

Kerala High Court

Dr.J.Seetharaman vs State Of Kerala Represented By The on 10 February, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 35218 of 2009(Q)

1. DR.J.SEETHARAMAN,SHANMUGHAVILASOM,
... Petitioner

Vs

1. STATE OF KERALA REPRESENTED BY THE
... Respondent

2. THE EXCISE INSPECTOR,EXCISE RANGE,

For Petitioner :SRI.K.KARTHIKEYA PANICKER

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice P.BHAVADASAN

Dated :10/02/2010

O R D E R

P. BHAVADASAN, J.

W.P.(C). No. 35218 of 2009

Dated this the 10th day of February, 2010.

JUDGMENT

This is a petition filed under Article 226 of the Constitution of India seeking to have all further proceedings in S.C. 780 of 2007 pending before the Additional Sessions Court (Abkari Cases) Kottarakkara quashed and also to declare that until an Expert Committee is appointed under Section 56A(b) of the Kerala Abkari Act and norms are prescribed, no further proceedings shall be taken.

2. Petitioner is a doctor by profession and he is an Ayurvedic physician. He manufactures Ayurvedic medicines also. The manufacture is covered by Drugs and Cosmetics Act and the Rules. As per Rule

154 of the Rules, manufacture and sale of Ayurvedic medicines is permitted on the strength of Form 25-D licence issued by the Drugs Controller of Kerala. The petitioner holds a licence to that effect and it is marked as Ext.P1. The licence prescribed the medicines that could be manufactured by the petitioner. The licence is being renewed from year to year and is in force even now. Apart from Ext.P1 licence, the petitioner is also in possession of L2 licence under the Medicinal and Toilet Preparations (Excise Duties) Act. He has been manufacturing Ayurvedic medicines strictly in accordance with law. On 8.12.2001 at about 12.15 in the noon, the second respondent suddenly conducted a search in one of the retail outlets of the petitioner and 350 ml of Kanakasavam kept for sale in a sealed bottled was seized and the sample taken was sent for chemical analysis. The report disclosed that Kanakasavam contained 12.40% volume of self generating ethyl alcohol and based on that certificate Crime No.60 of 2002 was registered against the petitioner as the first accused and the retail outlet employee as the second accused. The offence, which is alleged to have been committed, is one under Section 56A(b) of the Abkari Act. The occurrence report is produced as Ext.P2.

3. According to the petitioner, in order to attract Section 56A of the Abkari Act, the articles seized should be such preparation other than a bona fide medicinal preparation. The said provision defines what is a medicinal preparation and prescribes certain conditions and norms. In fact going by the provision, namely 56A(2) Explanation (c) an Expert Committee to be constituted by the Government of Kerala has to prescribe the formula in a pharmacopoeia regarding the medicinal preparation. It is that Expert Committee which is competent to say whether the medicine prepared is a bona fide one or not. The Government of Kerala has not so far constituted any such Committee and therefore the whole proceedings is illegal. No other authority as per the Act has the power and authority to determine whether the Ayurvedic medicine seized is a bona fide preparation or not. Petitioner relies on Note to Rule 3 of the Kerala Spirituous Preparations (Control) Rules, 1969, Act 1 of 1077 also.

4. The short contention of the petitioner is that in order to launch a prosecution for the offence punishable under Section 56A(b) of the Abkari Act, it is necessary to obtain the opinion of the Expert Committee to be constituted regarding the medicinal preparation. That having not been done, the entire proceedings have to be quashed.

5. Inspite of several opportunities given to the Government and even inspite of direction to file a statement, nothing has been done in this matter.

6. When the matter was taken up for hearing, learned Government Pleader handed over a copy of the notification dated 19.11.2009, which reads as follows:

"S.R.O. No.963/2009- In exercise of the powers conferred by Section 68A of the Abkari Act; 1 of 1077 read with rule 3 of the Abkari (Expert Committee) Rules, 1968 and in supersession of the notification issued under G.O.(P) No.115/87/TD dated 27th November, 1987 published as S.R.O. No.1657/87 in Part I of section iv of the Kerala Gazette No.49 dated 15th December, 1987, the Government of Kerala hereby appoint an Expert Committee with following members, namely.-

1.The Drugs Controller, Kerala,
Thiruvananthapuram.

2. The Chief Chemical Examiner, Kerala, Thiruvananthapuram.

3. The Director of Health Services, Kerala, Thiruvananthapuram (Official- Allopathic System of Medicines)

4. The Ayurvedic Drugs Controller, Kerala Thiruvananthapuram (Official-Indian System of Medicines).

5. Dr.V.G. Udayakumar, 'Arabhi', Areekkal, Edaricode P.O., Malappuram (Non-Official Indian System of Medicines).

6. The Director of Homoeopathy, Kerala, Thiruvananthapuram (Official- Homoeopathic System of Medicines).

7. The Joint Commissioner of Excise (Internal Audit Wing), Excise Commissionerate, Thiruvananthapuram."

7. It must be said that there is considerable force in the contentions raised by the petitioner. Section 56A of the Abkari Act reads as follows:

"56A. For allowing consumption of certain preparations in business premises, for the manufacture and stocking of such preparations, etc:-

(1) Whoever being a chemist, druggist , apothecary or keeper f a dispensary or Vaidyasala-

(a) allows any preparation containing liquor or intoxicating drug to be consumed in his business premises otherwise than for the bona fide treatment, mitigation or prevention of any disease; or

(b) manufactures or stocks or causes to be manufactured or stocked any such preparation, other than a bona fide medicinal preparation, within the premises under his control;

shall, on conviction before a competent court, be punished with imprisonment for a term which may extend to five years, and with fine which shall not less than fifty thousand rupees.

(2) Whoever consumes any preparation containing liquor or intoxicating drug, which is not a bona fide medicinal preparation, in any premises referred to in sub-section (1) shall, on conviction before a Magistrate be punished with fine which may extend to five thousand rupees.

Explanation:- For the purposes of this section, "Bona fide medicinal preparation" shall mean any medicinal preparation-

- (a) manufactured according to a formula prescribed in a pharmacopoeia approved by the Government of India or the Government of Kerala, or
- (b) manufactured according to a formula approved by the Government of Kerala in respect of patent and proprietary medicinal preparations; or
- (c) approved as a bona fide medicinal preparation by the Expert Committee appointed under Section 68A."

Section 68A deals with the constitution of the Exert Committee.

8. A reading of Section 56A will clearly show that the authority to determine whether a particular medicinal preparation is in conformity with the norms is the Expert Committee to be appointed under Section 68A. The Explanation to the said provision defines what is a bona fide medicinal preparation. It should be confirm to a formula prescribed in a pharmacopoeia approved by the Government of India or the Government of Kerala. In the case on hand, the issue, even as accepted by the learned Government Pleader, falls within the scope of Explanation (c). The Expert Committee has been constituted only on 19.11.2009.

9. The prosecution in the case on hand was launched much before that. It was infact launched on 8.12.2001. Obviously, it is not in accordance with the provisions of the Act. On that sole ground the petition has to succeed.

In the result, this petition is allowed, and all further proceedings in respect of C.R. No.60/2002 of Pathanapuram Range Punalur Circle initiated by the Excise Range Office shall stand quashed. So also, all further proceedings in S.C. 780 of 2007 on the file of the Additional Sessions Court (Abkari) Cases, Kottarakkara shall stand quashed and the petitioner shall stand discharged.

P. BHAVADASAN, JUDGE sb.