

State of Kerala Vs. Radhakrishnan

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Court : Kerala

Decided On : Mar-10-2010

Reported in : 2010(2)KLT185

Judge : K. Balakrishnan Nair and; P.N. Ravindran, JJ.

Acts : Foreign Liquor Rules, 1953 - Rules 13(3) and 19

Appeal No. : W.A. No. 1565 of 2009

Appellant : State of Kerala

Respondent : Radhakrishnan

Advocate for Def. : George Poonthottam, Adv.

Advocate for Pet/Ap. : C.P. Sudhakara Prasad, Adv. General

Disposition : Appeal dismissed

Judgement :

K. Balakrishnan Nair, J.

1. The appellants were the respondents in the Writ Petition. The respondents were the writ petitioners.

2. The brief facts of the case are the following: The respondents are the partners of Apsara Tourist Home. The said firm was having an FL-3 licence, authorising retail sale of Indian Made Foreign Liquor in its restaurant. There were 12 partners for the said firm, when it was reconstituted as per Ext.P2, on 1.4.1996. One of them, K.V. Balakrishnan, died on 13.6.2003. After his death, it was decided to reconstitute the partnership, with the remaining 11 partners. The son of K.V. Balakrishnan was already a partner of the firm. Annexure R-II dated 27.6.2003 was the partnership deed executed, pursuant to the said decision. It was forwarded to the Excise Commissioner, by Annexure R-III. But, the same was not approved by the said officer. The licence of the firm was being renewed from time to time.

3. Another partner, A.P. Antony, died on 9.10.2006. All his sons were already the partners of the firm. On his death, again, motion was made for reconstitution of the partnership, as per Ext.PI dated 19.10.2006. At the time of death of A.P. Antony, he was an Abkari defaulter. The amount defaulted related to some other Abkari business done by him, earlier. As on 1.9.2007, the amount due from him was Rs. 76,34,451/-. According to the respondents, the said amount due to the State from late A.P. Antony was realised on 24.4.2007. According to the State, the amount was cleared only on 21.4.2008. Because of the default of A.P. Antony, it appears, his children, who were partners of the firm, were also treated as defaulters. So, the FL3 licence granted to the firm was not renewed from 1.4.2007. In the above back ground, the Writ Petition was filed by the respondents, seeking the following reliefs:

(i) Issue a writ in the nature of mandamus directing respondents 2 and 3 to renew the FL-3 licence granted to Hotel Apsara, Shornur for the Abkari year 2007-08 as the licence was operational till 31.3.2007.

(ii) Issue a writ declaring that Ext.PI is not a reconstitution as there is no incoming or retiring partners other than the rearrangement of shares among the existing partners in terms of Ext.P2.

(iii) Issue a writ declaring that the 2nd proviso to Rule 19 of the Foreign Liquor Rules is contrary to the 6th proviso to Rule 13(3) and discriminatory and arbitrary

as the licensees who intend to reconstitute the partnership firm within the terms of the deed under which the licence was renewed are treated differently than others who are given the renewal of the licence in terms of the 6th proviso to Rule 13(3) of the Foreign Liquor Rules.

(iv) Issue a writ declaring that Sub-rule (ii) of Rule 19 of the Foreign Liquor Rules is unreasonable as the reconstitution of the firm by dividing the shares among the partners cannot constitute transfer as per law.

The second respondent in the Writ Petition filed a counter affidavit, resisting the prayers in the Writ Petition. According to the said respondent, with the death of A.P. Antony, there was reconstitution of the partnership and the same would be covered by Rule 19(ii) of the Foreign Liquor Rules (for short, 'the Rules'). There was no permission obtained for the same, from the Excise Commissioner. Further, permission could not have been granted because the children of A.P. Antony were Abkari defaulters.

4. The learned Single Judge, after hearing both sides, allowed prayers 1 and 2. The other reliefs were declined. The writ petitioners have not appealed against the judgment. But, the respondents in the Writ Petition appealed, feeling aggrieved by the directions issued by the learned Single Judge. The learned Single Judge dealt with the case of the respondents/petitioners along with the cases of a few other writ petitioners, at para. 13 of the judgment, which reads as follows:

13. In these cases (W.P.C. Nos. 28698, 28699 and 23870 of 2007) admittedly, the reconstitution of the partnership is only on the death of some of the partners and the rights and liabilities have been redistributed among the surviving partners, in tune with the terms of the deed. In other words, the privilege under the licence is continued to be enjoyed by such persons who were already enjoying the same along with the deceased partners and there is no question of any 'addition or deletion' of partners involving any 'transfer' of the privilege. Almost same is the position with regard to the case involved in W.P. (C) No. 6626/2008 as well, where the reconstitution was sought for, pursuant to retirement of some partners. The rights and liberties to the surviving/remaining partners are clearly discernible from the relevant partnership deeds which reveal that the partnerships were 'at will' and

that 'death' or 'retirement' of a partner would not dissolve the Firm and that the surviving/remaining partners could very well proceed with the trade/business. This being the position, absolutely no question of transfer of the licence as contemplated under Rule 19(ii) is involved in the above four cases and hence the petitioners therein are hereby declared as entitled to have their licence renewed in view of the admitted fact that their licence was valid and functional as on 31.3.2007 and very much entitled to the benefit of the '6th proviso' to Rule 13(3) of the Foreign Liquor Rules.

Based on the above finding, the learned Judge granted the following relief:

(i) The petitioners in W.P.(C) Nos. 23870,28698 and 28699 of 2007 and W.P.(C) No. 6626 of 2008 are held as eligible to be considered for the benefit of the 'sixth proviso' to Rule 13(3) of the F.L.R. and their applications for recognizing the reconstitution of the Firm on the death/ retirement of the concerned partners are liable to be reconsidered in tune with the law as it existed prior to the amendment of the Rules brought into effect from 01.04.2007. Ext.P4 in W.P.(C) No. 6626 of 2008 issued to the contrary is set aside.

Challenging the above finding and the consequential direction, in so far as they relate to W.P.(C) No. 23870/07, this Writ Appeal is preferred.

5. We heard Sri. C.P. Sudhakara Prasad, learned Advocate General for the appellants and Sri. George Poonthottam, learned Counsel for the respondents. The learned Advocate General submitted that under Ext.P1, A.P. Antony was deleted from the partnership and his interest in the partnership was allotted to his four sons, who were already partners. So, the said actions from the side of the partnership, are clearly covered by Rule 19(ii) of the Rules. Therefore, previous sanction of the Excise Commissioner was necessary. Secondly, it is submitted that late A.P. Antony was a defaulter and on his death, his children, who were already partners of the firm should also be treated as defaulters. They continued to be defaulters on 1.4.2007 and therefore, the renewal of licence was validly rejected. The learned Advocate General further submitted that in view of the 5th proviso to Rule 13(3) of the Rules, the licence could not be renewed because the licence was defunct for more than six months, that is, from 1.4.2007. The learned Counsel

for the respondents supported the findings of the learned Single Judge, on the aforementioned contentions.

6. We considered the rival submissions made at the Bar. Rule 19, which is relevant in this case, reads as follows:

19. (i) Under no circumstances shall any licence obtained under this notification be sold, transferred or sub rented without the previous sanction of the Excise Commissioner.

(ii) Reconstitution of partnership by addition or deletion of members or reconstitution of Directors in a Company resulting in change of ownership which owns/manages or operates any licence issued under this rule shall be deemed to be transfer of licence.

(iii) Reconstitution of partnership/Directors of a company may be allowed on payment of Rs. 50,000 (rupees fifty thousand only).

(iv) Change of name of licensee may be allowed on payment of Rs. 2 Lakhs (Rupees two lakhs only):

Provided that such change shall be allowed only if the incumbent in whose name the licence is to be granted is eligible otherwise for obtaining a licence under these rules:

Provided further that, constitution/reconstitution of partnership deed/Director Board of a Company will be allowed only if the hotel is having two star classification certificate issued by Ministry of Tourism, Government of India.(emphasis supplied)

The point to be considered is whether Clause (ii) of Rule 19 of the Rules quoted above, will stand in the way of the partnership, in continuing the business and getting the licence renewed. If an existing partner is deleted or a new partner is inducted, then definitely, previous sanction of the Excise Commissioner is necessary. The State has the exclusive privilege to deal with intoxicated liquor and can grant it in favour of others on paying the fees, rentals etc. Having regard to the very nature of the business, strict control of the State is required to be maintained.

A licence to vend foreign liquor should not fall into the hands of undesirable persons. To ensure this, we think, Clause (ii) of Rule 19 of the Rules is introduced. The partnership may remain the same, but, good people may be deleted and anti-social elements may be inducted, with the facade of the partnership still remaining as the same. To prevent this, the State has framed rules, requiring previous sanction of the Excise Commissioner. In this case, a person continued as the partner, till his death. Thereafter, he is no longer a member of the partnership. Deletion did not take place, as a result of the actions of the remaining partners. By act of God, it has happened. We think, Clause (ii) of Rule 19 is not intended to take care of such deletion of partners, resulting out of death. It is introduced to take care of deletion by the conscious action of the partnership, by removing an existing living member. We are in full agreement with the reasoning of the learned Judge that Clause (ii) of Rule 19 will not apply to the facts of the case. Therefore, previous sanction of the Excise Commissioner was not necessary. In this case, we notice that there was no addition of legal heirs of the deceased person because four of his sons were existing partners.

7. The next point to be considered is whether the default of late A.P. Antony can be treated as the default of the children. The law on the point is clear. If a defaulter dies, his estate will be liable. The persons, who inherited the estate will be liable, to the extent the estate can meet the liability. The State can proceed against the estate of the deceased defaulter. So, if the four sons of late A.P. Antony have inherited any property, to that extent, they are liable to the State, in the sense that State can proceed against that property to recover the dues of their father. We think, they cannot be described as Abkari defaulters and disqualified to get the licence granted/renewed. The sin of the father cannot visit them in that manner. Of course, if the liability was arisen out of the business of Apsara Tourist Home, then, the situation may be different. In this case, admittedly, the default of late Antony was in relation to some other Abkari business engaged by him. So, the denial of renewal of the FL-3 licence from 1.4.2007 was unjustified. Therefore, the appellants cannot take the advantage of their own default and take shelter behind the 5th proviso to Rule 13(3) of the Rules, which says that if the licence remained defunct for more than six months, the same cannot be renewed. In this case, the respondents were always ready and willing to pay the licence fee and get it

renewed. The competent authority of the State consciously decided, not to grant renewal, for the reasons which we have already adverted to. In view of the above position, we find no reason to interfere with the judgment of the learned Single Judge. Accordingly, the Writ Appeal is dismissed.

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