affirmed by the Honourable Supreme Court, and also to extend the benefit of Amnesty Scheme, after due adjustment of the amounts.

14. The learned counsel has also brought to my notice the further developments after filing of the writ petition. According to him, the department initiated revenue WPC633209 ⁹ recovery proceedings and sold away a piece of property belonging to the first petitioner, but the proceeds were adjusted only towards interest rather than towards the principal, contrary to the provisions in the Amnesty Scheme. According to him, the sale proceeds of the property auctioned by the department ought to have been adjusted towards the principal, inasmuch as under the Amnesty Scheme, to which the petitioner is entitled, no interest should be charged. Respondents':

15. Per contra, the learned Government Pleader has submitted that though the petitioners along with two other persons were the licencees for the year 1993-94, they failed to pay the kist amount from the very second month, forcing the respondents to cancel the licences, apart from adjusting the kist amount from the security amount. Drawing my attention to unamended Rule 13 of the Departmental WPC633209 ¹⁰ Management Rules ('the Rules' for brevity), the learned Government Pleader would contend that it is mandatory on the part of the

petitioners to have the said amount replenished to the security, but they failed. According to him, only as a consequence, on 19.08.1993 was the licence cancelled. Under these compelling circumstances, the authorities, contends the learned Government Pleader, placed the shops under the Departmental Management from 11.09.1993 to 31.03.1994.

16. The learned Government Pleader has taken me through the entire Exhibit P1 judgment. He has laid stress on the aspect that the learned Division Bench of this Court has examined the impact of the unamended Rule 13 as well as the amended Rule 13 and eventually held that since the licences, including the petitioners', were issued prior to the amendment of Rule 13, only the unamended rule would govern the contracts in question. WPC633209 11 17. In sum and substance, it is the singular contention of the learned Government Pleader that Exhibit P7 cannot be found fault with and that since the petitioners have committed default in replenishing the security, they were not entitled to the benefit of adjustment, for the facility of adjustment under unamended Rule 13 is conditional.

18. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondents, apart from perusing the record. Issues:

1. Whether Exhibit P1 judgment mandates giving credit of Departmental Management Fees or the revenue generated from the shops, when they were under the departmental management, to the petitioners de hors unamended Rule 13 of the Rules? 2. Whether the petitioners are entitled to the benefit of Amnesty Scheme? And WPC633209 12 3. Consequentially, whether the adjustment of the sale proceeds of the property belonging to the first petitioner could be adjusted towards the interest rather than the principal, for at that time the petitioners had already filed their application under the Amnesty Scheme? In re, Issue No.2:

19. There is no gainsaying the fact that Exhibit P1 judgment was unsuccessfully tested by the respondents before the Honourable Supreme Court, as is evident from Exhibit P2 order. It need not detain us for long to hold that the petitioners are entitled to the benefit of the Amnesty Scheme, subject to their fulfilling the criteria laid down therein, the adjustment of the Departmental Management Fee being altogether a different issue. The issue of adjusting the sale proceeds generated

out of the sale of the first petitioner's property under Revenue Recovery Act towards principal or interest is contingent on the extension WPC633209 13 of the benefit of the Amnesty Scheme to the petitioners. In re, Issue No.1:

20. The only issue that engages the attention of the Court and requires adjudication is whether Exhibit P1 judgment has in invariable terms laid down a proposition of law that the petitioners are entitled to the adjustment of the departmental management fee, notwithstanding the operation of unamended Rule 13 of the Rules.

21. It is apposite to examine the adjudicatory ambit of Exhibit P1 judgment which is the fulcrum of the submissions made by the learned counsel for the petitioners. In fact, the learned Division Bench of this Court, while rendering Exhibit P1 judgment, has examined Rule 13 in its dual facet: amended and unamended. There is no cavil about the principle of law that in so far as the petitioners are concerned only the unamended Rule 13 applies. It is apposite to examine Rule 13, which reads as follows: WPC633209 14

"3. Departmental management fee to be given credit of - The amount collected as departmental management fee may be given credit towards he dues from the original contractor provided he had completed the security and such credit shall be given only up to the date of confirmation of the resale, if any. In the case of resale purchasers, the departmental management fee collected from the date of confirmation of the resale may be given credit towards the dues from the resale purchaser, if he completes the security. The Departmental Management fee that may be given credit to the original contractor shall be forfeited if he had not completed the security. Similarly the departmental management gee that may be given credit to the resale purchaser shall be forfeited if he fails to complete the security." 22. A perusal of the above provision makes it manifestly clear that the departmental management fee collected from the shops while they were under its management needs to be given credit towards the dues from the defaulting licencees if they have replenished the security. In other words, the departmental management fee that may be given credit in favour of the original contractor shall be forfeited if he has not replenished the security. WPC633209 15 Without fear of

any contradiction, I may place on record that this provision has not been under challenge in Exhibit P1 judgment; on the contrary, the petitioners wanted to take benefit of the said Rule.

23. Before proceeding further, it is pertinent to observe that Exhibit P1 is a common judgment rendered taking together eighteen Original Petitions (OPs). As a result, the nuances of individual cases or the factual differences in different original petitions have not been considered; what has been considered is the impact of the amended Rule 13 on contracts which stood concluded prior to its enforcement. The observations of the learned Division Bench are therefore required to be construed or interpreted in that light.

24. To begin with, the learned Division Bench has observed that in the absence of contract to the country, recovery of more amount than the loss incurred will amount WPC633209 16 to undue enrichment. It is further pertinent to extract the salient observations of the learned Division Bench in the said judgment, which reads thus: "Since all the contracts in these original petitions were entered into before amendment of Rule 13, the petitioners are liable to pay only the actual loss suffered by the Government in realisation of rentals and excise duty. Apart from the absence of any clause in the agreement for forfeiture of departmental management fee, while calculating the loss suffered by Government Rule 13 of the Departmental Management Rules existing at the time of executing the agreement, specifically provided for giving credit to departmental management fee collected unless the contractor fails to compensate security in case of resale. Therefore, balance amount taking into account the amount collected can be realised while calculating the loss suffered by the Government in view of cancellation of licence." (emphasis added) 25. Indeed, the learned Division Bench has specifically taken note of the possibility of the licensee failing to replenish the security in case of resale. Exhibit P1 judgment, pertinently, further reads to the following effect: WPC633209 17 "Hence, all the demands are set aside and the Government is directed to pass fresh demands in accordance with the rules and agreements executed with the licences and rules recovering only the actual loss suffered by the government taking into account the income received by the Government during the abkari year while it was under departmental management also."

(emphasis added) 26. The learned counsel for the petitioners has placed heavy reliance on the last portion of the above quoted observation that the recovery shall be only towards the actual loss suffered by the Government taking into account the income received by the Government during the abkari year while the shops were under departmental management. I am afraid such a truncated or piece-meal reading or construction of a judgment is impermissible.

27. In the first place, a judgment is not a statute and, trite as it sounds, to cull out the ratio, it has to be read in the factual backdrop it has been rendered. The learned Division Bench, to my mind, has made it clear that fresh WPC633209 18 demand to be made by the Government shall be in accordance with the rules and agreements executed with the licencees. The second limb of the judgment concerning the recovery of the actual loss suffered by the Government, taking into account the income received while the shops were under departmental management, has to be read in conjunction with the previous limb--the need to determine the entitlement of the licencee in statutory terms.

28. It needs not much cogitation to hold that there can be no proposition of law, much less a rule of interpretation, that the observations of the court in a judgment are required to be read without reference to the factual context the judgement has been rendered under. At any rate, there cannot be a method of construing a judgment, as if it were an edict, having the effect of nullifying a statutory provision, without its actual invalidation. In other words, there can no judicial WPC633209 19 invalidation of a piece of legislation in the name of interpretation, even of a judgment.

29. As has already been adverted to, the learned Division Bench has dealt with a host of original petitions and rendered a judgment essentially on the principle of law concerning the adjustment of the departmental management fee. Despite my best efforts, I have failed to persuade myself to believe that the learned Division Bench has laid down a proposition of law in Exhibit P1 that the petitioners or any other licencees are entitled to the benefit of adjustment, notwithstanding the statutory mandate in the unamended Rule 13.

30. In this context, it may be pertinent to note the ratio in Ajith Kumar (supra) which, in fact, has arisen from Exhibit P1 judgment. In paragraph 22 of the judgment, their Lordships have observed thus: WPC633209 20 "A party to the lis, it is trite, cannot take advantage of his own wrong. If the State, in law, was liable to adjust the said amount of Rs.31,49,288/-, a valid demand could have been raised only in respect of the balance sum. The High Court was not concerned with the amount of interest as the sum was required to be calculated on the amount legally due and recoverable and not on the amount specified in the notice." (emphasis added) 31. As can be seen from the above extract, Ajith Kumar (supra) reiterates the principle that if the State, in law, was liable to adjust the amount, it could make a valid demand only after adjusting the said amount.

32. The learned counsel has submitted that Exhibit P21 is the judgment rendered by another learned Single Judge of this Court repelling the plea of the first respondent as was taken in Exhibit P7 vis-a-vis a similarly placed person. It is his contention that the learned Single Judge has rejected the contention of the respondents that the benefit of Exhibit P1 judgment shall be extended only after WPC633209 21 the conclusion of the proceedings in a connected matter before the Honourable Supreme Court.

33. There is no gainsaying the fact that this Court in Exhibit P21 judgment has dealt with the issue of a similarly placed person. This Court has held that so long as the decision binds the parties, the petitioner is entitled to have the benefit of Exhibit P1 judgment. If that be so, he is entitled to have his request for the benefit of Amnesty Scheme considered, after having the adjustment of the Departmental Management Fee.

34. In the first place, it is not clear whether the petitioner therein suffered the same statutory constraint of not replenishing the security amount. At any rate, the learned counsel would contend that not only the petitioners but all other parties to Exhibit P1 judgment were defaulters having failed to replenish the security amount. Be that as it may, I cannot pronounce definitely on the said aspect for WPC633209 22 want of information.

35. My concern, however, is whether this Court in Exhibit P21 judgment has examined the impact of unamended Rule 13. In other words, is there any proposition of law laid down in Exhibit P21 that notwithstanding the condition imposed in the unamended Rule 13, the licencees are entitled to the credit of the departmental management fee? Or at least, has Exhibit P21 judgment interpreted Ext.P1 judgment to have declared the law to the effect that the licencees are entitled to the adjustment of revenue under any circumstance? 36. My anxious reading of Exhibit P21 has not lead me to conclude that there is any issue considered in the manner indicated above. It is trite to observe on my part that the result of a judgment, in other words, the conclusion thereof, is not a binding precedent. It is further to be held that once an issue, though present by implication, has not WPC633209 23 been expressly dealt with and pronounced upon, the judgment on the said issue remains sub silentio. Any issue thus rendered sub silentio cannot be treated as a precedent. It is apt, at this juncture to examine, very briefly, the precedential value of an issue that remained sub silentio in a previous decision.

37. The concept of sub silentio has been explained by Salmond on Jurisprudence, 12th Edn. as follows:

"1. [A] decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the Court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio." WPC633209 24 38. It is instructive to quote the observations of the Hon'ble Supreme Court in M/S.Delhi Airtech Services (P) Ltd. and Another v. State of U.P. and Another², wherein their Lordships have observed as follows:

"4. The aforesaid passage has been quoted with approval by the three-Judge Bench in Gurnam Kaur³. This Court in Gurnam Kaur, in order to illustrate the aforesaid proposition further relied on the decision of the English Court in Gerard v. Worth of Paris Ltd.⁴ In Gerard, the only point argued was on the question of priority of the claimant's debt. The Court found that no consideration was given to the question whether a garnishee order could be passed. Therefore, a point in respect of which no argument was advanced and no citation of authority was made is not binding and would not be followed. This Court held that such decisions, which are treated having been passed sub silentio and without argument, are of no moment. The Court further explained the position by saying that one of the chief reasons behind the doctrine of precedent is that once a matter is fully argued and decided the same should not be reopened and mere casual expressions carry no weight." 2 (2011) 9 SCC5343 (1989) 1 SCC1014 (1936) 2 All ER905WPC633209 25 39. In the light of the above settled position of law, I am unable to accept the contention of the learned counsel for the petitioner that Exhibit P21, which is otherwise binding on me, has laid down any proposition of law that notwithstanding the unamended Rule 13, Exhibit P1 judgment has mandated that the benefit of adjustment shall be given to the defaulting licencees.

40. It is to be seen that Exhibit P22 is the consequential order passed by the authorities pursuant to Exhibit P21 judgment, adjusting the departmental management revenue towards the dues from another similarly placed person. The learned counsel for the petitioners contends that denial of the same benefit to the petitioners is discriminatory. Regrettably, that is not to be.

41. It is an established principle of law that an official cannot be compelled to repeat a mistake, as it were, even in the name of parity, once the Court finds that such a WPC633209 26 direction would be violative of a statutory provision. This proposition of law has to be read in the context that neither in Exhibit P1 or in Exhibit P21, this Court has laid down that the unamended Rule 13 is to be ignored or disregarded. In re, Issue No.3:

42. The further grievance of the petitioners is that though the respondent department has sold in auction the first petitioner's property for the realisation of

the abkari arrears by invoking the provisions of the Revenue Recovery Act, it has adjusted the sale proceeds towards the interest alone. This adjustment was done while the petitioners' application for having the benefit of the Amnesty Scheme extended to them was pending. According to the learned counsel, if the petitioners are found to be eligible to have the benefit of the Amnesty Scheme, they are not required to pay any interest at all. WPC633209 27 43. I do find sufficient force in the submissions of the learned counsel for the petitioners. This Court has already held the first issue in favour of the respondent department. In terms of the unamended Rule 13, as the petitioners have not replenished the security, they were, rightly, denied the benefit of adjustment. After calculating the amounts due from the petitioners without giving credit to the Departmental Management Fee, the respondent department is required to determine the issue of the applicability of the Amnesty Scheme to the petitioners. If the authorities have arrived at a decision that the petitioners are entitled to the benefit of the Scheme, it shall adjust the sale proceeds towards the principal amount alone. With the above observations, the writ petition stands dismissed. No order as to costs. Dama Seshadri Naidu, Judge tkv 'C.R.'

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