



GOVERNMENT OF KERALA

No.7497/AZ/09/TD

Taxes (A) Department,
Thiruvananthapuram,
Date: 29.4.2009.

CIRCULAR

Sub:- Judgment dated 5.3.2009 of the Hon'ble High Court
in WP(C)No.5748 and 6149 of 2009 -Compliance of direction -
Instructions issued.

The Hon'ble High Court of Kerala, in the judgment dated 05.03.2009 in WP(C) Nos. 5748 and 6149 of 2009, observed that several instances have come to the attention of the Court wherein District Collectors issued orders under Section 54 of the Abkari Act, directing closure of abkari shops, the day previous to the event for protection of which the order is passed, with the result that the aggrieved licensees are unable to challenge those orders, even if they have proper reasons to do so.

2. The Hon'ble High Court has also pointed out that the law on the subject has been succinctly laid down by a Division Bench of the High Court, in W.P.(C)No.5187/2005. The relevant portion of the judgment reads as follows:

"Mr.C.K.Abdul Rahim, learned Senior Government Pleader after obtaining instructions from the Government submits that this is not approved as a policy decision of the Government. If that be so, the District Magistrate exercised the power in the facts and circumstances of a particular situation, which cannot be called continuous or perpetual and are only momentary. It is stated that about four years back, the members who attended the convention, had attacked the bars and other shops where intoxicating drinks were being sold. But, this cannot be a ground to exercise the powers under Section 54 of the Act for this year. The above provision is a transient provision and has to be invoked only when there is law and order situation or there is a reasonable apprehension of breach of peace and public tranquility. The fact that, about four years back, there was rioting by members of the convention, protesting against the operation of the bars and other shops dealing in intoxicants, cannot be a ground for the District Magistrate to order closing of the said Bars and shops for this year as it is the duty of the District Magistrate to supervise the law and order situation and Superintendent of Police to tackle law and order problem. It is admitted that the District Magistrate or Superintendent of Police cannot lay down a policy of closure of Bars and shops dealing in intoxicants. If that be so, the exercise of the powers under Section 54 of the Act cannot be mechanical and merely because there is a letter of the Superintendent of Police, Puthanambitta expressing concern that there is every likelihood of breach of peace if sale of alcohol and liquor is allowed within a periphery of two kilometers of the above convention, the said vague letter cannot form basis for the imposition of the ban for a total period of five days during which the convention is held".

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3. In compliance of the judgment dated 5.3.2009 of the Hon'ble High Court, in WP(c).No.5748 & 6149 of 2009, the following instructions are issued to all District Collectors in the State, for strict compliance while exercising the powers under section 54 of the Abkari Act directing closure of abkari shops for the preservation of public peace:-

- (a). An order under section 54 of the Abkari Act shall be passed at least one week prior to the event in respect of which the same is issued in order not to stifle legal remedies available to those who may be aggrieved by such orders.
- (b). Section 54 of the said Act shall be invoked only when there is a law and order situation or there is a reasonable apprehension of breach of peace and public tranquility and the circumstances so warrant.
- (c). The exercise of the powers under the said section may not be mechanical and if there is any apprehension of breach of peace and public tranquility, the grounds or acceptable reasons in support of such apprehension shall be stated in the order.
- (d). The order shall not be on vague grounds and a speaking order shall be passed.
- (e). The order shall not be based on desirability but to the objective and subjective satisfaction of the District Collector that there is possible breach of peace or law and order.
- (f). There shall be cogent material to show that on account of opening of liquor shops there is a distinct likelihood of breach of peace and law and order situation.
- (g). The facts and circumstances of a particular situation shall not be treated as continuous or perpetual warranting an order under section 54 for the coming year.

4. All District Collectors shall ensure that the above instructions are strictly complied with.


K.J.MATHEW,
Chief Secretary.

To

All District Collectors.

- Copy to:-
1. The Excise Commissioner, Thiruvananthapuram.
 2. The Managing Director, Kerala State Beverages Corporation Limited, Thiruvananthapuram.
 3. The Director of Information and Public Relations, Thiruvananthapuram.
 4. The Taxes (G) Department.
 5. Stock File/Office Copy.

Forwarded / By Order


Section Officer

This is the true copy of the document marked as Exhibit P..... referred in the above Writ Petition @.