

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P. (C) TMP. NO.263 OF 2020

PETITIONER:

PRITHIVIRAJ, AGED 62 YEARS,  
S/O.LATE.CHATHUKUTTY, MANNAMPALLAM VEEDU,  
MARUTHA ROAD.P.O., PALAKKAD.

BY ADV.JOHNSON VARIKKAPPALLIL

RESPONDENTS:

1. THE DISTRICT COLLECTOR,  
CIVIL STATION, PALAKKAD - 678 001.
2. THE COMMISSIONER OF EXCISE,  
OFFICE OF THE COMMISSIONER OF EXCISE,  
THIRUVANANTHAPURAM - 605 911.
3. THE JOINT COMMISSIONER OF EXCISE,  
OFFICE OF THE JOINT COMMISSIONER OF EXCISE,  
CENTRAL ZONE, ERNAKULAM - 682 011.
4. THE DEPUTY COMMISSIONER OF EXCISE,  
OFFICE OF THE DEPUTY EXCISE COMMISSIONER,  
CIVIL STATION, PALAKKAD DISTRICT - 678 001.
5. K.K.BHAGEERATHAN, AGED 63 YEARS,  
S/O.LATE.KUMARAN, KARATTU VEEDU,  
KOORKENCHERY.P.O., THRISSUR - 680 007.

R1 TO R4 BY GOVERNMENT PLEADER SMT. B.VINITHA

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 05.05.2020,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

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***Dated this the 5<sup>th</sup> day of May, 2020***

This is a matter which had come up in an earlier round as W.P(C) TMP No. 177/2020, which was, by order dated 28-04-2020, permitted to be withdrawn with liberty to approach this Court again. This writ petition is filed consequent to such liberty, having been granted.

2. I have heard the learned counsel for the petitioner and the counsel for respondents 1 to 4. I find that this is a case which can be disposed of at this stage itself and in the manner in which I am disposing of the case, notice to the 6<sup>th</sup> respondent can be dispensed with.

3. Petitioner alleges that 5<sup>th</sup> respondent and himself were joint licensees for toddy shops No., 11, 12, 13, 57 and 58 in group VIII of Kuzhalmannam range, in Alathur circle of Palakkad district, for the last 14 years. In support of his contention that petitioner had a preference for conduct of the toddy shop for the year 2020-21, he has produced, Ext. P4 preference certificate issued under Rule 5(2)

of the Kerala Abkari Disposal Rules, apart from a few of his licenses issued jointly with 6<sup>th</sup> respondent.

4. It is the contention of the petitioner that even though he had handed over to the 5<sup>th</sup> respondent, his share of the license fee and had signed all the necessary documents for submitting the same before the 4<sup>th</sup> respondent, for participating at the auction, as had been the practice adopted by them all along, the 5<sup>th</sup> respondent is alleged to have stabbed him in his back. It is alleged that in a clandestine manner, the 5<sup>th</sup> respondent filed an individual application in his name alone, instead of a joint application, for bidding at the auction. Petitioner became aware about the furtive act of the 5<sup>th</sup> respondent only at the venue of the auction. Even though petitioner tried to enforce his preferential right by filing an application, it is submitted that the same was rejected by the 5<sup>th</sup> respondent, since petitioner could not attach the fee required for participating in the auction.

5. It is also the contention of the petitioner that immediately thereafter, he filed Ext. P5 objection before the 4<sup>th</sup> respondent, as well as the 2<sup>nd</sup> respondent, pointing out the alleged fraud that was

carried out by the 6<sup>th</sup> respondent. It is his case that the 4<sup>th</sup> respondent had a statutory duty to pass an order on the objections that were raised under Rule 5(8)(a) of the Rules. However, without taking note of the objections that were filed, the auction was conducted by the 4<sup>th</sup> respondent and the same is now understood to have been confirmed by Ext. P6 on 20-04-2020.

6. On going through the pleadings, the documents produced as Ext. P1 to P6 and the dates of auction, I find that immediately after the date of auction, National lockdown was declared on account of the pandemic Covid-19, and the confirmation was carried out by the 2<sup>nd</sup> respondent during the lockdown. Petitioner had acted with reasonable alacrity, especially in these times of lockdown, to have approached this Court earlier, through another writ petition, and on coming to know about the confirmation order is now challenging that order also.

7. I remind myself of the elementary principal that 'fraud vitiates everything'. Since petitioner, vehemently contends, that he has been the subject of a fraud in the hands of the 6<sup>th</sup> respondent, I feel that interest of justice warrants me to direct reconsideration of

confirmation of the auction as relating to the 5 toddy shops mentioned earlier, in group VIII of the Palakkad division.

8. In view thereof, I direct the 2<sup>nd</sup> respondent to reconsider the question of confirmation of auction of toddy shops No., 11, 12, 13, 57 and 58 in group VIII of Kuzhalmannam Range, in Alathur Circle of Palakkad Division, within a period of 4 weeks from the date of receipt of a copy of this judgment.

9. The 2<sup>nd</sup> respondent shall issue notice to the 6<sup>th</sup> respondent and shall give a reasonable opportunity of hearing to him as well as the 4<sup>th</sup> respondent and also the petitioner, before taking a decision. I have not heard the 6<sup>th</sup> respondent, in this case only because he is granted an opportunity of hearing before the 2<sup>nd</sup> respondent as per this order. Needless to state that the 2<sup>nd</sup> respondent shall consider the matter, untrammelled by any observations made in this order.

Writ Petition is disposed of as above.

**BECHU KURIAN THOMAS  
JUDGE**

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT.P1. TRUE COPY OF THE RELEVANT PAGES OF THE LICENCE NO.315/2014-15 OF T.S.NO.57/2014-17 OF ANIKKODE ISSUED IN THE NAME OF THE PETITIONER AND 3<sup>RD</sup> RESPONDENT.

EXHIBIT.P2. TRUE COPY OF THE RELEVANT PAGES OF THE LICENCE NO.316/2014-15 OF T.S.NO.13/2014-17 OF PALLANCHATHANNOOR ISSUED IN THE NAME OF THE PETITIONER AND 3<sup>RD</sup> RESPONDENT.

EXHIBIT.P3. TRUE COPY OF THE KERALA TODDY WORKER'S WELFARE FUND CERTIFICATE DATED 20.03.2020.

EXHIBIT.P4. TRUE COPY OF THE PREFERENCE CERTIFICATE OF THE PETITIONER DATED 18.03.2020 ISSUED BY THE CIRCLE INSPECTOR OF EXCISE, ALATHUR.

EXHIBIT.P5. TRUE COPY OF THE COMPLAINT DATED 23.03.2020 SUBMITTED BEFORE THE 4<sup>TH</sup> RESPONDENT.

EXHIBIT.P6. TRUE COPY OF THE ORDER NO.EXC/6364/19/XA1-PLKD DATED 20.04.2020.

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RESPONDENTS' EXHIBITS : NIL

// TRUE COPY//

P..S. TO JUDGE