

പതിനാലാം കേരള നിയമസഭ

പതിനാറാം സമ്മേളനം

ബിവറേജസ് കോർപ്പറേഷനിലെ നിയമനം

നക്ഷത്ര ചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ: 4653

13.11.2019-ൽ മറുപടിയ്ക്ക്

ചോദ്യം

ഉത്തരം

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തൊഴിലും എക്സൈസും വകുപ്പുമന്ത്രി

(എ) സംസ്ഥാനത്ത് ചാരായം നിരോധിച്ചത് മൂലം ജോലി നഷ്ടപ്പെട്ട തൊഴിലാളി മരണമടഞ്ഞാൽ അവരുടെ മക്കൾക്ക് ബിവറേജസ് (എ) കോർപ്പറേഷനിൽ തൊഴിൽ നൽകുന്നതിന് യും തീരുമാനിച്ചിരുന്നോ, ഇതിനകം എത്രപേർക്ക് (ബി) ഇത്തരത്തിൽ നിയമനം നൽകിയെന്ന് യും അറിയിക്കുമോ,

സംസ്ഥാനത്ത് ചാരായം നിരോധിച്ചത് മൂലം ജോലി നഷ്ടപ്പെട്ട തൊഴിലാളി മരണമടഞ്ഞാൽ അവരുടെ ആശ്രിതരായ ആൺമക്കൾക്ക്, ബിവറേജസ് കോർപ്പറേഷനിൽ ഭാവിയിൽ ഉണ്ടാകുന്ന ദിവസവേതന ഒഴിവുകളിൽ 25% നിയമനം നൽകുവാൻ 07.08.2004 തീയതിയിലെ സർക്കാർ ഉത്തരവ് (സാധാ)നം. 567/2004/നിയ പ്രകാരം ഉത്തരവിട്ടിരുന്നു. സർക്കാർ ഉത്തരവ് പ്രകാരം ചീഫ് വെൽഫെയർ ഫണ്ട് ഇൻസ്പെക്ടർ, കേരള അബ്കാരി വർക്കേഴ്സ് വെൽഫെയർ ഫണ്ട് ബോർഡ് തയ്യാറാക്കിയ ലിസ്റ്റ് പ്രകാരം 266 പേർക്കും, കോടതിവിധിയുടെ അടിസ്ഥാനത്തിൽ 3 പേർക്കും, ലേബർ വകുപ്പ് പുറപ്പെടുവിച്ച ഉത്തരവ് പ്രകാരം 2 പേർക്കും ഉൾപ്പെടെ ആകെ 271 പേർക്ക് ഇത്തരത്തിൽ നിയമനം നൽകിയിട്ടുണ്ട്.

(ബി) ബിവറേജസ് കോർപ്പറേഷനിൽ ഭാവിയിൽ ഉണ്ടാകുന്ന ദിവസവേതന ജോലിയുടെ 25 ശതമാനം ഇത്തരത്തിൽ നിയമിക്കപ്പെടുന്നവർക്ക് നൽകണമെന്ന് ഉത്തരവുണ്ടോ,

(സി) പ്രസ്തുത ഉത്തരവ് സുപ്രീംകോടതി (സി) റദ്ദാക്കിയിട്ടുണ്ടോ, ആയത് സംബന്ധിച്ച് ബിവറേജസ് കോർപ്പറേഷൻ സുപ്രീം കോടതിയിൽ നൽകിയ സത്യവാങ്മൂലത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ?

ഈ ഉത്തരവ് സുപ്രീംകോടതി റദ്ദ് ചെയ്തിട്ടില്ല. ഇതുമായി ബന്ധപ്പെട്ട് സുപ്രീംകോടതിയിൽ നിലവിൽ കേസുകൾ ഇല്ല. എന്നാൽ G.O(Rt) 81/2002/TD dt:20.02.2002 പ്രകാരം, തൊഴിൽ നഷ്ടപ്പെട്ട ചാരായതൊഴിലാളികൾ ടി പദ്ധതി നടപ്പിലാക്കണമെന്ന് ആവശ്യപ്പെട്ടുകൊണ്ട്, ഹർജികൾ ഫയൽ ചെയ്യുകയും ആയത് ഹൈക്കോടതി അനുവദിച്ചിട്ടുള്ളതുമാകുന്നു. ഈ വിധിക്കെതിരെ കോർപ്പറേഷനും സർക്കാരും സുപ്രീംകോടതിയിൽ ഹർജികൾ ഫയൽ ചെയ്യുകയും ആയത് അനുവദിച്ചു ബഹു.സുപ്രീംകോടതി ഉത്തരവിട്ടതുമാകുന്നു. ടി അപ്പീലുകളിൽ കോർപ്പറേഷൻ ഫയൽ ചെയ്ത സത്യവാങ്മൂലത്തിന്റെ പകർപ്പുകൾ ഉള്ളടക്കം ചെയ്യുന്നു.

സെക്ഷൻ ഓഫീസർ



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Application for Exemption from filing the certified copy of the impugned judgment



## **SYNOPSIS**

The present Special Leave Petition is directed against the final order / Judgment dated 21.12.2015 passed by the High Court of Kerala at Ernakulam in W. A. No. 1488 of 2015 in W. P. (C) No. 26208 of 2005 wherein the Hon'ble High Court was pleased to uphold the order passed by the Ld. Single Judge and held that the State is bound to implement the Government order dated 20.02.2002 whereby the State in view of enormous agitation by abkari workers as well as numerous suicides that took place across the State between 2001 and 2002 took a policy decision for an interim period and passed the G. O. Dated 20.02.2002 indicating that 25% of all daily wage employment vacancies arising in the Petitioner's organisation in future will be reserved to be filled up by abkari workers registered with the abkari workers welfare fund board. While dismissing the Writ Appeal No. 1488 of 2015 filed by the petitioner herein, the Hon'ble Court was pleased to grant two months to implement the directions passed by the Ld. Single Judge without considering the change of circumstances that took place over a period of almost 20 years from 1996 when arrack was banned in the State of Kerala.

While passing the impugned order, the Hon'ble High Court failed to take a pragmatic view of the fact that arrack

was banned in the State of Kerala since 01.04.1996. Therefore, after almost 20 years in the year 2016 to grant appointment to erstwhile abkari workers who may not even be fit from the perspective of age, qualification, literacy etc. and admittedly who were never employees of the State and never appointed in any public employment by following due process of law vitiates the settled law of the land pertaining to appointments in government organisations. Furthermore, the Hon'ble Court also failed to consider that the Petitioner is State within the meaning of Article 12 of the Constitution of India and thereby stands on a different footing altogether.

The Hon'ble High Court while considering the petition filed by the petitioner herein failed to consider the following important aspects despite the fact that those contentions were made before the Hon'ble Constitutional Court with supporting documents, namely:

THE G. O. DATED 20.02.2002 WAS ISSUED AS AN INTERIM MEASURE TO PREVENT SOCIAL DISTURBANCE AND SUICIDIES THAT TOOK PLACE IN THE YEARS 2001-2002 IN THE WAKE OF AGITATIONS BY ABKARI WORKERS ACCROSS THE STATE OF KERELE:

The G. O. dated 20.02.2002 could not be implemented due to unavailability of sufficient number of vacancies, therefore, State have issued another G. O. dated 07.08.2004

stating that only the dependents of the perished arrack workers who have committed suicide will be eligible for employment. The said G. O. in 2004 was issued only for an interim period keeping in mind the public interest. Therefore, the G. O. dated 20.02.2002 was substituted by G. O. dated 07.08.2004 and the G. O. dated 20.02.2002 was superseded and therefore, ceased to exist.

THE IMPLEMENTATION OF THE G. O. DATED 20.02.2002 IN THE YEAR 2016, NAMELY HAVE SEVERE IMPLICATIONS UPON STATE EXCHEQUOR AND PRACTICALLY NOT FEASIBLE DUE TO NUMEROUS FACTORS:

The State have already paid a compensation of Rs. 30,000/- and ex gratia compensation of Rs. 2000/- in the year 1997 itself to the abkari workers who lost their employment in the wake of change of policy decision of the State and the same was observed by this Hon'ble Court in the Judgment dated 24.03.2006. Therefore, in view of the same, the question of agitating the same issue by the erstwhile workers again does not arise and therefore, the Impugned order herein is liable to be set aside on this ground alone. The relevant portion of the Judgment dated 24.03.2006 is reproduced as below:

*"..... A policy decision admittedly was taken by the Labour and Rehabilitation Department of the State of*



*Kerala that workers who had been engaged in manufacture, import, export, transport, sale and possession of arrack should be rehabilitated. The State of Kerala paid compensation at the rate of Rs. 30,000/- per worker. The said workers were also paid the benefit under the Abkari Workers Welfare Fund Board Act"*

Furthermore, when the petitions were filed by the abkari workers, the petitioner was engaging daily wagers from employment exchange which is entirely changed as on date and no engagement of daily wage employees exist. Furthermore, the Petitioner itself is struggling with the existing employees whose jobs are uncertain due to closure of shops run by the Petitioner, therefore, creating new employment to implement the G. O. dated 20.02.2002 is not feasible under the circumstances. It is further submitted that in the year 2014-2015, Government have issued orders to close down 10% of the outlets run by the petitioner every year.

THE ABKARI WORKERS DOES NOT HAVE A VESTED RIGHT TO BE APPOINTED IN THE VACANCIES OF THE PETITIONER ORGANISATION SINCE THEY WERE NEVER APPOINTED TO ANY GOVERNMENT SANCTIONED POST FOLLOWING THE PROCEDURE OR BY THE STATE PUBLIC SERVICE COMMISSION:

There is no vested rights which accrued in favour of the displaced workers merely because a G. O. was issued on

20.02.2002. It is humbly submitted that a new scheme which was introduced by State by amending Rule 4(2) of the Kerala Abkari Shops Disposal Rules, 2002 was declared to be *ultra vires* and unconstitutional by this Hon'ble Court vide Judgment dated 24.03.2006 and therefore, the workers have no legally vested right whatsoever in the eyes of law.

POLICY DECISION OF A STATE IS WITHIN THE SOVEREIGN POWER AND NOT TO BE TESTED BY JUDICIARY AS HELD BY THIS HON'BLE COURT AND SETTLED PRINCIPLE OF LAW:

The G. O. dated 07.08.2004 was introduced by the State only to grant compassionate appointment to the dependent sons of the perished arrack workers to mitigate immediate hardships to the bereaved's families as they belong to the lowest strata of the society. Therefore, the workers cannot possibly claim vested rights in view of the same and further, the question of legitimate expectation does not even arise.

RATIO DECIDENDI OF UNION OF INDIA VS ARULMOZHI INIARASU & OTHERS 2011 (7) SCC 397 WAS IGNORED IN TOTO BY THE HON'BLE HIGH COURT:

The impugned order challenged herein is against the spirit of the judgment passed by this Hon'ble Court in the matter of Union of India Vs Arulmozhi Iniarasu & Others 2011 (7) SCC 397. While passing the impugned order, the Hon'ble High Court blindly applied the obiter dicta of various

judgments and failed to take into account the ratio decidendi laid down by this Hon'ble Court in Union of India Vs Arulmozhi Iniarasu & Others 2011 (7) SCC 397. The Hon'ble Court failed to give any reasoning as to how the facts and circumstances of the cases relied upon by the Ld. Counsel for the Respondents are applicable to the present case at hand. The relevant *ratio decidendi* of the judgment in Union of India Vs Arulmozhi Iniarasu & Others reported as 2011 (7) SCC 397 is extracted as below:

*".....the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases."*

Therefore, it is a blatant error apparent on the face of the record since the order passed by the Hon'ble High Court is erroneous in the eyes of law and therefore, the same is liable to be set aside. That the Impugned judgment suffers from complete non-application of mind and is based on conjectures and surmises and is liable to set aside.

**LIST OF DATES AND EVENTS**

- 01.02.1984 The petitioner is State within the meaning of Article 12 of the Constitution of India, which is fully owned and controlled by the Respondent No. 4. Vide G. O. Dated 01.02.1984, the complete financial investment and total management of the Petitioner was vested with the Respondent No. 4.
- 20.12.1995 Vide a G. O., the arrack shops were abolished and the petitioner started retail outlets in several parts of the State.
- 01.04.1996 Arrack was banned in the State of Kerala as a policy decision of the State and in view of the same, about 12500 abkari workers employed in the arack shops lost their employments.

- 21.07.1997 Vide a G. O., State accorded sanction to payment of an amount of Rs. 30,000/- towards compensation to each of the jobless abkari workers with effect from 01.04.1996. In addition to said benefit, another amount of Rs. 2000/- *ex gratia* was also disbursed by the Government.
- 2001-2002 The jobless abkari workers launched strike all over the State demanding rehabilitation and an agreement was arrived at between the stakeholders that the displaced abkari workers will be offered jobs.
- 20.02.2002 The Petitioner issued a Government Order stating that 25% of all daily wage employment vacancies arising in the Petitioner's organisation in future will be reserved to be filled up by abkari workers registered with the abkari workers welfare fund board. A copy of the Government Order dated 20.02.2002 is annexed hereto and marked as **ANNEXURE – P1 (Pages\_\_\_\_\_to\_\_\_\_\_)**.
- 03.03.2004 The Ld. Single Judge of the Hon'ble High Court

in O. P. No. 30688 of 2001 was pleased to direct the Petitioner to comply with the G. O. Dated 20.02.2002 for rehabilitation and to prepare District wise seniority list for the same. A copy of the order dated 03.03.2004 in O. P. No. 30688 of 2001 is annexed hereto and marked as **ANNEXURE - P2** (**Pages \_\_\_\_ to \_\_\_\_**)

07.08.2004 The Respondent No. 5 issued a Government Order fixing new criteria for the rehabilitation of abkari workers and fill up the vacancies reserved for them in future, based on the revised criteria and it was decided that dependents of perished workers will be accommodated. A copy of the Government Order dated 07.08.2004 is annexed hereto and marked as **ANNEXURE - P3** (**Pages \_\_\_\_ to \_\_\_\_**).

24.03.2006 This Hon'ble Court in the matter of Kerala Samsthana Chethu Thozhilali Union Vs State of Kerala & Ors bearing Civil Appeal No. 1732 of 2006 was pleased to strike down Rule 4(2) of the Kerala Abkari Shop Disposal Rules, 2002

providing for employment to the displaced arrack workers as ultra vires and unconstitutional. A copy of the Judgment dated 24.03.2006 in the matter of Kerala Samsthana Chethu Thozhilali Union Vs State of Kerala & Ors bearing Civil Appeal No. 1732 of 2006 is annexed hereto and marked as **ANNEXURE – P4 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

31.05.2007 The Hon'ble High Court in a WP (C) No. 16614 of 2007 was pleased to hold that since this Hon'ble Court vide judgment dated 24.03.2007 was pleased to hold the Rule 4(2) of the Kerela Abkari Shop Disposal Rules, 2002 providing for employment to the displaced arrack workers as ultra vires and unconstitutional, therefore, the petitioner in the said petition who sought rehabilitation cannot be granted. A copy of the order dated 31.05.2007 passed in WP (C) No. 16614 of 2007 is annexed hereto and marked as **ANNEXURE – P5 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

03.04.2009 The Ld. Single Judge of the Hon'ble High Court in WP (C) No. 26878 of 2007 directed that 25% of future vacancies shall be filled up by the

abkari workers. The Ld. Single Judge left it open for the Respondent No. 4 to modify the earlier G. O.s so that the abkari workers who lost employment consequent to the ban of arrack can be rehabilitated. A copy of the order dated 03.04.2009 passed by the Ld. Single Judge in WP (C) No. 26878 of 2007 is annexed hereto and marked as **ANNEXURE - P6 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

30.04.2009 The Respondent No. 5 issued a Government Order indicating that the petitioner will issue formal appointment orders in view of the order dated 03.04.2009 passed by the Hon'ble High Court in WP (C) No. 26878 of 2007. A copy of the Government Order dated 30.04.2009 is annexed hereto and marked as **ANNEXURE - P7(Pages\_\_\_\_\_to\_\_\_\_\_)**.

27.10.2010 WP (C) No. 33110 of 2010 was filed by few abkari workers seeking a direction against the petitioner not to fill up the vacancies of employees of daily wage without appointing the abkari workers as per quota prescribed. Further, in the petition a direction was also



sought to appoint the abkari workers in existing vacancies of the petitioner. A copy of the WP (C) No. 33110 of 2010 filed by few abkari workers dated 27.10.2010 is annexed hereto and marked as **ANNEXURE - P8 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

21.05.2012 The petitioner filed a Counter Affidavit in the WP (C) No. 30569 of 2010 stating that abkari workers merely by holding abkari card does not earn a vested right for employment in the Petitioner organisation and the appointment can be made after following due procedure. Furthermore, the affidavit also points out practical difficulties in rehabilitating about 1500 displaced arrack workers. It was also stated that the selection to the post of abkari workers are not entrusted to the Public Service Commission. A copy of the Counter Affidavit dated 21.05.2012 filed in the WP (C) No. 30569 of 2010 is annexed hereto and marked as **ANNEXURE - P9 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

27.08.2014 The Ld. Single Judge of the Hon'ble High Court in a batch of petitions filed by various parties

was pleased to direct the Petitioner to implement the G. O. Dated 20.02.2002 in the petitioner organisation in all future vacancies. The Ld. Single Judge was pleased to also direct that the sais implementation shall take place within a period of two months from the receipt of the order. A copy of the order dated 27.08.2014 passed by the Ld. Single Judge of the Hon'ble High Court in WP (C) No. 19204 of 2005, 26208 of 2005, 19427 of 2009, 5126 of 2010, 6316 of 2010, 20180 of 2010, 30569 of 2010, 33110 of 2010, 9959 of 2011 and 32207 of 2011 is annexed hereto and marked as **ANNEXURE - P10 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

01.07.2015 Assailing the Judgment dated 29.05.2015 passed in WP (C) No. 19204 of 2005 and connected matters, the petitioner filed a W. A. No. 1416 of 2015 before the Hon'ble High Court. A copy of the W. A. No. 1416 of 2015 dated 01.07.2015 is annexed hereto and marked as **ANNEXURE - P11 (Pages\_\_\_\_\_to\_\_\_\_\_)**.

15.07.2015 The Hon'ble High Court in W. A. No. 1488 of

2015 and connected appeals was pleased to pass an interim order directing the petitioner to file an affidavit indicating the total strength of cadres in the petitioner corporation and the number of remaining vacancies, which are permanent and ad-doc/temporary in nature. A copy of the order dated 15.07.2015 passed in W. A. No. 1488 of 2015 is annexed hereto and marked as **ANNEXURE - P12 (Pages \_\_\_\_\_ to \_\_\_\_\_)**.

21.12.2015 Vide the Impugned order, the Hon'ble High Court was pleased to uphold the order passed by the Ld. Single Judge and held that the State is bound to implement the Government order dated 20.02.2015. While dismissing the Writ Appeal No. 1488 of 2015 filed by the petitioner herein, the Hon'ble Court was pleased to grant two months to implement the directions passed by the Ld. Single Judge. (Impugned order)

15.02.2016 Hence the present Special Leave Petition

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CIVIL) NO. OF 2016**

(Against the final order / Judgment dated 21.12.2015 passed by the High Court of Kerala at Ernakulam in W. A. No. 1488 of 2015 in W. P. (C) No. 26208 of 2005)

**IN THE MATTER OF:**

**Position of Parties**

Before High Court    Before this Court

**IN W.A. NO. 1488 OF 2015:**

Kerala State Beverages (manufacturing & marketing) corporation limited Sasthakripa office Complex Sasthamangalam Thiruvananthapuram - 695010 Kerala Represented by its Company Secretary	Appellant	Petitioner
Versus		
1. k. P. Thankakuttan S/o Pathamanabhan K. C. Kudilil Veedu Ayavana, Aenenallor, Muvattupuzha Taluk Ernakulam-686673 Kerala	Respondent  No. 1	Respondent  No. 1
2. N. A. Vinod Kumar K. K. Ayyappan Narikkottil Veedu Government High School Road Marady village, Muvattupuzha Taluk Ernakulam-686673 Kerala	Respondent  No. 2	Respondent  No. 2

3. M. K. Soumy S/o M. I. Karunakaran Meenamalakunnel Thekkan Marady P O Marady Village Muvattupuzha Taluk Ernakulam-686673 Kerala	Respondent No. 3	Respondent No. 3
4. State of Kerala Represented by Chief Secretary Government Secretariat Thiruvananthapuram - 695001, Kerala	Respondent No. 4	Respondent No. 4
5. Secretary to Government Tax Department Government Secretariat Thiruvananthapuram - 695001, Kerala	Respondent No. 5	Respondent No. 5

All are contesting Respondents

**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE  
CONSTITUTION OF INDIA**

To,  
THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS HON'BLE COMPANION JUSTICES  
OF THE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH :**

1. The present Special Leave Petition is directed against the final order / Judgment dated 21.12.2015 passed by the High Court of Kerala at Ernakulam in W. A. No. 1488 of

2015 in W. P. (C) No. 26208 of 2005 wherein the Hon'ble High Court has dismissed the Writ Appeal filed by the petitioner.

**2. QUESTIONS OF LAW :**

The questions of law that arises for consideration of this Hon'ble court are as follows:

- (i) Whether the policy decision of a State can be tested by the Hon'ble High Court wherein a policy decision was taken only as a temporary measure to maintain law and order and the situation then existing?
- (ii) Whether any vested right can be claimed by a class of displaced workers who were rendered jobless due to a policy decision of State?
- (iii) Whether a G. O. issued in the year 2002 for tackling an unprecedented social disturbance can be sought to be implemented in 2016 wherein the scenario does not even exist foisting financial burden upon State?
- (iv) Whether it is open for Hon'ble High Court to direct the implementation of a G. O. passed in 2002 wherein in the same facts this Hon'ble Court struck

down an amendment in 2006 for providing employment to abkari workers by State?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The petitioner states that no other petition seeking leave to appeal have been filed by them against the final order / Judgment dated 21.12.2015 passed by the High Court of Kerala at Ernakulam in W. A. No. 1488 of 2015 in W. P. (C) No. 26208 of 2005.

4. **DECLARATION IN TERMS OF RULE 5:**

The Annexures-P/1 to P/12 produced along with the Special Leave Petition are true copies of the pleading/document which formed part of the records of the case in the Hon'ble High Court below against whose order the leave to appeal is sought for in this petition.

5. **GROUND:**

Leave to Appeal is sought for on the following grounds.

- A. For that the Hon'ble High Court failed to consider that since the G. O. dated 20.02.2002 could not be implemented due to unavailability of sufficient number of vacancies, therefore, State have issued another G. O. dated 07.08.2004 stating that only the dependents of the perished arrack workers who have committed suicide will

be eligible for employment. Therefore, the G. O. dated 20.02.2002 was substituted by G. O. dated 07.08.2004 and the G. O. dated 20.02.2002 was superseded and therefore, ceased to exist.

- B. For that the Hon'ble High Court failed to consider that there is no vested rights which accrued in favour of the displaced workers merely because a G. O. was issued on 20.02.2002. It is humbly submitted that in view of the new scheme which was introduced by State by amending Rule 4(2) of the Kerala Abkari Shops Disposal Rules, 2002 was declared to be *ultra vires* and unconstitutional by this Hon'ble Court vide Judgment dated 24.03.2006.
- C. For that the Hon'ble High Court failed to consider that the State have already paid a compensation of Rs. 30,000/- and ex gratia compensation of Rs. 2000/- in the year 1997 itself which was taken into account while passing a Judgment by this Hon'ble Court on 24.03.2006. Therefore, in view of the same, the question of agitating the same issue by the erstwhile workers does not survive.
- D. For that the Hon'ble High Court failed to consider that the G. O. dated 07.08.2004 was introduced by the State only to grant compassionate appointment to the dependent



sons of the perished arrack workers to mitigate immediate hardships to the bereaved's families as they belong to the lowest strata of the society.

- E. For that the Hon'ble High Court failed to consider that rehabilitation package itself is in the nature of compassionate appointment and therefore, same does not accrue any vested right in anyone's favour with respect to any public employment. Therefore, the question of legitimate expectation does not arise.
  
- F. For that the Hon'ble High Court failed to consider that when the petitions were filed by the abkari workers, the petitioner was engaging daily wagers from employment exchange which is entirely changed as on date and no engagement of daily wage employees exist. Therefore, the implementation of the G. O. dated 20.02.2002 becomes impossibility. Furthermore, the Petitioner itself is struggling with the existing employees whose jobs are uncertain due to closure of shops ran by the Petitioner, therefore, creating new employment to implement the G. O. dated 20.02.2002 is not feasible. It is further submitted that in the year 2014-2015, Government have issued orders to close down 10% of the outlets run by the petitioner every year.

- G. For that the Division bench of the Hon'ble High Court failed to appreciate that the foundation of the order passed by the Ld. Single Judge itself was incorrect. The Ld. Single Judge placed heavy reliance on order dated 03.04.2009 passed in WP (C) No. 26879 of 2007 wherein only the dependents of the deceased workers sought appointment and therefore, the question of parity to the other litigants does not arise.
- H. For that the Hon'ble High Court failed to consider that in a similar claim in WP (C) No. 16614 of 2007, the Ld. Single Judge of the Hon'ble Court was pleased to hold the Rule 4(2) of the Kerala Abkari Shop Disposal Rules, 2002 providing for employment to the displaced arrack workers as ultra vires and unconstitutional, therefore, the petitioner in the said petition who sought rehabilitation cannot be granted.
- I. For that the Hon'ble High Court failed to appreciate that the impugned order is otherwise bad in law, passed without any judicial application of mind, perverse and deserves to be set aside.

**6. GROUNDS FOR INTERIM RELIEF:**

- a) It is respectfully submitted that the impugned order is erroneous in the eyes of law and contrary to settled principles of law and the Constitution of India.
  
- b) Because the balance of convenience is in favour of the Petitioner. If during the pendency of this petition in this Hon'ble Court, the operation of the impugned final Judgment & Order of the High Court is not stayed, the petitioner will suffer irreparable loss and the same would be impossible to recover, in case it succeeds before this Hon'ble Court. It is an apprehension of the Petitioner that if during the pendency of this petition, an interim relief is not granted, the defendants will proceed to create third party rights in respect of the suit properties.
  
- c) Because the Petitioner has prima facie good case on merit and has every hope of its success before this Hon'ble Court. In case the interim relief as prayed for is not granted, the petitioner would sustain irreparable loss and injury.

**7. MAIN PRAYER:**

It is, therefore, respectfully prayed that Your Lordships may be pleased to:

- a) grant special leave to appeal against the final order / Judgment dated 21.12.2015 passed by the High Court

of Kerala at Ernakulam in W. A. No. 1488 of 2015 in  
W. P. (C) No. 26208 of 2005; and

b) pass such other order as this Hon'ble Court may deem  
just and proper in the interest of justice.

**8. PRAYER FOR INTERIM RELIEF:**

It is, therefore, respectfully prayed that Your lordships may be  
pleased to:

a) Pass an ex parte interim order staying the final order /  
Judgment dated 21.12.2015 passed by the High Court  
of Kerela at Ernakulam in W. A. No. 1488 of 2015 in  
W. P. (C) No. 26208 of 2005; and

b) pass such other order as this Hon'ble Court may deem  
just and proper in the interest of justice.

AND FOR THIS ACT OF KINDESS THE PETITIONER AS IN DUTY  
BOUND SHALL EVER PRAY.

DRAWN AND FILED BY:

[JOGY SCARIA]  
ADVOCATE FOR PETITIONER

PLACE: NEW DELHI  
Drawn On: 11.02.2016  
FILED ON: 15.02.2016

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2016

IN THE MATTER OF:

Kerala State Beverages (M&M)Corp Ltd ...Petitioner

~Versus~

K. P. Thankakuttan & Ors. ...Respondents

CERTIFICATE

"Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the petitioner/ person authorized by the petitioner whose affidavit is filed in support of this S.L.P."

(JOGY SCARIA)  
Advocate for the Petitioner

NEW DELHI  
DATED: 15.02.2016

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. No. \_\_\_\_\_/2016  
IN

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2016

IN THE MATTER OF:

Kerala State Beverages (M&M)Corp Ltd ...Petitioner

~Versus~

K. P. Thankakuttan & Ors. ...Respondents

**APPLICATION FOR EXEMPTION FROM FILING  
CERTIFIED COPIES IMPUGNED JUDGMENT**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS HON'BLE COMPANION JUSTICES  
OF THE SUPREME COURT OF INDIA.

THE HUMBLE APPLICATION OF THE  
PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1) That the Petitioner has filed the aforesaid petition praying for special leave to appeal against final order / Judgment dated 21.12.2015 passed by the High Court of Kerala at Ernakulam in W. A. No. 1488 of 2015 in W. P. (C) No. 26208 of 2005.

2) That all the facts stated in the Special Leave Petition in details and the same are not repeated herein for the sake of

brevity. The petitioner craves leave and permission of this Hon'ble Court that the same may be treated as part and parcel of this application.

3) That the Petitioner is filing the instant SLP without the certified copy of the impugned judgment. Though the petitioner received a copy of the above judgment but while sending it to the local lawyer the same got misplaced. The petitioner shall apply for a certified copy of the same and undertakes to file the certified copy is made available to the Petitioner.

4) That the Petitioner be exempted from filing certified copy of impugned judgment along with the petition for special leave to appeal as the matter is urgent and the petitioner is seeking urgent interim orders from this Hon'ble Court. Obtaining the certified copy will consume more time and therefore the aforesaid petition be heard and decided by this Hon'ble Court on the basis of the true copy of the impugned judgment filed by the Petitioners.

#### **PRAYER**

It is, therefore most respectfully prayed that this Hon'ble Court may be pleased to:-

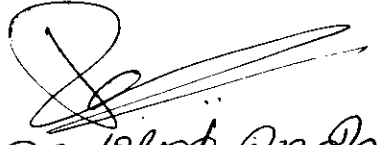
- 9-
- a) exempt the Petitioner from filing the certified copy of the impugned judgment; and
  - b) pass such other and further order as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

[JOGY SCARIA]  
ADVOCATE FOR PETITIONER

PLACE: NEW DELHI  
FILED ON: 15.02.2016



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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A NO. 131018 OF 2018  
IN  
SPECIAL LEAVE PETITION (C) NO. 5550-5559/2016

IN THE MATTER OF:

KERALA STATE BEVERAGES  
CORPORATION (M & M) PVT LTD

..PETITIONER

VERSUS

P.P. SURESH & ORS

.....RESPONDENTS

**REPLY FILED BY THE PETITIONER TO THE APPLICATION**  
**FOR DIRECTIONS FILED BY RESPONDENT NO. 55**  
**IN SLP (C) No. 5557/16**

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition has been filed by the petitioner challenging the final impugned judgment and order dated passed by the High Court of Kerala at Ernakulam in WA No. 1505 of 2015 and other connected cases. The impugned judgment while upholding the judgment of the Single Judge directed the implementation of the order passed by the Single Bench directing engagement of displaced arrack workers against the 25% of the daily wage vacancies in the Corporation issued as per GO dated 20.02.2002. It is submitted that the Division Bench has not properly appreciated or considered the contentions raised by the petitioner in the appeal instead the appeal was disposed off in a mechanical way without properly analysing or considering the law and facts involved but on consideration of some other grounds which is legally unsustainable.

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2. It is humbly submitted that arrack was banned in the state w.e.f. 01.04.1996. Government had initially decided to provide employment to the displaced arrack workers due to ban on arrack in the State by reserving 25% of the daily wage vacancies in the petitioner corporation as per GO (Rt) No. 81/02/TD dated 20.02.2002. After the issuance of the Government Order dated 20.2.2002, several writ petitions were filed before the High Court, seeking implementation of the same and to provide employment to the displaced arrack workers. The High Court by Judgment dated 03.03.2004 in OP Nos. 13261/03 and 30688/01 had directed to implement GO dt: 20.2.2002. There were more than 20,000 displaced arrack workers at that point of time and since all of them cannot be rehabilitated due to want of sufficient number of vacancies and other grounds, Government at that stage had decided to provide employment to the dependent sons of perished arrack workers who had committed suicide due to the loss of employment consequent to the ban of arrack sale in the State as per Order No. GO (Rt) No. 567/2004/TD dated 07.08.2004. Later, by Judgment dated 31.05.2007 in WPC No. 16614/07, the High Court has categorically held that the displaced arrack workers have no right to claim any employment elsewhere merely on the ground that they have been made jobless, due to ban of sale of arrack in the State. True copy of the judgment dated 31.05.2007 in WPC No.16614/2007 is produced and marked as **ANNEXURE-R1 (Pages \_\_\_\_\_ to \_\_\_\_\_)**. Moreover, the Government of Kerala had introduced a scheme of providing employment to the displaced arrack workers in Toddy Shops by amending Rule 4 (2) & Rule 9 (10) (a) & (b) of Kerala Abkari Shop Disposal Rules 2002. The above amendment was set aside by this Hon'ble Court in Civil Appeal No. 1732/2006 and 1733/2006 reported in 2006 (4) SCC 327, holding the amendment as *ultravires* and unconstitutional. In the said judgment, the Hon'ble Court further observed that the one-time

compensation of Rs. 30,000/- and additional compensation of Rs. 2,000/- paid was sufficient compensation for loss of employment due to ban of sale of arrack in the State. Though the Single Bench of High Court vide judgment dated 03.04.2009 in WPC No. 26878/2007 had directed to reconsider implementation of GO (Rt) No. 81/02/TD dated 20.02.2002, this was considered by the Government and it was decided not to implement the GO dated 20.02.2002 on account of various reasons as provided in GO (Rt) No. 399/2009/TD dated 30.04.2009. True copy of the judgment dated 03.04.2009 in W.P. (C) 2878/2007 is produced and annexed as **ANNEXURE-R2 (pages \_\_\_\_\_ to \_\_\_\_\_)**. True copy of the GO (Rt) No. 399/2009/TD Dt: 30.04.2009 is produced and annexed as **ANNEXURE- R3 (pages \_\_\_\_\_ to \_\_\_\_\_)**.

3. By the issuance of 2004 order, the 2002 order stands replaced and no valid scheme subsists with regard to displaced arrack workers as of now. Based on the 2004 order, a scheme with certain criteria was issued by Government for providing employment and also directed the Chief Welfare Fund Inspector of Kerala Abkari Workers Welfare Fund Board to prepare a list of eligible dependant sons of perished arrack workers. Whereas, the Government has not evolved any scheme or authorised any agencies to prepare a list of persons as per any scheme and as such there is no valid scheme which the Division Bench in the impugned order directed to be implemented. These crucial aspects were not considered by the Division Bench of High court, and in fact had directed State Government to implement G.O dt 2002. There is no contempt of court action on the part of the Corporation as alleged. This Corporation has not suppressed any material facts and has not made any incorrect or false statement before this Hon'ble Court for getting an interim order by staying the operations of the impugned order. It is true that at present, also there were no

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compensation of Rs. 30,000/- and additional compensation of Rs. 2,000/- paid was sufficient compensation for loss of employment due to ban of sale of arrack in the State. Though the Single Bench of High Court vide judgment dated 03.04.2009 in WPC No. 26878/2007 had directed to reconsider implementation of GO (Rt) No. 81/02/TD dated 20.02.2002, this was considered by the Government and it was decided not to implement the GO dated 20.02.2002 on account of various reasons as provided in GO (Rt) No. 399/2009/TD dated 30.04.2009. True copy of the judgment dated 03.04.2009 in W.P. (C) 2878/2007 is produced and annexed as **ANNEXURE-R2 (pages \_\_\_\_ to \_\_\_\_)**. True copy of the GO (Rt) No. 399/2009/TD Dt: 30.04.2009 is produced and annexed as **ANNEXURE- R3 (pages \_\_\_\_ to \_\_\_\_)**.

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daily wage vacancies in this Corporation for accommodating the Respondents Arrack workers. At present also there are no such vacancies or requirement to engage them in this Corporation. There was no misstatement and no incorrect matter was furnished before the Hon'ble court in the SLPS filed by the Corporation.

4. The 2002 GO cannot be implemented at this stage in 2018 due to the following reasons:

a. Consequent to the ban of sale of arrack, about 20000 arrack workers employed in arrack shops lost their employment. Government by GO (Rt) No. 2145/97/LBR dt: 21.07.97 accorded sanction for payment of an amount of Rs.30,000/- as compensation to each of the jobless registered arrack workers thrown out of employment due to arrack ban in the state with effect from 01.04.1996. In addition to the said compensation, an exgratia amount of Rs. 2000/- each was also disbursed by the government/Abkari Workers Welfare Fund Board apart from the eligible provident fund, pension and DCRG disbursed from the Abkari Workers Welfare Fund Board.

b. Based on the decision in 2002 order, no valid scheme was framed by government to proceed further based on the decision. Hence any decision without providing the modalities and schemes is null and void in itself.

c. Government had taken note of the difficulty in implementing the 2002 GO, in view of the large number of displaced arrack workers and many other factors. After the ban and due to loss of employment, several arrack workers had committed suicide and at that stage more attention was needed for members of such families who find it difficult to survive due to the sudden demise of their sole bread winner. In that circumstances, the Government was constrained to restructure the policy to give

compassionate appointment to the dependent sons of perished arrack workers to mitigate the immediate hardships to the bereaved families as they belong to the lower strata of the society. Therefore the policy was changed in the best interest of all concerned.

- d. This Corporation had already given employment to the dependant sons of perished arrack workers totalling to 274 as per the scheme framed under 2004 order. Considering the nature of job that can be assigned to the displaced arrack workers and the number of employees already working in those jobs, no further persons can be accommodated under this category.
- e. It is to be noted that the rehabilitation package itself is in the nature of a compassionate appointment. The displaced arrack workers have no vested right to get appointment elsewhere on the ground of ban of a trade which was ordered on social and other grounds in the best interest of all. In the absence of any vested right, there cannot be a legitimate expectation in the matter of such appointment. The policy to appoint the displaced arrack workers was changed only due to the changing scenario in the State due to the large number of suicide of arrack workers and limited number of persons that can be accommodated in this category. Therefore there is a valid reason for change of policy. The Government has a right to frame and change its policies from time to time.
- f. It is to be noted that the arrack was banned in State with effect from 01/04/1996 and now almost 22 years have elapsed and continuance of the rehabilitation scheme for such indefinite period is against any kind of appointment and that even against any form of compassion in the matter of appointment in Government Corporations. Moreover most of the displaced

arrack workers may be aged and unfit for appointment to discharge the functions in the manner required.

- g. Moreover in OP No. 21971/2002, the Division Bench of the High court directed that if any casual or other temporary employees are necessary in KSBC, they can be appointed only through employment exchange and such employee will not get any right for regularization on account as they are not allowed to work for more than 6 months. Thereafter, daily wage employment is made from employment exchange only which is legally and constitutionally valid. True copy of the judgment dated 31.08.2006 passed in OP No.21971/2002 is produced and marked as **ANNEXURE-R4 (Pages \_\_\_\_\_ to \_\_\_\_\_)**.
- h. It may be noted that most of the beneficiaries envisaged in the 2002 GO are so illiterate who may not read or write and many of them had worked with private arrack contractors in many capacities and not as salesman alone. Those include who even worked as bodyguards of the contractor and those serving touching and did cooking etc. Those private contractors were running their business in a rude and unstructured manner involving statutory violations, criminal offenses, without maintaining any records etc. Whereas, the Corporation being a government undertaking runs its business complying all statutory provisions. Hence it was not possible for the Corporation to consider appointment of such people in the outlets in the larger interest of all concerned.
- i. It is true that the Government had issued an order for providing employment to displaced arrack workers. However the government is empowered to withdraw or modify such order if find it difficult to implement. It is not legal and justifiable on the part of court to act in such a manner resulting in a compulsory imposition of such displaced arrack workers in the Corporations Service without looking in to aspect of their suitability,

practicality etc. Hence the withdrawal of decision or otherwise cancel implementation of an impossible decision impossible is also vested with government in which the court cannot held as otherwise.

- j. The position now has entirely changed whereby there is no engagement of daily wage vacancy exists in the petitioner corporation. Subsequent to the issue of 2002 GO, government had accorded sanction for creation of further posts whereby the posts in the Corporation has become permanent vacancies. The details of sanctioned post in 2002 and as on today are given below:

Sl No	Category	Sanctioned Strength in 2002	Sanctioned Strength now
1	Managing Director	1	1
2	General Manager(Admn)	1	1
3	General Manager (Finance)	1	1
4	Company Secretary	1	1
5	Finance Manager	1	1
6	Internal Auditor	1	1
7	Accounts Officer	1	1
8	Regional Manager	3	6
9	Manager	15	22
10	Confidential Secretary	1	1
11	Assistant Manager/Accountant	37	63
12	Computer Programmer	38	75
13	Assistants	352	612
14	Stenographer	2	2
15	Typist grade II	18	18
16	LDC/UDC	305	557
17	Driver Grade II	9	9



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18	Helper/Peon	220	633
19	Sweeper/Scavenger	15	15
	<b>TOTAL</b>	<b>1021</b>	<b>2020</b>

From the above it is clear that there are 633 sanctioned posts of Helpers in the Corporation as of now. Besides as many as 1409 Akbari workers are also working who are absorbed from private FL1 contractors and others who were taken in service earlier. Thus the actual number of workers in the lower category of Helper/Abkari workers to which the applicants seeks employment comes to 2042. The category of persons who ordered to be accommodated against daily wage vacancies in the FL1 outlets to be opened in future. As on today, the Corporation operates only 270 outlets and considering the sales volume etc, the average number of persons required in the category of Helper and equivalent comes to only 7 and hence the requirement is only 1890. Even considering the requirement at other offices, the actual number of persons required does not exceed 2000. As there are 2042 post exists in this category, there are no daily wage vacancies now as all of them have become permanent posts. However, the Corporation need persons in this category as all the 633 sanctioned posts of Helpers are not advised by PSC and 382 posts are to be filled. As the present required strength has got sanctioned, the Corporation cannot consider engagement of persons to such permanent posts but can engage only from employment exchange for a period of 179 days as statutorily permissible. The selection to the vacant posts are to be made by PSC and the process is going on and till the posts are filled, the option available is to take candidates from employment exchange only. That being so, implementation of order dated 20.02.2002 has become an impossibility and unnecessary. As there are many practical difficulties in implementing the single

bench judgement, an appeal was filed and up on dismissal of the appeal, the Corporation approached the Hon'ble Apex court and this court was pleased to stay the impugned judgement all of which are done in the best interest of the entity.

5. The 2002 order was under challenge before High court and this Hon'ble court many times. There were many orders including judgement to the effect that there is no liability to give employment to jobless people as it is not the duty of government to provide employment to such people as rightly held in Judgement dated 31.05.07 in WP(C) No 16614/07. Further this Hon'ble court has also set aside the amendment brought in to the Kerala Akbari Shop Disposal Rules providing employment to displaced arrack workers in toddy shops holding such amendment as *ultravires*. The government had banned sale of arrack considering its social and other implications and the sufferings of many families which out-weighted the employment opportunities in this sector. There were many instances of ban of certain trade or closure industry etc in which case it is not the duty of any government to provide employment and payment of compensation for loss of employment is sufficient. In the case of displaced arrack workers also, sufficient compensation was paid and this aspect was already upheld by the apex court also. Hence, it is not necessary that consequent to banning of a trade in the interest of social count, government is not bound to provide any alternate employment as has been categorically held. Further the displaced workers were paid a compensation which was sufficient for the loss of employment as was held by the Apex court in the judgement supra.
6. It is submitted that the petitioner Corporation has not misguided this Hon'ble court on any matters in the SLP as stated in the application for obtaining the stay granted on 5.07.2016. It is true

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that there are no Adhoc/daily wage vacancies in this Corporation for accommodating the Respondents Arrack workers. At present also there are no such vacancies or requirement to engage the displaced arrack workers in this Corporation. Further, there is no scheme duly framed and approved for providing employment in accordance with the 2002 order as on today. Moreover, upon issue of 2004 order and framing of scheme/guidelines for selection based on the said order, the 2002 order stands automatically cancelled. There was no mis-statement or furnishing of any incorrect matter before the Hon'ble court in the SLPS filed by the Corporation.

10. Annexure A3 communication was issued in reply to a RTI and on the fact that the matter is under challenge before this Hon'ble court. It does not mean that this is the only reason for not implementing the order. The reasons were already detailed in many occasions as a speaking decision many times. Therefore mere reliance to Annexure A3 reply as the reason in the matter cannot be accepted,
11. It is to be noted that as per the policy decision of earlier Government, all the private run FL3 bar hotels other than hotels of 5 star categories and above had been closed. Due to the closure of bars, there had been substantial increase of customers at the outlets run by this Corporation, which could not have been managed by the then available staff. Accordingly, based on the request of the Corporation, the Government had issued order sanctioning 300 temporary posts of Helpers for appointment through employment exchange. Later, this Corporation had requested Government to sanction these 300 temporary posts on permanent basis for appointment through PSC vide letter dated 11/10/2017. This was then done considering the retirement of workers in the Helper/Abkari category and Govt had approved the proposal by according

sanction for creation 300 posts of Helpers. At this stage, some of the women candidates who was included in the list of Helpers prepared by PSC and who are not appointed due to prohibition in engaging women at outlets but up on removal of the ban, the High court had directed to accommodate those lady candidates who are higher in rank than the male candidate but lost appointment due to prohibition by creating supernumerary posts, if required. Accordingly, the PSC has re-worked the rank list and as per the revised list, 106 more women candidates are found eligible for appointment. Hence in order to accommodate those candidates required posts are being reserved and the reporting of remaining vacancies to PSC is in process. The displaced arrack workers cannot be considered for employment in the above vacancies.

- 12. It is true that the policy of previous Govt was that 10% of the liquor shops had to be reduced every year and accordingly 20% of the outlets totalling 68 shops were closed down from out of the 338 outlets then operated. True copy of the G.O. dated 30.09.2014 ordering closure of 34 outlets is produced and annexed as **ANNEXURE-R5** (Pages\_\_\_\_\_to\_\_\_\_\_).

True copy of the G.O. dated 20.12.2014 ordering closure of 12 outlets is produced and annexed as **ANNEXURE-R6** (Pages\_\_\_\_\_to\_\_\_\_\_).

True copy of the G.O. dated 31.12.2014 ordering closure of 22 outlets is produced and annexed as **ANNEXURE-R7** (Pages\_\_\_\_\_to\_\_\_\_\_).

However, the present government has decided not to close down any outlets further as per the present Abkari Policy but no decision was taken on the re-opening of closed outlets as per the earlier policy. True copy of the G.O. dated 1.10.2016 is produced and annexed as **ANNEXURE-R8** (Pages\_\_\_\_\_to\_\_\_\_\_).

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Regarding the observation of increase in vacancies in this corporation, it is submitted that earlier there were only 1021 sanctioned posts and at that time there were requirement for manpower on daily wage basis being adhoc requirement. However, later the Government had sanctioned 700 more number of posts in various categories which include Accounts Officer, Regional Manager, Manager, Computer Programmer, Assistants & helper posts and further 300 more posts in the category of Helper in 2018. Besides, a scientific study on manpower was conducted through Centre for Management Development (CMD) so as to arrive at the actual manpower requirements of the Corporation. Even as per this report, the requirement of staff in the category of Helper/Salesman is only 1756. This Corporation is currently employing 251 Helpers and 1409 Abkari Worker who are taken as part of takeover of FL1 on permanent basis and thus 1660 persons are working in this category now. The total strength of 2042 post in the Helper/equivalent category as per sanctioned and approved strength is sufficient. Even though there are vacancies in the category of Helpers due to non-selection by PSC, the same can be filled by PSC only as these posts are sanctioned posts and not daily wage posts entitling the petitioners to claim employment.

633 → 251  
 1409 → 1756  
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 2042

13. It is submitted that Annexure-A5 produced along with the application is the letter addressed to Government, requesting sanction to engage 300 additional employees from Employment Exchange at the outlets of petitioner at that time due to increase of customers in outlets as most of the FL3/ F11 outlets were closed at that time due to the Abkari policy of previous government and the order of this Hon'ble Court banning sale of liquor with in 500 mtrs of National Highway / State Highway. Now, the above 300 post have been sanctioned permanently by the Government, and therefore appointments can only be made

through Public Service Commission for those posts and the displaced Arrack workers cannot be considered.

14. The matter covered by Annexure A6 is not true to facts and made at the imagination of any news paper reporter. Now a days, many reports are appearing in news papers and visual media which are in fact contrary to facts, untrue, misleading and utter lies. Any reporter can interpret a matter according to his requirement or requirement of any interest parties and seems to act as exceptional experts. The mere report by some scrupulous reporter cannot reveal real facts. It is well known fact that many matters are reported according to the wish of any interested party in the guise of vested interest.
15. The statement that the Corporation has misguided this Hon'ble Court and obtained stay order in SLP on 5.7.2016 and then appointed so many persons through backdoor entry is untrue. The petitioner has not suppressed any material facts before this court. It is true that at present also, as there are no daily wage posts in this Corporation for accommodating the Petitioners. There was no misstatement and no incorrect matter was furnished before the Hon'ble court in the SLPS filed by the petitioner, Corporation. No backdoor entries are done in this corporation, and all those appointments were made based on the advice issued by PSC against permanent posts and temporary appointments against permanent posts are made through Employment Exchange for 179 days. These appointments are not back door entries but only legally and constitutional scheme of appointment in public service. In OP No. 21971/2002, the Division Bench of High court directed that if any casual or other employees are necessary in petitioner corporation, they can be appointed only through employment exchange and such employer will not get any right for regularization on account as they are allowed to work for more than 6 months. Thereafter, daily wage employment is made

from employment exchange only. These daily wage employees are discontinued after completion of 179 days.

18. Annexure-A11 is the Government order dated 05.06.2018, whereby Govt had accorded sanction for creating 300 posts as permanent post in KSBC. These arrack workers cannot be considered for appointment to the above post, since the same is permanent post and the same can be filled up through Public Service Commission only.
19. Annexure- A12 seems to be a newspaper report dated 28.06.2018 whereby it is reported that 437 labelling temporary workers were regularised in the petitioner Corporation. These labelling workers are engaged by the Labelling contractors from time to time to execute the labelling work undertaken by the contractor. The regularisation of these Labelling workers were challenged before various legal forums and now based on the High Court order that the Government has decided to regularise them by order dated 07.06.2018. As per the G.O dt 7.6.2018, 437 only women labelling workers were ordered to be regularised strictly for label stickers on liquor bottles and these works are executed by women within the warehouses of this Corporation. As per the above GO, the arrack workers are not entitled for appointment to these posts. Hence the submissions are not considerable.
20. The submission was made by this Corporation at a time when there was a decision of Government to ban liquor vending in the state over a period of 10 years by closing down 10% outlets of the petitioner Corporation and CONSUMERFED every year as per the Abkari policy of the then Government for the year 2014-15. Based on the said policy decision, this Corporation had closed down 68 retail outlets and that of the Consumerfed, the only other single entity running FL1 retail business in the state, had closed down 10 shops totalling closure of 78 retail

outlets in the State. As a result of the closure of 78 retail outlets, this Corporation had to accommodate the staff of the closed shops in other working outlets. Therefore it was true at the time of filing the SLP that there was no requirement of further manpower at that point of time. However, it may be noted that as per the above policy decision, all the private run FL3 bar hotels other than hotels of 5 star categories and above had also been closed. Due to the closure of bars also, there had been substantial increase in number of customers at the remaining outlets, which could not have been managed by the then available staff. Accordingly, based on the request of the Corporation, the Government had issued order sanctioning temporary 300 posts for appointment through employment exchange. The matters stated in the said order are true to facts only. The request for sanction for temporary engagement of 300 persons were made on the premises that appointments to 492 sanctioned posts are not advised by the PSC and further that due to closure of bars there was an increase in the sale at the outlets by about 12%. In fact, on an average 30% of the sale of liquor in the state takes place through FL3 and other liquor licensees and therefore increase of 12% customers up on closure of most of the FL3 bar hotels is reasonable and expectable. Further, Government has later decided to reconsider the Abkari policy of previous government and decided not to close down further any FL1 outlets as per GO (MS) No. 92/2016/TD dated 01.10.2016. Considering these further developments which took place after the filing of SLPs that the request for sanction to appoint 300 persons were made and later request was also made to create permanent posts in KSBC for appointment through PSC. Accordingly, later on, this Corporation had requested Government to sanction these 300 temporary posts on permanent basis for appointment through PSC vide letter dated 11/10/2017 which is sanctioned by Govt vide order dated 05.06.2018. The same is being reported to



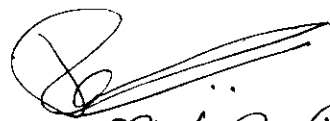
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PSC and only PSC can make appointments. These arrack workers cannot be considered for employment in the above vacancies. Hence, there is no misstatement or misleading submission by this Corporation and the statements submitted by this corporation were true to the facts based on the facts and position prevailing at the relevant point of time. The other contention in this para that there is a discussion to split/reduce the duty timings of employee in KSBC shops is not known to us and is only an imaginations of the applicant.

In nutshell, the reason for non-implementation of 2002 order are as follows:

- i. 2002 order was impliedely replaced by 2004 order.
- ii. No scheme was prepared based on 2002 order
- iii. A scheme and list of eligible candidates were prepared as per 2004 order and all of them are given employment.
- iv. Displaced arrack workers were too many and about 20000 and therefore not implementable.
- v. Displaced arrack workers were paid adequate compensation by Government.
- vi. The 2002 order was for giving employment against daily wage vacancies. No such vacancies exist now to consider for appointment as all of them are made permanent requiring appointment through PSC.
- vii. Various writ petitions and writ appeals came up before High Court and in some cases it was held that order need not be implemented and in some cases to implement the order.
- viii. This Hon'ble Court has held provisions included in Kerala Abkari Shop Disposal Rules for providing employment to displaced arrack workers in toddy shops as utravirus and

unconditional and also held that payment of compensation is adequate for loss of employment.

- ix. The Corporation has already given employment to 274 dependant sons of perished arrack workers and considering the extent of requirement of this type of category of employment.
  - x. There are no daily wage vacancies as envisaged in the scheme in the Corporation now to give such appointment.
  - xi. The order became in operative due to passage of time as about 22 years have elapsed scheme issuance of the same.
21. It is submitted that this Hon'ble Court vide order dated 20.09.18 has issued an order banning all appointments in the Corporation which is highly unjustifiable. Even the applicant has made a prayer in their application to restrain appointment to the post of Helper/Salesman only but the order now passed is a blanket order banning all appointments. This was not at all warranted in the facts of the case. This Honble Court may not prohibit the appointment in qualified category for the sake of the issue of appointment in daily wages category. Due to the blanket ban imposed by the Hon'ble court, the appointment even to higher post based on the advise made by PSC has come to a standstill and even the advisees are badly affected due to this. Further, this would affect the day to day business operations of the Corporation involving loss of revenue to the state and the Corporation. The aspect of negative revenue impact especially at this time when the economy is badly affected by the recent flood situation in the state adversely affected the financial position of the Government affecting the rebuilding process of the state. Hence the order dated 20.09.2018 passed by this Hon'ble Court may be withdrawn, and the present application may be dismissed in the interest of justice.



01/09/2018 02/09/2018

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 5550-5559/2016

IN THE MATTER OF:

KERALA STATE BEVERAGES  
CORPORATION (M & M) PVT LTD

..PETITIONER

VERSUS

P.P. SURESH & ORS

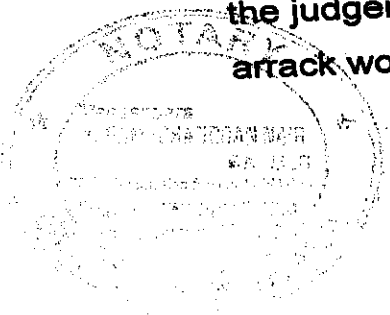
.....RESPONDENTS

**AFFIDAVIT FILED BY KERALA STATE BEVERAGES  
CORPORATION IN TERMS OF THE ORDER DATED 30.04.2019**

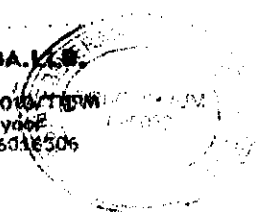
I, Sparjan Kumar G IPS S/o Sri. Moses Gajulavarti, aged 46 years,  
Managing Director, Kerala State Beverages (M&M) Corporation Ltd,  
BEVCO Tower, Vikas Bhavan P.O., Palayam, Thiruvananthapuram-  
695033, Kerala do hereby solemnly affirm and state as follows:

1. I am the Managing Director of the Petitioner Corporation in the  
above mentioned Special Leave Petition, and as such I am well  
conversant with the facts of the case as available from the records  
maintained with the petitioner corporation and thus competent to  
swear this affidavit.

2. That Special Leave Petition's (C) No. 5556 - 5559 of 2016 are  
filed by the Corporation and SLPs (C) No.12573/2017 and connected  
cases are filed by the State of Kerala challenging the judgment  
passed by the Hon'ble High Court of Kerala at Ernakulam in WA No.  
1505/15 & other connected cases. As per the judgement in Appeal,  
the judgement of the Single Bench directing engagement of displaced  
arrack workers against the 25% of the future daily wage vacancies in



Pengantar  
K. RAMACHANDRAN NAIR B.A., L.L.B.  
ADVOCATE & NOTARY  
Dist. No. 735/92, Notary Reg. No. 06/2010, TBM  
Deposit Police Station, Vanchiyode  
Thiruvananthapuram - 695 035, Mob: 9846016506



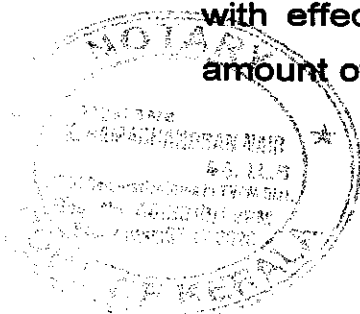
*Sparjan*  
G. SPARJAN KUMAR  
Managing Director

the Corporation held as per GO (Rt) No 81/2002/TD dated 20.02.2002 was directed to be implemented.

3. That by an order dated 30.04.2019 in the above SLPs, this Hon'ble Court has directed the State Government, this Corporation and the Kerala Abkari Workers Welfare Fund Board (KAWWFB) to file an Affidavit giving details about the number of vacancies that have arisen in the Corporation after 20.02.2002, the number of vacancies that have been filled up after 20.02.2002 and whether pursuant to the order dated 26.10.2018 directing reservation of 25% of the daily wage employment vacancies in the petitioner corporation which arose after 20.02.2002 have been reserved for Abkari workers etc. In this regard it is submitted that for appointments made through employment exchange made after 26.10.2018, this Corporation had reserved 25% of the daily wage vacancies as ordered and no appointments were made against the said vacancies. As directed, the details of vacancies arisen in the Corporation since 20.02.2002 is produced and marked as ANNEXURE-A (pages \_\_\_\_\_ to \_\_\_\_\_) and the number of vacancies filled in the Corporation after that date is produced and marked ANNEXURE-B (pages \_\_\_\_\_ to \_\_\_\_\_).

4. It is submitted that the subject matter involved in the Special Leave Petition is with regard to implementation of Government Order dated 20.02.2002. As per the said Government order, the decision was to reserve 25% of all daily wage employment vacancies arising in the Corporation in future to be filled up by the Abkari Workers registered with the Abkari Workers Welfare Fund Board who have been terminated from service due to ban of arrack with effect from 01.04.1996.

5. That it is submitted that sale of arrack was banned in the state with effect from 01.04.1996 and that the Government had paid an amount of Rs.30,000/- as compensation for loss of employment in



Pangappara  
K. RAMACHANDRAN NAIR BA.LL.B.  
ADVOCATE & NOTARY  
Bell No: 738/92 Notary Reg. No.06/2010/7  
Opposite Police Station, Vanchiyoor  
T.Gandran-695 035, Moh. Panchayath

*[Signature]*  
G.SPARIAN

that year itself to all the displaced arrack workers. Further, the Kerala Abkari Working Welfare Fund Board had also paid an additional compensation of Rs.3000/- per displaced arrack workers. In this context this Hon'ble Court in Civil Appeal No 1732/2006 had categorically held that the compensation paid is enough for loss employment due to arrack ban and further struck down the amendment made to Rule 4(2) of Kerala Abkari Shop Disposal Rules providing for rehabilitation of displaced arrack workers in toddy shops as unconstitutional. Copy of the judgement passed by this Hon'ble Court in Civil Appeal No 1732/2006 reported in 2006 SCC \_\_\_\_\_ is produced and marked as ANNEXURE C (Pages \_\_\_\_\_ to \_\_\_\_\_). In the light of the aforesaid judgement, the displaced arrack workers are not entitled for claim for rehabilitation.

6. This Corporation was set up by the Government of Kerala as a fully owned Government of Kerala undertaking in order to regulate the trade in foreign liquor in the State, to ensure portability of liquor supplied and to prevent leakage of government revenue. copy of the Government order GO (Ms) No. 21/83/TD dated 11.05.1983 is produced and marked as ANNEXURE- D (Pages \_\_\_\_\_ to \_\_\_\_\_) and copy of the GO (Ms) No. 17/84/TD dated 01.02.1984 is produced and marked as ANNEXURE- E (Pages \_\_\_\_\_ to \_\_\_\_\_) respectively-. The Corporation being a Government company is fully regulated by the Government of Kerala as per Articles of Association of the Corporation. As per Article No. 26(12) of the Articles of Association, prior approval of Government is required for creation of any post and appointment thereof. This Corporation is bound to comply with the directions of Government. A copy of the Articles of Association is produced and marked as ANNEXURE- F (Pages \_\_\_\_\_ to \_\_\_\_\_).

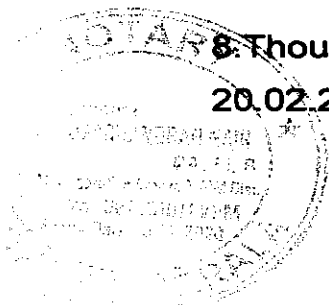
7. The Corporation started its business in 1984 with 4 FL9 warehouses/Bonded warehouses for whole sale business in liquor for

Pangappara  
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 ADVOCATE & NOTARY  
 Roll No: 738/92 Notary Reg. No.06/2010/TV3M  
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 Phone Area 495 025. Mobile 98471 1234

*[Signature]*  
**G. SPANDAN KUTTY**  
 Director

supply to other licensees. Subsequently Government had also sanctioned for operation of one FL1 retail outlets in each district totalling 14 such retail outlets till 31.01.2001. In the light of the liquor tragedy, that took place in the state in 2001, the Government had decided to abolish private retail vending of foreign liquor under FL1 license and allotted 235 such outlets then run by private contractors to this Corporation for running from 01.04.2001 and further allotted 89 outlets since 2002 and up to 2010 totalling the number of outlets to 338, of which 68 outlets were closed during 2014-16 period based on the Abkari Policy of then Government. Hence, till 31.03.2001, the Corporation required only limited staff at different levels to run the 14 FL1 outlets and 14 FL9 warehouses then in operation and the staff pattern then existing consisting of 345 staff at different levels were enough to carry out the operations in these units. The details of posts sanctioned by the government till date are produced and marked as ANNEXURE-G (Pages \_\_\_\_\_ to \_\_\_\_\_). Upon takeover of the FL1 retail outlets, the Corporation had to take over the employees who were working with the private liquor vendors also. These workers were registered with the Kerala Abkari Workers Welfare Fund Board and continued as such as per the bilateral agreement entered into in this regard with unions and the workers. Thus as on the date of issue of the order dated 20.02.2002, the Corporation had got a sanctioned staff strength of 345 regular workers and 1748 Akbari Workers. There is no sanctioned post of daily wagers in the Corporation at that time and even now. However, due to shortage of man power people were recruited from employment exchange on daily wage basis for a period of 179 days. This was done on account of the fact that 676 post sanctioned by Government were remaining vacant and that there was no select list published by PSC due to delay on the part of PSC in completing the selection process.

8. Though the Government had issued a blanket order dated 20.02.2002 directing reservation of 25% of future daily wage

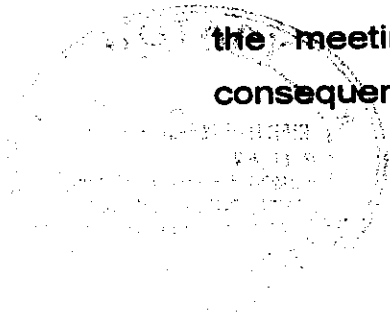


**K. RAMACHANDRAN NAIR BALLAL**  
ADVOCATE & NOTARY  
Roll No: 738/92 Notary Reg. No. 06/2010  
Opposite Police Station, Van-Niyad

**G. SARJAN**  
MEMBER

vacancies, no further orders prescribing criteria etc for selection of displaced arrack workers were issued by Government. It is further submitted that the term 'daily wage employment vacancies' is not defined or clarified in the said order. Moreover, the number of jobless arrack workers due to arrack ban was as large as more than 12,500 workers were made jobless and selection from such jobless workers following a selection process based on some criteria for a few number of 25% daily wage vacancies was not practical. It is also pertinent to note that when the order was issued almost 6 years were elapsed after arrack ban and there were no data available with respect to jobless workers. In the light of the above circumstances that the government had come out with a revised scheme as given below which is clearly evident from the minutes of the meeting convened by the Chief Minister on 22.10.2003. Copy of the minutes of meeting dated 22.10.2003 is produced and marked as **ANNEXURE-H** (Pages \_\_\_\_\_ to \_\_\_\_\_).

9. In the above circumstances, the Government had issued a modified order dated 07.08.2004, wherein it is specifically stated that though certain daily wage vacancies were reserved for the ex-Abkari workers as per GO dated 22.02.2002, these vacancies cannot be filled up as the list of eligible workers were not made available to the Corporation. Considering all these facts, in the meeting convened by Chief Minister on 22.10.2003, it was decided to fix new criteria for the rehabilitation of Abkari Workers and to fill up vacancies in future based on the revised criteria. Accordingly, revised criteria for rehabilitation of arrack workers are prescribed in the modified Government Order. Copy of the revised GO dated 07.08.2004 is produced and marked as **ANNEXURE-I** (Pages \_\_\_\_\_ to \_\_\_\_\_). The G.O further specifically provided that the order read as the order dated 20.02.2002 stands modified to this extent. From the minutes of the meeting convened by the Hon'ble Chief Minister and the consequential order above, it was clear that the GO dated



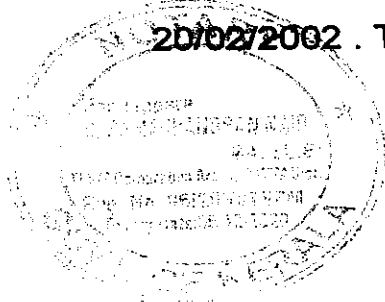
Pangaspara  
**K. RAMACHANDRAN NAIR BA LLB.**  
 ADVOCATE & NOTARY  
 Roll No: 738/91 Notary Reg. No. 06/2010/T/PS  
 Opposite Police Station, Marthandapuram  
 686 022, 686 023, 686 024

*[Signature]*  
**G. SRIJAN ET AL**  
 SECRETARY

20/02/2002 cannot be implemented and stands substituted by revised scheme as contained in GO dated 07.08.2004 which alone will subsists in the subject matter thereafter. The facts being so, the conclusion drawn by the learned Division Bench in para 31 of the judgement that the Government did not intend to supersede its earlier order dated 20.02.2002 is not correct, legal and sustainable.

10. It is submitted that based on the modified scheme, the Welfare Fund Board had finalised a list of eligible persons consisting of 266 persons and this was approved by Government as per order dated 04.02.2006. As per the revised scheme, the decision was to reserve 25% of daily wage vacancies arising in FL1 outlets to be opened in future. Accordingly, sanction was also accorded to appoint 51 persons from the list considering the opening of 51 new outlets since 20.02.2002 and up to the issue of the order above. Copy of the GO dated 04.02.2006 is produced and marked as ANNEXURE-J (Pages \_\_\_\_\_ to \_\_\_\_\_). Of the 51 persons thus given appointment 49 joined then. After this, the Government had issued order dated 30.04.2009 wherein the Government had accorded sanction for engagement of balance 213 persons whose name are included in the list. A copy of the order dated 30.04.2009 is produced herewith and marked as ANNEXURE-K (Pages \_\_\_\_\_ to \_\_\_\_\_). Of the 213 persons thus given appointment, 172- persons joined for duty. Later 7 persons also joined in the year 2010. Further based on the directions of Hon'ble High Court, 5 more persons were also included in the list and given employment and joined. Hence a total of 276 persons were given appointment so far under the modified scheme of which 233 persons joined.

11. It is submitted that the Government had allotted new FL1 retail outlets at various points of time since the issuance of GO dated 20/02/2002 . The year wise details of allotment of new FL1 outlets to



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Trivandrum - 695 035, Mob: 9846015506

*[Handwritten Signature]*

G. SPARJAN KUNHABADU



this Corporation after 2002 are given in **ANNEXURE-L** (Pages \_\_\_\_ to \_\_\_\_). Thus it was necessary to engage persons to run the outlets. In this regard, the Division Bench of Hon'ble High Court of Kerala in OP No 21971/02 & connected cases vide judgement dated 31.08.2006 had categorically directed this Corporation to engage manpower in the event of any exigency through employment exchange only. A true copy of the judgement dated 31.08.2006 passed by the High Court of Kerala in O.P. No. \_\_\_\_/200 is produced and marked as **ANNEXURE-M** (Pages \_\_\_\_ to \_\_\_\_). It is submitted that in compliance with the judgement directions above, this Corporation had decided to engage persons to meet the exigent manpower requirement through employment exchange on a temporary basis. However, as per the provisions governing temporary appointments through employment exchange such appointment can be made for a maximum period of 179 days only. On completion of 179 days, the appointed persons were to be disengaged and new recruitments were being made from 2008 onwards. The details of the number of persons engaged through employment exchange since 2002 is given separately in **ANNEXURE-N** (Pages \_\_\_\_ to \_\_\_\_).

12. The order was issued in 2002 and about 18 years have elapsed since the issuance of GO. The displaced arrack workers were paid a compensation of Rs.32000/- in 1996 for loss of employment. It was held by this Hon'ble Court that the payment of above compensation is enough to compensate the loss of employment then. Having accepted the compensation and further seeking employment elsewhere amounts to giving double benefits which is not warranted under any circumstances. Hence, the petitioners are not entitled for the benefits based on the G.O. which was already modified by the Government. All the arrack workers ought to have found out alternate employment or engagement for getting income for living now. Hence there is no justification in implementing the GO dated

Petitioners  
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 Opposite Police Station, Vanchiyoor  
 Thiruvandrum-695 035. Mob- 9846045033

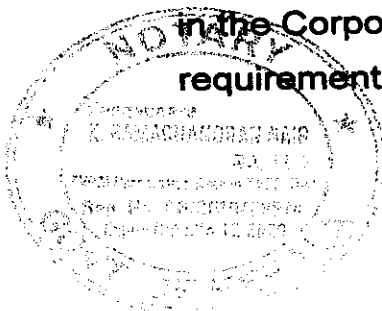
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**G. SRADHAN**  
 ADVOCATE & NOTARY

20.02.2002 at this distant point of time. It is also pertinent to note that the validity of 2004 notification is not under challenge till date. Therefore the inevitable conclusion is that the 2002 notification stands modified by 2004 notification.

13. The Corporation being a Government Company requires Government approval for creation of posts and the Government from time to time has sanctioned different posts at various levels. It is submitted that subsequent to the issue of 2002 Government Order, government had accorded sanction for creation of further posts. The details of posts sanctioned by Government at different periods are produced and marked as **ANNEXURE-O (Pages \_\_\_\_\_ to \_\_\_\_\_)**. The Government had issued orders bringing the appointment in the Corporation through Kerala Public Service Commission after framing special rules (Recruitment Rules) in 2007 only. Thereafter the Corporation started to report vacancies to PSC for appointment and after completing the selection process, the PSC started issue of appointment advise from 2011 only. The details of PSC appointments so far made against sanctioned posts are produced and marked as **ANNEXURE-P (Pages \_\_\_\_\_ to \_\_\_\_\_)**.

14. The 2002 scheme was announced by Government in which no guidelines were prescribed for selection. Therefore if the Hon'ble court finds that the 2002 order is liable to be implemented, the Government only can issue necessary guidelines for the implementation of the 2002 Order and therefore directions in this regard may be issued to government.

15. It is submitted that as per the 2002 GO, the decision of government was to reserve for appointment of displaced arrack workers only against 25% of the future daily wage vacancies arising in the Corporation. Therefore, as per the order, 25% of the daily wage requirement that arises in the Corporation since 2002 only need to be



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Trivandrum - 695 035, Mob: 9846016000

  
**G. SPARJAN KUTTAN**

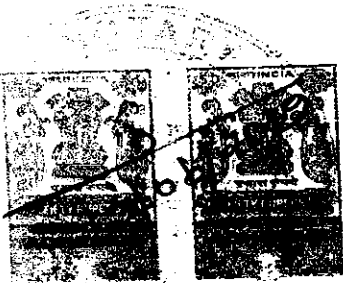
considered This Corporation has engaged 1900 person on daily wage basis through employment exchange at various stretches since 2002 as given in ANNEXURE N. . All of them were engaged for a maximum period of 179 days only. Hence determination of persons to be appointed based on 2002 scheme could be made against the said daily wage vacancies filled. However, while determining the number of persons entitled for daily wage appointment, the 233 persons already appointed as included in the list prepared as per 2004 scheme also need to be considered. Further, appointment if at all required can be done only through selection and it cannot be given as a matter of right to the displaced arrack workers. Further, as these posts are already sanctioned and reported to PSC for regular recruitment, the appointment could be made for a maximum, period of 179 days, as is done in the case of recruitment through employment exchange, or till PSC recruitees joins, whichever is earlier.

**VERIFICATION**

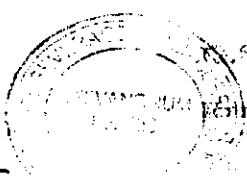
Verified this on the 12<sup>th</sup> day of June 2019 that the contents of Para 1 to 15 of this affidavit are true and correct to best of my knowledge and belief and no part of it is false and nothing material has been concealed there from.



*[Signature]*  
**DEPONENT**  
 G. SPAN...  
 ...  
 ...



*Solemnly affirmed and signed before me by the deponent on this day the 12th of June, 2019 at my office of Trivandrum, Travancore.*



*[Signature]*  
**DEPONENT**  
 G. SPAN...  
 ...

**K. RAMACHANDRAN NAIR B.A., LL.B.**  
 ADVOCATE & NOTARY  
 Roll No. 738/92 Notary Reg. No. 06/2010/TVPM  
 Opposit Police Station, Vanchiyoor  
 Trivandrum - 695 035, Mob: 9845014006

*[Signature]*  
*[Handwritten text]*

The authority of Certificate issued within jurisdiction of Panapattanam K. Ramachandran Nair, Advocate & Notary, Trivandrum, Kerala, India, is hereby certified to be true and correct.  
 S. No. 815 of 2019  
 12/06/2019

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A NO. 67487 OF 2018  
IN  
SPECIAL LEAVE PETITION (C) NO. 5550-5559/2016

IN THE MATTER OF:

KERALA STATE BEVERAGES  
CORPORATION (M & M) PVT LTD

..PETITIONER

VERSUS

P.P. SURESH & ORS

.....RESPONDENTS

**REPLY FILED BY THE PETITIONER TO THE APPLICATION**  
**FOR VACATION OF STAY FILED BY RESPONDENTS**  
**NO. 1 TO 4 IN SLP (C) No. 5558 OF 2016**

1. The present Special Leave Petition has been filed by the petitioner challenging the final impugned judgment and order dated passed by the High Court of Kerala at Ernakulam in WA No. 1505 of 2015 and other connected cases. The impugned judgment while upholding the judgment of the Single Judge directed the implementation of the order passed by the Single Bench directing engagement of displaced arrack workers against the 25% of the daily wage vacancies in the Corporation issued as per GO dated 20.02.2002. It is submitted that the Division Bench has not properly appreciated or considered the contentions raised by the petitioner in the appeal instead the appeal was disposed off in a mechanical way without properly analysing or considering the law and facts involved but on consideration of some other grounds which is legally unsustainable.
2. The conclusion of the Division Bench that the direction in OP No. 21971 of 2002 no way seems to affect the petitioner in implementing the scheme is not correct. The scheme was announced in 2002,

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whereas the direction in the original petition above was issued in 2006 and therefore the said direction was issued at a time after the announcement of the scheme. In this regard it is pertinent to note that after announcement of the scheme several writ petitions came up before the Hon'ble High Court and before this Court for consideration on the question of eligibility for employment for the so called displaced arrack workers in the petitioner Corporation and other private running toddy shops etc and the conclusion was that the respondents are not entitled for employment elsewhere on the ground of loss of employment due to ban arrack. Facts being so, a conclusion drawn after elapse of about 20 years by the Ld. Single Judge that the government and the petitioner Corporation is bound to implement the impugned Government order dt 20.2.2002 is not at all properly conceived and is impractical for implementation and holdings of the same as legal by the division bench is highly unjustifiable and unsustainable.

3. It is submitted that, the statement in Para 4 was made by the Corporation but this was true to facts as per the then prevailing position as is explained hereinafter.
4. As stated above, the submission was made at a time when there was a decision of Government to ban liquor vending in the state over a period of 10 years by closing down 10% outlets of this respondent and the CONSUMER FED every year as prescribed the Abkari policy of the then Government for the year 2014-15. Based on the said policy decision, this Corporation had closed down 68 retail outlets and that of the Consumer fed, the only other single entity running FL1 retail business in the state, had closed down 10 shops totaling to closure of 78 retail outlets in the State.

True copy of the G.O. dated 30.09.2014 is produced and annexed as **ANNEXURE-R1** (Pages \_\_\_\_\_ to \_\_\_\_\_).

True copy of the G.O. dated 20.12.2014 is produced and annexed as **ANNEXURE-R2** (Pages \_\_\_\_\_ to \_\_\_\_\_).

True copy of the G.O. dated 31.12.2014 is produced and annexed as **ANNEXURE-R3** (Pages \_\_\_\_\_ to \_\_\_\_\_).

As a result of the closure of 68 retail outlets, this Corporation had to accommodate the staff of the closed shops in other working outlets. Therefore it was true at the time of filing the SLP that there was no requirement of further manpower at that point of time. However, it may be noted that as per the above policy decision, all the private run FL3 bar hotels other than hotels of 5 star categories and above had been closed. Due to the closure of bars also, there had been substantial increase of customers at the remaining outlets, which could not have been managed by the then available staff. Accordingly, based on the request of the Corporation, the Government had issued order sanctioning 300 posts for appointment through employment exchange. The matters stated in the said order are true to facts only. The request for creation of 3979 posts were made at a time when the Corporation was running 338 FL1 outlets in the state. However considering the closure of 68 retail outlets, the staff strength has been re-fixed at 2631 posts at various levels. The request for sanction for engagement of 300 persons were made on the premises that appointments to 492 sanctioned posts are not made by the PSC and further that due to closure of bars there was an increase in sales at the outlets by about 12% . In fact, on an average 30% of the sale of liquor in the state takes place through FL3 and other liquor licenses and therefore increase of 12% customers up on closure of most of the FL3 bar hotels is reasonable and expectable. Further, Government has later decided to reconsider the Abkari policy of previous government and decided not to close down any further FL1 outlets as per GO (MS) No. 92/2016/TD dated 01.10.2016. True copy of the GO (MS) No. 92/2016/TD dated 01.10.2016 is produced and annexed as **ANNEXURE-R4** (Pages \_\_\_\_\_ to \_\_\_\_\_).

5. Considering these further developments which took place after the filing of SLPs that the request for sanction to appoint 300 persons were made and later a request was also made to create permanent posts in the petitioner Corporation for appointment through Public

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Service Commission. Accordingly, later on, this Corporation had requested Government to sanction these 300 temporary posts on permanent basis for appointment through Kerala Public Services Commission vide letter dated 11/10/2017. Now, the above 300 posts have been sanctioned permanently by the government and therefore the displaced arrack workers cannot be considered for employment in the above vacancies. Hence it is clear that the Annexure-R1 produced is issued based on the subsequent developments which cannot be projected as false or made any misstatement which is not at all true.

5. The contentions raised in para 6 of the application is not true to facts. Appointment under compassionate employment scheme and appointment as sought in the instant case are entirely different. The method stated for appointment in the para is about the appointment of dependants in the case of death of an employee while in service popularly known as 'Employment under dying-in-harness scheme' or compassionate employment scheme (CES). The scheme is applicable for the serving employees who die in harness to provide relief to the family and is in force in all government and other public service. **Copy of the scheme issued by Government G.O. (P) No.32/2007/Plg dated 07.06.2007 is produced and annexed as ANNEXURE-R5 (Pages \_\_\_\_\_ to \_\_\_\_\_).** The claim of the respondents is not for appointment under compassionate employment scheme. All the respondents were working with private arrack contractors who were running the arrack shops auctioned by the government before ban in 1996. These persons were only employees of such private contractor. They cannot claim any compassionate employment in Government on the ground that the trade in which they were engaged was banned by government. This was earlier rightly held by the courts, categorically stating that mere loss of employment due to ban of a trade does not entitle the jobless persons to raise any claim for employment in public, where as the appointment of public employment has to be made as per the constitutional scheme of appointment. Hence this contention also is unfounded and does not merit further consideration.

6. Annexure R3 is the minutes of the meeting held on 27.06.14, where in some decisions with regard to staff pattern, Daily Allowance, Transfer of excess employees working in warehouses and other offices to FL1 shops etc were discussed and decided. In this regard it may be noted that as per the minutes nothing pertaining to the matter under challenge was discussed or decided. So also this document does not reveal suppression of any fact furnished before the Apex Court as per the SLPs. In this regard it may be noted that a scientific study on manpower was conducted through Centre for Management Development (CMD) so as to arrive at the actual manpower requirements of the Corporation. Though the report has been received and submitted to government for consideration, the government had decided to conduct a study on the man power requirement through the Finance Inspection wing of the Government and the study is yet to be completed and report has not been submitted so far. As per the revised report of CMD, the optimum number of persons required in the category of Helper/salesman is only 1756, whereas 251 number of regular employees are working in this category and that 339 posts are yet to be filled by PSC and once the PSC recruitees join, the actual number of employees in this category exceeds the requirement in the category. Further since the remaining posts are sanctioned posts, it cannot be treated as daily wage vacancies so as to consider the respondents but have to be filled through employment exchange only.
7. The statement that from the documents Annexure R1 to R3 this Corporation has suppressed material facts and made incorrect and false statement before the court are not true and hence strongly denied. This Corporation has not suppressed any material facts and has not made any incorrect or false statement before this Hon'ble Court for getting an interim ex-party order by staying the operations of the impugned order. It is true that at present, also there are no sanctioned posts in this Corporation for accommodating the Applicants/respondents. At present also there are no such vacancies or requirement to engage the respondents in the petitioner corporation. There was no misstatement and no incorrect matter was furnished before the Hon'ble court as per the SLPs filed by the



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petitioner. The order dated 20/8/2016 was issued not in the Circumstances that was prevailing at the time of filing SLP, but arose due to the increase in customers due to closure of FL3 bar hotels etc. The situation has now changed and the Government as per Abkari Policy for the Year 2017-18 has decided to issue license to those hotels having 3 star and above categories. As a result, more number of bar hotels were opened and the rush that was faced in 2016 or 2017 in the outlets have come down little.

8. As regards the implementation of 2002 scheme, following crucial aspects are also to be noted:
  - a) It is humbly submitted, the petitioner Corporation had got a staff structure consisting of various posts in different categories. There are prescribed qualification for appointment against each post. The displaced arrack workers are all unqualified and illiterate who were engaged by the private arrack contractors according to their choice without considering any qualification. Those engaged are mainly for issuing arrack and food articles to the customers at the arrack shop for consumption within the premises. Those workers were not required to run the shop in any professional or organized manner, but rather to run it as per the requirement of the private contractor. On the other hand, the petitioner Corporation is running its business in an organized way with more accountably and responsibility which the so call arrack worker could not perform.
  - b) The petitioner Corporation already has about 1732 persons working in the category of Abkari workers/helpers/salesmen as of now and further appointment for 107 posts are to be issued by PSC. **True copy of the judgment passed by the High Court of Kerala in W.P. (C) No. 12956/2014 dated 13.12.2016 is produced and marked as ANNEXURE-R6 (Pages \_\_\_\_\_ to \_\_\_\_\_).** Based on the circumstances necessitated due to struck down of the provision in the Foreign Liquor Rules banning engagement of women in PM outlets. If so the strength of staff in this category goes much beyond the required strength in this category as per the study conducted by CMD. All of them are doing the same work of storing and issue of liquor to customers. Considering the number of outlets and the staff

available, in this category, further engagement of arrack workers in this category is not necessary at this stage. It is clear even from the man power study by the Centre for Management Development (CMD) that the total requirement of persons at this level is 1756 and therefore there is no need to induct more persons in the category. It is further evident that further posts are required in the category of Assistant and Clerk and above level officers only. **True Copy of relevant page of report submitted by Centre for Management Development is attached as ANNEXURE-R7 (Pages \_\_\_ to \_\_\_).** Hence if at all any requirement is there, it is necessary to appoint persons with more qualification to get along with the requirement of the corporation, for delivery of services in professional manner.

- c) The scheme was framed by Government in 2002. However no action was taken to identify suitable workers for engagement as per the scheme. This was due to impracticality to consider the displaced workers due to their qualification and number which was around 15000 as per available information. Accordingly, the government had framed another scheme for providing employment to the dependant sons of perished arrack workers and as per this scheme appointments have already been given for about 270 persons. Therefore further consideration of persons for appointment under 2002 scheme seems to be not logical.
- d) About 22 years have elapsed since the ban of arrack in the state. So also, more than 16 years have elapsed since the framing of the scheme. Most of the displaced arrack workers are either illiterate or over aged now. It is not practical to consider the scheme at such a later stage due to various reasons. The petitioner Corporation requires persons of required talent and knowledge to manage the outlets. Therefore, imposition of the arrack workers who are either illiterate or aged at this stage would defeat the manpower planning of the Corporation and also affect the service delivery and would be burden on Corporation.


- e) It was categorically held by the courts that there is no obligation for providing employment to displaced workers on account of loss of employment due to ban of arrack. It is based on this principle that this Hon'ble Court had struck down the amendment to the Kerala Abkari Shop Disposal Rules making it obligatory for toddy shops to engage displaced arrack workers. It was also observed by this court that the payment of compensation of Rs. 30,000/- and ex-gratia compensation of Rs. 2000/- in the year 1997 itself is enough and adequate compensation for loss of job due arrack ban. The same principle would apply in the case of the petitioner Corporation also. Hence direction by another court at a later stage to implement the scheme has put the petitioner corporation in an embarrassing situation.
- f) Though the Government had issued 2002 order but no guidelines or detailed scheme was announced. This was due to the reason that the scheme could not have been implemented considering the number of claimants involved. Accordingly only, government had prepared 2004 scheme also announced guidelines on eligibility etc and there by the Abkari Welfare Fund Board prepared the list of eligible persons as per 2004 scheme. By issuing the 2004 scheme, the 2002 scheme was replaced and no valid scheme subsists with regard to displaced arrack workers now.
9. It is submitted that this Hon'ble Court vide order dated 20.09.18 in I.A. No.131018/2018 has issued an order banning all appointments in the Corporation which is a blanket order. Because of the above order the petitioner Corporation is not in a position to issue appointment orders to 176 candidates to the post of Assistant Grade-II, which has already been advised by the PSC. **True copy of the order dated 31.08.2018 passed by the Kerala Public Service Commission is produced and annexed as ANNEXURE-R8 (Pages \_\_\_\_\_ to \_\_\_\_\_).**

10. The Honourable High Court of Kerala has failed to appreciate the facts and circumstances leading to the issuance of the government

order dated 20/2/2002. The learned single judge and the division bench has failed to consider the fact that there is no vacancy called the "daily wagers" in the petitioner Corporation. There is no concept of vacancy in daily wage and the daily wager is engaged in casual arrangement basis due to exigencies of work. As submitted again and again the government of Kerala has abolished the arrack shops and has also taken away the liquor vending by private parties and accordingly the petitioner Corporation has started running retail outlets. The Corporation was not running any retail outlets till that time and due to the immediate starting of the retail outlets by the Corporation there occurred a exigencies of work requiring casual engagements during 2002. Therefore in order to meet the said requirement the government has issued a direction to engage the displaced arrack workers against 25 percentage of the vacancies of the daily wagers at that point of time. It is the settled position of law that no employment in public sector undertaking can be filled up through backdoor by engaging daily wage employees for long. Therefore the government has never intended to continue with the government order dated 20/2/2002 for long and it was only for a short duration considering the facts and circumstances prevailing at that point of time. This vital aspects were not considered at the time the impugned judgment was passed by the learned single judge as well as the division bench of the Honourable High Court of Kerala. It is submitted that if the direction is maintained it will lead to backdoor entry again in public employment which is prohibited by this honourable court in various decisions. Therefore there is no illegality or curtailment of rights of anyone due to the ex parte directions issued by this honourable court and the vacation petition only deserves to be dismissed.

In the light of the facts and legal position narrated above, it clear that there is no suppression of material facts or made any incorrect statement and false statement before the court necessitating vacation of the interim order passed by the Hon'ble court. Hence the Present interim application is liable to be dismissed.

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