

Binoj Vs. Excise Commissioner

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Court : Kerala

Decided On : Nov-14-2003

Reported in : 2004(1)KLT777

Judge : C.N. Ramachandran Nair, J.

Acts : Kerala Abkari Act, 1077 - Sections 26; Kerala Abkari Shops Disposal Rules, 2002 - Rule 7(31)

Appeal No. : W.P. (C) No. 31844 etc. of 2003

Appellant : Binoj

Respondent : Excise Commissioner

Advocate for Def. : George Mecheril, Government Pleader

Advocate for Pet/Ap. : C.C. Thomas,; B. Mohanlal,; Mereena Joseph,;

Disposition : Petition dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. The petitioners in all these cases who were engaged in retail sale of toddy are challenging separate orders issued by the Commissioner of Excise cancelling their licences. The reason for cancellation of licenses is the seizure of arrack/spirit from

the toddy shop, or from the compound of the toddy shop or from nearby area, and consequent registration of crime against the petitioners as licensees and against their employees. Though the orders under challenge are different, the findings are more or less the same and the reason for cancellation also being the same, the Writ Petitions are heard together, and I proceed to dispose of the same under this common judgment. I heard counsel for the petitioners appearing in all the cases and Government Pleader appearing for the respondents.

2. Even though the reason for cancellation of license is seizure of arrack or spirit and consequent registration of crime against the petitioners who are licensees, alongwith their employees, there is some difference on facts particularly with regard to the quantity of contraband article seized, the place of seizure and the persons from whom seized. While in W.P.C.31844 of 2003, the quantity of spirit seized is 58 litres from a place not far away from the toddy shop, in W.P.C.31570, the item seized is 15 litres of arrack from a place not far away from the toddy shop. In the case of W.P.C.32513/03, three litres of arrack was seized from the shop itself and in the case of W.P.C. 32045/03, three litres of arrack was seized from the compound of the toddy shop and in W.P.C.29463 of 2003, the item seized in 10 litres of arrack, 200 metres away from the toddy shop.

3. The Commissioner of Excise issued notices to the petitioners/licensees and called for their objections, heard them and cancelled the licences in exercise of his powers conferred under Section 26(b) of the Kerala Abkari Act read with Rule 7(5) and Rule 7(31) of the Kerala Abkari Shops Disposal Rules, 2002. The orders are issued based on the prima facie case established in the form of registration of crime against the petitioners/licensees before the Magistrate Court for offences punishable under Sections 8(1) and 8(2) read with Section 55(a) of the Abkari Act.

4. The petitioners have denied the transactions and according to them unless the seizure of contraband item is from the licensee, the licences cannot be cancelled or suspended. Though in some cases, the seizure is from persons stated to be employees or acting for the petitioners/licensees the petitioners have denied the same. There is also another argument that even if the employee is engaged in sale of contraband item, namely, arrack or spirit, the same should not be a ground

for cancellation of licence of the petitioners unless it is established that such business is carried on behalf of the petitioners or at least with the knowledge of the petitioners. Relying on the decisions of the this Court in Vijayan v. Excise Commissioner ((2002) 3 KLT 646) and Jose v. Asst. Excise Commissioner ((1991) 2 KLT 800) the petitioners contended that mere filing of FIR was not a ground to establish the 'charge' against them and so much so, the cancellation of licences is absolutely unjustified. According to them, under Section 26(c) of the Abkari Act, licence can be cancelled only if the person is convicted for the abkari offence and not merely on the basis of registration of a crime.

5. The Government Pleader on the other hand submitted that the conviction by the Judicial Magistrate is different from cancellation of license and Section 26(a) to (d) other than Sub-clause (c) of Section 26 the provisions of which authorise suspension or cancellation of licence for reasons other than conviction in a criminal case.

6. I do not think the argument of the petitioners that conviction in a criminal case is a necessary precondition for suspension or cancellation of license can be accepted. I have already considered the matter in detail in W.P.C. No. 29182 of 2003 that licence can be suspended or cancelled on establishing a case of dealing in contraband item like arrack or spirit. The proceedings before the Judicial Magistrate where the degree or level of evidence required for punishment is different from proceedings for cancellation or suspension of licence and conviction by criminal court is not a necessary precondition for cancellation of license. Even if the licensee is later acquitted the order cancelling licence will not automatically, stand vacated. Therefore, following the judgment in W.P.C.29182/03, I hold that even before the criminal court decides the case charged and conviction by the criminal court, though the same constitutes an independent ground for cancellation of licence under Section 26(c), it is not a precondition for cancellation of licence. If a case is established that the petitioner/licensee who is authorized to vend only toddy under the licence, is engaged in business of contraband item, like arrack or spirit, then the licence is liable to be cancelled in exercise of the powers conferred on the Excise Commissioner under Section 26(b) of the Abkari Act read with Rule 7(5) of the Kerala Abkari Shops Disposal Rules, 2002. Therefore, this argument of

the petitioners is found against them.

7. The next question raised by the petitioners is whether on the facts there is a case of involvement of licensees in the alleged offence, that is storage and sale of contraband item like arrack or spirit. The petitioners heavily relied on the details contained in the mahazar and submitted that the seizure was not from the toddy shops and though from places near or not too far from the licensed premises, they are not the custodian of enforcement of law in the area and they cannot stop anyone carrying on arrack business which is the duty of the excise authorities and that they cannot be linked to such sales. According to the petitioners, there is no statutory presumption making them liable for storage and sale of arrack or spirit elsewhere than in the toddy shop. The petitioners brought to my notice the prohibition contained in the license under Abkari Shops Disposal Rules prohibiting sale of arrack only in the licensed premises. According to the petitioners licences cannot be cancelled for violation of condition of licence under Section 26(b) of the Act read with Rule 7(5) of the Rules, unless it is established that the arrack was found in the toddy shop and arrack was sold in the licensed premises. Their contention is that in none of these cases there is seizure from the toddy shop and they cannot prevent the sale of others and therefore' their licences cannot be cancelled. Their further contention is that presumption under Section 64 of the Kerala Abkari Act will not also be available because the contraband item is not seized from the possession of the licensee but from elsewhere.

8. The question therefore to be considered is whether the licensee can be held responsible for sale of arrack in the premises close to the toddy shop. In the judgment in W.P.C.29182 of 2003 I have dealt with this issue also. It is seen that in all these cases, the seizure is effected from the places very close to the toddy shops. It is immaterial whether the place of seizure is within the compound or little away from the toddy shop. In all these cases, the excise authorities in the Mahazar stated that 'on questioning the accused, they have implicated the licensees and that is the reason why the licensees are charged alongwith the employees who are involved in the business of sale of arrack and spirit'. Counsel appearing for the petitioner in W.P.C.. No. 31844 of 2003 contended that the seizure is from the compound of a State Government company, namely, the Travancore Sugars and

Chemicals Ltd., and in W.P.C. 31570 of 2003 counsel contended that the seizure is from a river side and according to him in one case the excise authorities found that the toddy shop is closed on that day on account of labour strike. But on going through the Mahazar in detail, I find that in all these cases it is established by the excise authorities that licensees are selling arrack in the nearby places of their toddy shops by engaging their employees or their agents.

9. Arrack and spirit are banned in the State from 1996 onwards and several human tragedies have been reported on account of marketing illicit spirit and arrack. Therefore, the Commissioner of Excise cannot shut his eyes to the reality. He should not be hyper technical and take the view that only if arrack or spirit is seized from the toddy shop alone he can suspend or cancel the licence. Every licensee of a toddy shop has responsibility to see that no contraband item like arrack or spirit is stored or sold near the toddy shop and nobody is engaged in such business near the toddy shop. It is not as if the licensees cannot prevent the employees and others from selling arrack near the toddy shop if they really wanted to stop them. Therefore, the natural presumption in the case of sale of arrack or spirit around the toddy shop is that the licensee has complicity and he is the beneficiary and the customers targetted in such business are the customers of the toddy shop and this is the only realistic approach to the issue. The Commissioner rightly concluded that the licensees have complicity in the arrack found near the toddy shops. Therefore, I do not think the technical arguments of the petitioners can save their licenses and I find no justification to interfere with the Commissioner's Orders. However, I make it clear that insofar as offence charged before the Judicial Magistrate Courts, it is open to the petitioners to contest the same and probably the degree of proof required there may be different and the cancellation of licence by itself may not establish the charge against them, though the reverse position is not correct. In other words, both are independent proceedings to be decided , separately.

W.Ps. Are dismissed with the above observations.