

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 30TH DAY OF APRIL, 2020/10TH VAISAKHA, 1942

W.P(C) TMP NO.118 OF 2020

PETITIONER:

1. T.B.SHAJU
AGED 54 YEARS
S/O BHASKARAN
THADIKKAT HOUSE
PURAPPUZHA P.O. ,
PIN-685583
THODUPUZHA TALUK
IDUKKI DISTRICT.

BY ADVS. SRI RENJITH B.MARAR

SMT.LAKSHMI N.KAIMAL

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY,
EXCISE DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.
2. OFFICE OF THE COMMISSIONER OF EXCISE
TRIVANDRUM - 695 033

3. OFFICE OF THE DEPUTY EXCISE COMMISSIONER,
THODUPUZHA TALUK,
IDUKKI DISTRICT - 685585.

4. DISTRICT COLLECTOR
COLLECTORATE,
KUYILIMALA, PAINAV P.O.,
IDUKKI,
KERALA STATE, PIN - 685603.

5. EXCISE INSPECTOR,
EXCISE RANGE OFFICE
THODUPUZHA
THODUPUZHA EAST P.O.,
EXCISE COMPLEX, IDUKKI-685585

6. ELDHO. K. PAUL
S/O THOMAS
KAMUKUMPALLY (H),
CHELADU P.O., PIN-686681
KOTHAMANGALAM
ERNAKULAM DISTRICT.

R1-5 BY SRI. K.P. HARISH GP

THIS WRIT PETITION (CIVIL) TMP HAVING COME UP FOR ADMISSION
ON 30.04.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner was a licensee of toddy shop in Group No.3 of Thodupuzha Excise Range. He was continuing as licensee for the said group for the last few years. However, he was involved in an offence alleging offences punishable under Sections 10 and 13 r/w Section 63 of the Abkari Act. A final report was filed in the said case and cognizance was taken by the Judicial First Class Magistrate Court - I, Thodupuzha as ST No.1904/2017.

2. It is the case of the petitioner that even though summons was served on him, he filed an application for compounding the offences only on 23.03.2020. Unfortunately, on account of the lock down declared, his application for compounding the offence could not be taken up by the learned Magistrate. It is also pointed out today that, subsequently, the compounding application was filed before the Deputy Excise Commissioner, who allowed the same by his order on 27.04.2020.

3. Unfortunately, for the petitioner in the interregnum much 'water flowed under the bridge' and auction for the toddy

shops in the group was conducted on 23.03.2020 and the same went in favour of the 6th respondent.

4. When the matter came up on 28.04.2020, I had requested the Government Pleader to ascertain as to whether this auction had been confirmed in the meantime and also as to whether any objection as alleged had been filed by the petitioner before the 2nd respondent. It is informed by the learned Government Pleader on instructions that the auction was confirmed under Rule 5(15) of the Kerala Abkari Disposal Rules on 06.04.2020 in favour of the 6th respondent. It is also informed that the 2nd respondent is not in receipt of any objection filed by the petitioner.

5. Since it is an admitted case of all parties that the petitioner had a preference under Rule 5(1) of the Kerala Abkari Disposal Rules and that he could not exercise his preference on account of the criminal case pending, I deem it just that he be granted an opportunity to ventilate his grievances before the 2nd respondent. Since the petitioner's alleged objection has not yet been received by the 2nd respondent, I feel that interest of justice

demands that an opportunity be granted to the petitioner to file an objection before the 2nd respondent.

6. Hence, the petitioner, if so advised, will be entitled to file a petition before the 2nd respondent not later than one month from today airing his grievances regarding the conduct of auction on 23.03.2020. If such a petition is filed within the time as aforesaid, the 2nd respondent shall pass appropriate orders, in accordance with law, after hearing the petitioner and the 6th respondent, who has already been granted the licence to conduct the toddy shop in Group No.3 of Thodupuzha Excise Range. Such a process shall be carried out within a period of one month from the date of receipt of the petition/objection proposed to be filed by the petitioner as mentioned above.

This writ petition is disposed of as above.

BECHU KURIAN THOMAS
JUDGE

APPENDIX

PETITIONERS EXTS:

- EXHIBIT P1:- TRUE COPY OF THE FINAL REPORT IN ST NO.1904 OF 2017 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT , THODUPUZHA DATED 10.04.2017.
- EXHIBIT P2: TRUE COPY OF APPLICATION PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 21.03.2020.
- EXHIBIT P3: TRUE COPY OF THE APPLICATION PREFERRED BY THE PETITIONER BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.I, THODUPUZHA AS C.M.P.NO2505/2020 IN S.T NO.1904/2020 DATED 23.03.2020.
- EXHIBIT P4: TRUE COPY OF THE APPLICATION DATED 23.03.2020 PREFERRED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P5: TRUE COPY OF THE APPLICATION DATED 23.02.2020 PREFERRED BEFORE THE 3RD RESPONDENT BY THE PETITIONER'S LAWYER.
- EXHIBIT P6: TRUE COPY OF THE APPLICATION DATED 23.03.2020 PREFERRED BY THE PETITIONER'S LAWYER BEFORE THE 4TH RESPONDENT.
- EXHIBIT P7: TRUE COPY OF THE APPLICATION PREFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24.03.2020