

**KERALA HIGH COURT**

Madhavan K. P.,Kunissery

Vs

Assistant Excise Commissioner

(K.K.Mathew,J.)

06.02.1969

**JUDGEMENT**

**K.K.Mathew,J.**

( 1. ) THE petitioners in these writ petitions bid in auctions the right to vend country liquor in the respective areas mentioned in the licences issued to them. The auctions have been confirmed. The petitioners committed default in payment of the rental payable by them. The privilege to vend the liquor of some of them was directed to be re-auctioned, and proceedings have been taken against them and the other defaulters for recovery of arrears of rental under the provisions of the Revenue Recovery Act.

( 2. ) THE petitioners contend that no amount can be recovered from them by way of rental under the provisions of the Revenue Recovery Act, that S.18A of the Abkari Act, under which the privilege to vend the liquor was granted to them, is ultra vires the Constitution, as it infringes their fundamental right to carry on a trade under Art.19(1)(g) of the Constitution, that the rental is neither an excise duty nor a luxury tax, and that if it is considered as a fee, there is no quid pro quo. They further contend that the rental being neither a tax nor a fee cannot be recovered from them under the Revenue Recovery Act, that recovery of any amount under the provisions of that Act would be discriminatory as an unguided discretion has been vested in the authority concerned either to resort to a suit or to the more drastic provisions of that Act.

( 3. ) THE Cochin Abkari Act, 1 of 1077, was enacted by the Maharaja of Cochin. This enactment was amended in 1964 by the Abkari Laws (Amendment and Validation) Act, 1964 (Act 1 of 1964) and the amended Act with further modifications was extended to the whole of Kerala by Act X of 1967, hereinafter called the Act. S.18A, which practically reenacts the provisions of S.16 of the Cochin Act reads: " Grant of exclusive or other privilege of manufacture etc ., on payment of rules : (1) It shall be lawful for the Government to grant to any person or persons, on such conditions and for such period as they may deem fit, the exclusive or other privilege - (i) of manufacturing or supplying by whole sale; or (ii) of selling by retail; or (iii) of manufacturing or

supplying by whole sale and selling by retail, any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration of the grant of such privilege. The amount of rental may be settled by auction, negotiation or by any other method as may be determined by the Government, from time to time, and may be collected to the exclusion of, or in addition to, the duty or tax leviable under S.17 and 18. (2) No grantee of any privilege under sub-section(1) shall exercise the same until he has received a licence in that behalf from the Commissioner. (3) In such cases, if the Government shall by notification so direct, the provisions of S.12 relating to toddy and toddy producing trees shall not apply " ;. Sub-section(23) of S.3 reads: "rental " ;, means the rental payable under S.18A in consideration of the grant of an exclusive or other privilege of manufacturing, supplying or selling any liquor or intoxicating drugs." "Abkari revenue " is defined: "Abkari revenue 'means revenue derived or derivable from any duty, fee, tax fine or confiscation imposed or ordered under the provisions of this Act, or of any other law for the time being in force, relating to liquor or intoxicating drugs." It was argued on behalf of the State that "rental " is the consideration for the privilege of vending liquor, that the State could grant the privilege as the State has monopoly in liquor trade, that the assumption behind S.18A of the Act is that the State has exclusive monopoly to carry on the trade in liquor, and therefore, the reasonableness of restrictions imposed upon the fundamental right of the citizens to carry on trade in liquor cannot be canvassed in view of the amendment to Art.19(6) of the Constitution in 1951. In support of the contention that the trade in liquor was the monopoly of the State under the Cochin, Travancore and Madras Abkari Acts, and therefore, under the Kerala Statute also, the learned Government pleader referred me to the Cochin State Manual, Chap.12, Page 333. There, it is stated that the practice in erstwhile Cochin State was to farm out the privilege of vending toddy and arrack to a few persons. In T.K.Velu Pillai's Travancore State Manual, Vol.IV at page 48 it is stated: "In the early days the management of the Abkari Department was vested in the Dewan. The Abkari revenue was collected by a staff consisting of Vicharipukars, Pillamar and others employed for the purpose. The Amanee system was introduced in 1010 ME, under it, the monopoly of selling toddy and arrack was farmed out taluk by taluk to the highest bidder, who agreed to certain stipulations almost identical with those that obtained in British India. The selling prices were fixed by Government. To each contractor was assigned a fixed number of shops. He employed his own peons, collected the monthly instalments of the rent and remitted it into the District or Huzur Treasury. If no farmer came forward, the Tahsildar controlled the management of the shops." That the practice in the Malabar area was also the same is clear from the Malabar District Gazetteer, Chap.12, Page 376. Counsel also relied on the observations in *T.D.C.V.T.C.S.Ltd.v.State of Kerala*<sup>1</sup> and *Kunnathur Taluk Chethu Thozhilali v.State*<sup>2</sup> to support the contention that the State has the exclusive privilege to carry on the trade in country liquor and can farm out that privilege to the citizens. ;

#### Cases Referred.

1(1958 KLT 521)

2(1960 KLJ 689)