

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

FRIDAY, THE 29TH DAY OF JUNE 2012/8TH ASHADHA 1934

WP(C).No. 15237 of 2012 (D)

PETITIONER(S) :

KERALA STATE CO-OPERATIVE CONSUMERS FEDERATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, RIJI.G.NAIR
GANDHI NAGAR, ERNAKULAM.

BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI

RESPONDENT(S) :

1. KOYILANDI MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KOYILANDI.
2. MUNICIPAL COUNCIL,
REPRESENTED BY ITS CHAIRPERSON KOYILANDI MUNICIPALITY
KOYILANDI, KOZHIKODE DISTRICT.
3. CHAIRPERSON,
MUNICIPAL COUNCIL, KOYILANDI MUNICIPALITY, KOYILANDI
KOZHIKODE DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29-06-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE BYE LAW OF THE PETITIONER.
- EXHIBIT P2. TRUE COPY OF THE AUDIT CERTIFICATE FOR THE YEAR 2009-10 ISSUED ON 09.03.2012 BY THE KERALA STATE CO-OPERATIVE DEPARTMENT IN RESPECT OF THE PETITIONER.
- EXHIBIT P3. TRUE COPY OF THE ORDER DATED 12.10.2006 ISSUED BY THE GOVERNMENT OF KERALA APPOINTING THE MANAGING DIRECTOR OF THE PETITIONER.
- EXHIBIT P4. TRUE COPY OF THE ORDER BEARING NO.D3-1806/2011 DATED 01.04.2012 PASSED BY THE DEPUTY COMMISSIONER OF EXCISE.
- EXHIBIT P5. A TRUE COPY OF THE F L 1 LICENSE ISSUED TO THE PETITIONER WHICH STANDS RENEWED UP TO 31.03.2013 BY THE DEPUTY COMMISSIONER OF EXCISE KOZHIKODE.
- EXHIBIT P6. TRUE COPY OF THE ACKNOWLEDGMENT DATED NIL ACKNOWLEDGING THE RECEIPT OF APPLICATION DATED 31/03/2012 FOR D&O LICENSE SUBMITTED ON BEHALF OF THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7. TRUE COPY OF THE ORDER STYLED AS NOTICE BEARING NO.H1-17921/11 WRONGLY DATED AS 12.10.2011 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7(a). TRUE COPY OF THE APPEAL DATED 28.05.2012 FILED BY THE PETITIONER AND ANOTHER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P7(b). TRUE COPY OF THE PETITION DATED 28.05.2012 FOR STAY FILED BY THE PETITIONER AND ANOTHER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P8. A TRUE COPY OF THE JUDGMENT DATED 14.06.2012 IN W.P. (C) 11301/2012 OF THIS HON'BLE COURT.
- EXHIBIT P9. A TRUE COPY OF THE RECEIPT DATED 29.05.2012 ISSUED BY THE 1ST RESPONDENT EVIDENCING THE RECEIPT OF RS.2500/- AND RS.10/- FROM THE REGIONAL MANAGER OF THE PETITIONER.
- EXHIBIT P10. TRUE COPY OF THE NOTICE DATED 18.06.2012 ISSUED BY THE 1ST RESPONDENT TO SRI.JOSHI.
- EXHIBIT P11. TRUE COPY OF THE RECEIPT DATED 18.06.2012 ISSUED BY THE 1ST RESPONDENT EVIDENCING THE PAYMENT OF RS.3964/- BY THE POWER OF THE PREMISES WITH DOOR NUMBER 27/216.
- EXHIBIT P12. TRUE COPY OF THE APPLICATION DATED 19.06.2012 SUBMITTED ON BEHALF OF THE PETITIONER BEFORE THE 1ST RESPONDENT FOR D&O LICENSE.

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EXHIBIT P13.TRUE COPY OF THE LETTER DATED 23.06.2012 ISSUED BY THE 1ST
RESPONDENT TO THE PETITIONER.

EXHIBIT P14.TRUE COPY OF THE REPLY DATED 23.06.2012 SUBMITTED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P15.TRUE COPY OF THE LETTER 25.06.2012 ISSUED BY THE 1ST
RESPONDENT TO THE PETITIONER.

/true copy/

P.A. To Judge

ANTONY DOMINIC, J

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W.P.(C).15237/2012 (D)

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Dated this the 29th day of June, 2012

JUDGMENT

Petitioner is conducting an FL1 shop in building No.27/216 of the respondent Municipality. Ext.P5 is the licence issued under the Foreign Liquor Rules. According to the petitioner, it was unnecessary for them to obtain licence under Section 447 of the Kerala Municipality Act, in view of exemption as provided under Section 442 thereof. It is stated that in spite of it, on the insistence of the respondent Municipality, they submitted Ext.P6 application for a licence under Section 447 of the Act. It appears that the application was rejected by Ext.P8 order dated 12.10.2011. Although there is a dispute regarding the accuracy of the date shown in Ext.P8, there is no material to conclude the issue either way.

2. Be that as it may, aggrieved by Ext.P8, petitioner filed Ext.P9 appeal, along with Ext.P10 stay petition. Appeal and the stay petition are stated to be pending. It is also the case

of the petitioner that pursuant to Ext.P8, Ext.P7 notice was issued for closing down the shop and that, though the shop was sealed on 26.5.2012, on the filing of Exts.P9 and P10, shop was allowed to be reopened.

3. In the meanwhile, against Ext.P7, petitioner filed a writ petition before this Court as W.P.(C).11303/12. However by Ext.P11 judgment, that writ petition was dismissed as withdrawn.

4. It is also the case of the petitioner that the main objection of the Municipality against granting licence applied for, was that the premises in question was a residential one and that without change of occupancy, the same was used for commercial purposes. It is stated that therefore an application was made and that, by Exts.P12 to P15, the occupancy was changed from residential to commercial, and that necessary remittance of taxes was also made. According to the petitioner, thereafter they filed Ext.P16 application for D&O licence for the period of 2012-13 and that pursuant to Ext.P17 letter from the

Municipality, the documents called for therein were also produced and that by Ext.P19, they were informed that Ext.P16 application has been placed before the Council for consideration.

5. It is at that stage, this writ petition has been filed with a prayer to declare that the petitioner is not liable to take D&O licence under Section 447 of the Act and to direct the respondents to permit the petitioner to continue the shop in building No.27/216 of the respondent Municipality. Prayer is also sought to quash Ext.P8.

6. Insofar as the contention of the petitioner that, the licence under Section 447 of the Act is unnecessary in view of Section 442 of the Act is concerned, learned counsel for the petitioner submits that the issue is being considered by the Government and therefore, he requests that the issue may be left open. In view of the request so made, this Court is not examining the correctness of this contention and leave the same open to be considered by the Government.

7. Then what remains is the correctness of Ext.P8, the order rejecting Ext.P6 application made by the petitioner. From the pleadings itself it is obvious that against Ext.P8, petitioner has filed Ext.P9 appeal. It is during the pendency of this appeal, writ petition has been filed. Having regard to the case of the petitioner that the statutory appeal filed by them is pending, it is for the appellate authority to deal with the appeal in accordance with law. Therefore, I direct the second respondent to consider Ext.P9 appeal filed by the petitioner with notice to them and as expeditiously as possible, at any rate within four weeks of receipt of a copy of this judgment.

8. Yet another aspect is that while the aforesaid appeal was pending, petitioner filed Ext.P16 application before the first respondent for licence for the year 2012-13. From Ext.P19 and the pleadings, what is discernible is that the said application is also pending. Therefore, I direct that the authority under Section 447 of the Act shall consider the application with notice to the petitioner and

orders thereon shall be passed as expeditiously as possible at any rate, within two weeks of receipt of a copy of this judgment along with a copy of the writ petition.

Writ petition is disposed of as above.

Sd/- ANTONY DOMINIC, JUDGE

mrCS

/true copy/ PA To Judge