

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 16<sup>TH</sup> DAY OF SEPTEMBER 2021 / 25TH BHADRA, 1943

WA NO. 1174 OF 2021

AGAINST THE ORDER IN WP(C) 18183/2021 OF HIGH COURT OF KERALA,  
ERNAKULAM DATED 09.09.2021

**APPELLANT/PETITIONER:**

MRS.ANN BENNY  
AGED 44 YEARS  
W/O. BENNY ANTONY PAREL, LICENSEE AND DIRECTOR,  
FL 3 NO.E-113/2020-21, PARAYS HOLIDAY HOTELS (P)  
LTD, PARAY RESIDENCY MUVATTUPUZHA - 686661.

BY ADVS.  
SAIBY JOSE KIDANGOOR  
S.SIBHA  
PARVATHY VIJAYAN(K/000172/2016)

**RESPONDENTS/RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 2 DEPARTMENT OF EXCISE  
REPRESENTED BY THE SECRETARY TO GOVERNMENT, EXCISE  
DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695001.
- 3 THE EXCISE COMMISSIONER  
THIRUVANANTHAPURAM, KERALA - 695001.
- 4 DEPUTY COMMISSIONER OF EXCISE  
EXCISE DIVISION OFFICE, EXCISE ZONAL TOWER, CHITTOOR  
ROAD, KACHERIPADY, KOCHI, KERALA - 682018.

**OTHER PRESENT:**

SRI.T.K.VIPINDAS, SENIOR GOVT. PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
16.09.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**A.M. BADAR &  
MURALI PURUSHOTHAMAN, JJ.**

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Writ Appeal No.1174 of 2021  
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Dated this the 16<sup>th</sup> day of September, 2021

**J U D G M E N T**

**A.M Badar, J.**

The order refusing grant of interim relief, passed by the learned Single Judge of this Court on 09.09.2021 in W.P.(C) No.18183 of 2021 is impugned in this writ appeal.

2. The appellant/petitioner is one of the Directors of Parays Holiday Hotels Pvt. Ltd. The liquor licence stands in her name in favour of Parays Holiday Hotels (Pvt) Ltd. She filed the writ petition with the following prayers:

- i. Issue a Writ of Certiorari or appropriate writ, order or direction to call for the records leading upto the Exhibit P7 and quash the same.
- ii. Declare that sub-section (2) and (3) of Section 67 of the Kerala Abkari Act to the extent of seeking previous permission for reconstitution, alteration, modification of any deed constituting such Board of Directors of the Company on the strength of which licence is granted is ultra vires, unconstitutional and is in violation of the provisions of the Companies Act, 1956.

3. Along with the above prayers, by way of interim relief, the petitioner has prayed that the effect and operation of the order impugned in the said petition marked at Ext.P7 passed by the Excise Commissioner be stayed till disposal of the writ petition. By the order at Ext.P7, the Excise Commissioner has imposed fine of Rs.3 lakhs as per the provisions of Section 67(2) and (3) of the Abkari Act and also levied fee of Rs.1 lakh as per Rule 19(iii) of the Foreign Liquor Rules.

4. The learned Single Judge, by the order impugned in the instant appeal, was pleased to admit the writ petition for final hearing but has refused to grant stay to the effect and operation of the order at Ext.P7 passed by the Excise Commissioner.

5. Heard learned counsel for the appellant. He has vehemently argued that levy of fee of Rs.1 lakh as per Rule 19(iii) is not in consonance with the provisions of the rules and by rejecting interim relief, the main petition itself is rendered infructuous.

6. Learned counsel for the appellant drew my attention to the provisions of Rule 19 of the Foreign Liquor Rules and argued that so far as partnership firm is concerned, Rule 19(ii) of the said

Rules shows that addition or deletion of members of the partnership firm can be considered as reconstitution of the partnership firm. However, in submission of the learned counsel for the appellant, so far as the Company is concerned, no such terminology is used which implies that resignation of a Director does not amount to reconstitution of the Board of Directors of the Company. It is urged that, in the case in hand, only one Director resigned from the Board which has not resulted in change in the share holding pattern. Our attention is also drawn to the minutes of the meeting dated 05.09.2018, Ext.P3, by which resignation of the outgoing Director by name Sri.Parayil Joseph Antony came to be accepted by the Board of Directors.

7. Learned counsel for the appellant is at pains to submit that so far as resignation is concerned, it is a voluntary act on the part of the Director of the Company but so far as reconstitution is concerned, the process is different. It is further argued that the licence in favour of the Company is in the name of the appellant/petitioner and she has not retired from the Board. Learned counsel drew our attention to the judgment of the learned Division Bench of this Court in the matter of **State of Kerala** vs.

**Panamoottil Investments** (2010 (1) KLT 557) wherein by upholding the constitutionality of Rule 19 of the Foreign Liquor Rules, it is held that the provisions of Rule 19 are enacted to see that licence should not go to the hands of undesirable or unscrupulous persons. Learned counsel urged that provisions of Section 67 of the Abkari Act comes in to play when the offence is registered in terms of the provisions of Rule 19 of the Foreign Liquor Rules.

8. We have considered the submissions so advanced and also perused the pleadings in the matter so also the impugned order of the learned Single Judge of this Court. The Board of Directors of the Company named M/s.Parays Holiday Hotels (P) Ltd underwent change on 05.09.2018 as one of the three Directors namely, Sri.Parayil Joseph Antony tendered resignation which came to be accepted by the Board on that day. Accordingly, the appellant/petitioner preferred necessary application to the Excise Commissioner and the impugned order in the writ petition, Ext.P7, came to be passed on the said application. The Excise Commissioner was pleased to hold that prior permission was not taken for reconstitution of the Board of Directors and as such, for

regularising this act, under the provisions of Section 67(2) and (3) of the Abkari Act as well as under Rule 19(iii) of the Foreign Liquor Rules, fine of Rs.3 lakhs and fee of Rs.1 lakh is required to be imposed and accordingly, the same came to be imposed.

9. It is apposite to quote the provisions of Section 67(2) and (3) of the Abkari Act for better understanding of the matter:

**67. Power to impose fine: -**

(1) xxx

(2) The Commissioner may impose a fine of Rs. 3,00,000 (Rupees three lakhs) each on any person or persons holding a licence or permit under this Act for the violation by way of reconstitution, alteration or modification without the permission of the Commissioner of any deed on the strength of which any licence is granted.

(3) Where a partnership firm or a company having a hotel (restaurant) holding a licence under this Act has, without the previous permission of the Commissioner, re-constituted, altered or modified any deed constituting such partnership or Board of Directors of the company, on the strength of which such licence is granted, the Commissioner may, on payment of the fine imposed under sub-section (2) and on an application from such licensee and subject to the other provisions of this Act and the rules made thereunder, regularise such re-constitution, alteration or modification after accepting such fee as may be prescribed by rules”.

10. Similarly, it is apposite to quote the provisions of sub rule (iii) of Rule 19 of the Foreign Liquor Rules which read thus:

“19(iii) Reconstitution of partnership/ Directors of a company may be allowed on payment of Rs.1,00,000 (rupees one lakh only)”.

11. At this stage, it is also apposite to quote the relevant observations of the learned Single Judge of this Court in W.P.(C) No.18183 of 2021 while rejecting the contention of the petitioner therein so far as the issue of grant of interim relief is concerned. Paragraphs 9 and 10 of the impugned order reads thus:

“9. As evidenced by Ext.P3, the copy of the minutes of the Board of Directors held on 05.09.2018, the resignation of the Director was approved and it was resolved to file the necessary forms with regard to the resignation with the office of the Registrar of companies. The learned Government Pleader, on instructions submits that, pursuant to the resolution, application was submitted by the petitioner before the Registrar for making relevant entries in the registers and that changes have been effected therein indicating that presently there are only two Directors for the company. The said submission is not denied by the learned counsel for the petitioner. The averments in paragraphs 7 and 8 of the writ petitions indicate that, consequent to the resignation

from Directorship, the resigned Director desired to transfer the shares held by him to the petitioner, though the same did not fructify. In the Board of Directors of the Company, the number of Directors have now been reduced from three to two. The resolution has been acted upon by the Registrar of Companies. Prima facie, the facts noticed above amounts to nothing short of a re-constitution of the Board of Directors of the Company.

10. As held by the Apex Court in *Khoday Distilleries Ltd & others v. State of Karnataka & others* (1995) 1 SCC 574, liquor as a beverage is dangerous and injurious to health, and is an article "res extra commercium". There is no fundamental right to trade or business in liquor. The Apex Court further held that, the State can impose limitations and restrictions on the trade or business in liquor different from that imposed on trade of articles "res commercium". The necessity for supervision over the conduct of trade/business in liquor needs no elaboration. It is to achieve the said purpose that stringent conditions are imposed requiring that, the coming into or quitting the business by persons who run the same must be notified to the Commissioner and sanction obtained. Any person cannot come in and do any mischief and leave at his sweet will. Section 67 (2) and (3) and Rule 19 aim at this object".

Undisputedly, one of the Directors of Parays Holiday Hotels (P) Ltd has tendered resignation and that resignation came to be accepted



by the Board of Directors. It is seen that as per the provisions of Section 168 of the Companies Act, change was notified to the Registrar of Companies as per the statutory requirements. The substantive relief claimed in the writ petition is for a declaration that the provisions of Section 67(2) and (3) of the Abkari Act to the extent claimed by the petitioner are ultra vires and unconstitutional and in violation of the provisions of the Companies Act, 1956. Thus constitutionality of relevant provisions of Section 67 of the Abkari Act is challenged in the writ petition. Constitutionality of the statute is a presumption. It is thus well settled principle that, by way of interim relief, provisions of the statute in such eventuality need not be stayed.

12. In the case in hand, the appellant, in an indirect manner, is virtually seeking stay of the provisions of Section 67(2) and (3) of the Abkari Act by praying for stay of consequent action taken in pursuant to the provisions of that Section by the Excise Commissioner.

13. Be that as it may, to our mind, prima faice, reconstitution means change in the organisational set up of the Company. In the case in hand, undisputedly, one of the Directors of the Company

has resigned and thereby the Board of Directors of the Company came to be reconstituted and that change as required by the statutory provisions is already reported to the Registrar of Companies. Hence at the interim stage, we find it difficult to accede to the submissions of the learned counsel for the appellant that as share holding pattern is not changed or the Director in whose name licence stands, continues in the Board of Directors, the Excise Commissioner has committed an error in imposition of fine and fees. Undisputedly, no previous permission was sought by the appellant for reconstitution of the Board of Directors of the subject Company. Resignation of the outgoing Director is without seeking previous permission as envisaged by Section 67 of the Abkari Act and by resignation of one of the Directors, the Board is reconstituted. Therefore, imposition of fine of Rs.3 lakhs for regularisation of this act at this preliminary stage cannot be said to be contrary to the provisions of Section 67(3) of the Abkari Act. Similarly, Rule 19(iii) of the Foreign Liquor Rules provides for levy of fees of Rs.1 lakh for reconstitution of the Board of Directors of the Company. In fact in the matter of *Panamoottil Investments* (supra), the Division Bench of this Court has categorically pointed

out that the intention behind Rule 19 is to ensure that the licence should not fall into undesirable hands.

In the result, we find no illegality in the impugned order passed by the learned Single Judge.

Hence the appeal fails and the same is dismissed.

Sd/-

**A.M. BADAR  
JUDGE**

Sd/-

**MURALI PURUSHOTHAMAN  
JUDGE**

smp