

A STATE OF KERALA AND ORS.

v.

N. AVINASIAPPAN

NOVEMBER 20, 2003

B [V.N. KHARE, CJ. AND S.B. SINHA, J.]

Excise Law :

Kerala Abkari Act, 1977 :

C S. 67F—Revision—Suo motu powers of Commissioner—Opportunity
of hearing—Application before Excise Commissioner for suo motu exercise
of revisional power for setting aside the order passed by Joint Commissioner
in appeal u/s. 76B—Rejected—High Court holding that Commissioner
ought to have given opportunity of hearing to applicant and recorded
D reasons for rejecting the application—Held, merely because a party to the
proceedings may bring an order passed u/s. 67B or s. 67E to the notice
of the Commissioner, the same would not ipso facto mean that he has to
exercise his suo motu powers—A party to the appeal in terms of s. 67B
or 67E has not been conferred any right to file a revision application—
E When Commissioner examines the application only for the purpose of
arriving at a finding as to whether it is a fit case where suo motu power
of revision should be exercised or not, no lis between the parties can be
said to be pending—At that stage he would not be exercising any quasi
judicial powers as has been incorrectly held by the High Court—Question
F of giving an opportunity of hearing to applicant or assigning reasons by
Commissioner would not be necessary—Besides, in view of second proviso
to s. 67F, principles of natural justice have been extended only where the
proceeding is initiated in terms of the provision and the order which is
proposed to be passed would be prejudicial to the parties at a lis—As the
G applicant had no statutory right to file a revision petition, merely because
his application requesting the Commissioner to exercise suo motu revisional
powers had not been entertained, the same would not mean that any order
prejudicial to him had been passed.

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 225 of
1999.

From the Judgment and Order dated 18.3.98 of the Kerala High Court in W.A. No. 637 of 1991. A

Ramesh Babu M.R. for the Appellants.

The following Order of the Court was delivered :

In the year 1989, the Excise Circle Inspector seized a lorry and 45 barrels of spirit under the Abkari Act, alleged to be owned by the respondent. The driver and the cleaner compounded the offence before the Excise Circle Inspector on payment of fine of Rs. 10,000 each. Subsequently, the Joint Commissioner, Excise, released the vehicle to the respondent on furnishing the bank guarantee for a sum of Rs. 1,50,000. C

Aggrieved, an appeal was filed by the respondent before the Joint Commissioner under Section 67B of the Kerala Abkari Act, 1977 (for short 'the Act') and the same was dismissed. The respondent thereafter filed a revision before the Excise Commissioner praying therein for *suo motu* exercise of revisional power by the Excise Commissioner for setting aside the order passed by the authority below. The said petition was rejected on 4.6.91 by the Excise Commissioner. Aggrieved, the respondent filed a petition under Article 226 of the Constitution of India, which was dismissed. However, on a writ appeal filed by the respondent, the Division Bench of the Kerala High Court set aside the order of the learned Single Judge and allowed the appeal after having come to the view that as the Excise Commissioner was exercising powers under Section 67F of the Act, he was acting quasi judicially and as such an opportunity of hearing ought to have been given to the respondent and further the Commissioner ought to have recorded reasons for rejecting the petition of the respondent. It is against the said judgment of the High Court, the appellant is in appeal before us. D E F

We have heard learned counsel appearing for the appellant and are satisfied that the view taken by the High Court is erroneous. Section 67F of the Act runs as under : G

"67F. Revision : (1) The Commissioner may, before the expiry of thirty days from the date of an order passed under Section 6B or Section 67E, of his own motion, call for and H

A examine the record of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit :

B Provided that the Commissioner shall not call for and examine the record of any order passed under Section 67B if an appeal against such order is pending before the appellate authority:

C Provided further that no order prejudicial to a person shall be passed under this Section without giving him an opportunity of being heard.

(2) An order of the Commissioner under sub-section (1) shall be final and shall not be called in question in any court”

D The aforementioned provision empowers the Commissioner to examine the records on his own motion. The Commissioner may for the aforesaid purpose call for examination of the records wherein an order has been passed under Section 67B or Section 67E of the Act, before expiry of 30 days thereof the purpose of making an enquiry or cause such enquiry to be made. It is so doubt true, as has also been noticed by the High Court, that for exercising the said powers, the Commissioner may consider the question as regards initiation of such proceedings relying on or on the basis of an appropriate application filed by the aggrieved persons or the Department. But only because the party to the proceedings may bring an order passed under Section 67B or Section 67E to the notice of the Commissioner, the same would not *ipso facto* mean that he has to exercise his *sou motu* powers. A party to the appeal, in terms of Section 67B or Section 67E of the Act, has not been conferred any right to file a revision application. When the Commissioner examines the application only for the purpose of arriving at a finding as to whether it is a fit case where *suo motu* power of revision should be exercised or not, no lis between the parties can be said to be pending. At that stage, he would not be exercising any quasi judicial powers as has been held by the High Court. In that view of the matter, the question of giving an opportunity of hearing to the applicant or for that matter assignment of reasons by the Commissioner would not necessary.

H The question may also be considered from another angle. The second

proviso appended to Section 67F of the Act provides that no order prejudicial to a person can be passed under this section without giving him an opportunity of being heard. The principles of natural justice by reason of the aforementioned statutory provision, therefore, have been extended only in a case where the proceeding is initiated in terms of the said provision and the order is proposed to be passed which would be prejudicial to the parties at a lis. As the respondent herein had no statutory right to file a revision application only because his application requesting the Commissioner to exercise *suo motu* revisional powers had not been entertained, the same would not mean that any order prejudicial to him had been passed.

In this view of the matter, the view taken by the Division Bench deserves to be set aside. We, accordingly, set aside the order under challenge.

The appeal is allowed. There shall be no order as to costs.

R.P.

Appeal allowed.