

State of Kerala Represented by Its, Vs. M. Vijaya Kumar, Managing Partner

State of Kerala Represented by Its, Vs. M. Vijaya Kumar, Managing Partner

SooperKanoon Citation : sooperkanoon.com/717741

Court : Kerala

Decided On : Jan-16-2009

Reported in : 2009(1)KLT473

Judge : J.B. Koshy, Acting C.J. and; P.R. Ramachandra Menon, J.

Acts : Foreign Liquor Rules - Rule 13(3); Kerala Abkari Shops (Disposal in Auction) Rules, 1974 - Rule 6(2)

Appeal No. : W.A. Nos. 354 and 1039 of 2008

Appellant : State of Kerala Represented by Its, ;The Excise Commissioner, ;assistant Excise Commissioner and the

Respondent : M. Vijaya Kumar, Managing Partner

Advocate for Def. : A. Sudhi Vasudevan, Adv.

Advocate for Pet/Ap. : Government Pleader

Disposition : Appeal dismissed

Judgement :

P.R. Ramachandra Menon, J.

1. Proper manner of measurement of the prohibited distance between the classified institutions and concerned establishment in respect of FL 3 Licence is

the core issue involved in both these appeals.

2. The writ petitioner is the Managing Partner of the firm engaged in running a hotel under the name and style 'Hotel Ruby Arena', stated as having all the requirements to be classified under Four Star category, but classified as Three Star category - for want of necessary bar licence. Though the appellant applied for FL 3 licence on 22.09.2006, it was rejected by the Excise Commissioner as per Ext. P3 order dated 19.02.2007 on the ground that the men's hostel of the Medical College, Thiruvananthapuram is located within the prohibited distance, which, hence, was subjected to challenge in the Writ Petition.

3. Various contentions were raised by the writ petitioner pointing out that the hostel is not liable to be treated as an 'educational institution' as contemplated under the relevant rules; that it is situated far away from the medical college; that it is not under the control of the 'Education Department' of the State or Central Board of Education; that grown up people are residing there; that the measurement taken by the statutory authorities from the 'subsidiary gate' of the hostel is not at all correct or proper- as it has to be effected only from the 'main gate' of the hostel ; that the hotel of the petitioner does not come within the prohibited distance and further that the distance has to be measured taking note of the principles set out in Ext.P5 judgment rendered by the Division Bench of this Court.

4. The first respondent/State Government filed a counter affidavit rebutting the above contentions; simultaneously asserting that the hostel is very much part of an educational institution as declared by the Division Bench of this Court in State of Kerala v. Sukumaran 1988 (2) KLT 261 and that the prohibited distance envisaged under the Rule 13(3) of the Foreign Liquor Rules is the shortest pathway/lane street/road generally used by the public, as specifically pointed out in Note (2) thereunder.

5. After considering the rival contentions, the learned single Judge, placing reliance on the decision rendered by the Division Bench of this Court in State of Kerala v. Sukumaran 1988 (2) KLT 261 held that the hostel is part of the educational institution and hence the distance rule contained in Rule 13(3) of the Foreign Liquor Rules very much applies to the hostel also. However, it was

observed by the learned single Judge that the distance has to be measured from the 'main gate of the hostel' to the 'main gate of the hotel'. Taking note of the fact that the road in question has a 'central line' and also a 'zebra crossing' as divulged from Ext. P4 and relying on the mandate given by the Division Bench in Ext.P5 judgment, it was held that the distance had to be measured by taking the distance that a law abiding pedestrian would walk through, using the 'zebra cross' to reach the hotel from the hostel gate. Accordingly, the impugned order was set aside and the Writ Petition was disposed of directing that the distance from the gate of the men's hostel of the Medical College, Thiruvananthapuram to the main gate of the petitioner's hotel shall be re-measured in terms of the above observation and to decide the issue afresh within the time as specified therein.

6. W.A. No. 354 of 2008 has been preferred by the State Government and departmental authorities challenging the said verdict based on the contentions raised in their counter affidavit; whereas W.A. No. 1039 of 2008 has been filed by the writ petitioner, mainly seeking a further declaration that the hostel is not liable to be termed as an 'educational institution' and for consequential reliefs.

7. Regarding the prime contention of the writ petitioner, (the appellant in W.A. No. 1039 of 2008) that the particular hostel is not liable to be treated as an educational institution-mainly since grown up people are residing there being a 'men's hostel', as the very name indicates, it has to be borne in mind that the mere nomenclature cannot be the basis for reaching such an inference. The purpose of keeping the student community away from the vicinity of the concerned premises has been well explained by a Division Bench of this Court as per the decision reported in 1988 (2) KLT 261 (cited supra). In the instant case, it is not a matter of dispute that the students of the Medical College, Thiruvananthapuram are the inmates of the said hostel. Since it is not proved otherwise, it can be reasonably inferred that the hostel is being made use of by the students who undergo various courses in the Medical College, who may include persons securing admission for the MBBS, BDS and such other primary courses immediately after completing their Plus Two examination and on coming out successful in the common admission test. This being the position, the attempt of the writ petitioner to distinguish the concerned hostel does not hold any water and hence the finding of the learned single Judge

that the hostel is very much part of an educational institution does not call for any interference at all.

8. With regard to the mode of measurement of the prohibited distance, the learned single Judge has placed reliance on Ext.P5 judgment rendered by a Division Bench of this Court, wherein it has been categorically held that the measurement effected by the Commissioner therein from gate to gate along the foot path and through the zebra crossing, in conformity with the traffic rules, is perfectly in order . It is true that the said decision was rendered with reference to Rule 6(2) of the of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974. But the fact remains that the crux of Note (2) to Rule 13(3) of the Foreign Liquor Rules now relied on by the State/Department was also in existence in a more or less similar form as a 'Note' after the third proviso to Rule 6(2) of the Kerala Abkari Shops (Disposal in Auction)Rules, 1974 - having had been added as notified vide G.O.(MS.) No. 136/86/TD dated 20.10.1986. The Note under Rule 13(3) of the Foreign Liquor Rules was further amended by adding the words ' and the same will be measured from gate to gate' vide notification bearing No. G.O.(P) 30/93/TD dated 04.03.1993; which shows that the 'shortest distance' mentioned in the Note does not pave way to any illogical conclusions. Since the cause of action forming the subject matter of Ext. P5 judgment was of the year 1993 and since Ext.P5 verdict was passed by the Bench in October 1993 (at a time when the restrictive Note was very much available under Rule 6(2) of the relevant Rules), it is rather puerile to contend by the State that the scope of such restriction is still to be unearthed. Anyhow, Ext. P5 judgment has not been challenged by the State and it has become final In the above circumstances, we find no grounds to interfere with the judgment passed by the learned single Judge. Both the appeals are dismissed accordingly. However, taking note of the fact that the time prescribed by the learned single Judge has already elapsed, we make it clear that the proceedings ordered to be finalised by the learned single Judge shall be completed within a further period of one month from today.