

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. /2026
[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS.10772-10774/2025]

STATE OF KERALA & ORS.

APPELLANT(S)

VERSUS

M/S. ALANKAR ELITE INNS AND HOTELS (P) LTD. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2026
[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL)
NO.21572/2025]

O R D E R

1. Leave granted.
2. Heard learned counsel for the parties.
3. The appeals (@ SLP © Nos.10772-10774/2025) impugn judgment and order of the High Court of Kerala at Ernakulam¹ dated 09.12.2024 passed in Writ Appeal Nos.1806 of 2024, 1844 of 2024 and 1870 of 2024 whereby the order of the learned Single Judge dated 11.06.2024 passed in W.P. (C) Nos.4768/2019; 29520 of 2019; and 12475 of 2019 has been affirmed. The other connected appeal (@ SLP © No.21572 of 2025) impugns

1 The High Court

order dated 8th January 2025 passed in W.A. No.2107 whereby order of the learned Single Judge of the High Court dated 11.06.2024 in W.P. (C) No.8291 of 2019 was affirmed. As both sets of appeals emanate from a common order dated 11.06.2024 passed by learned Single Judge of the High Court in four writ petitions (i.e., W.P. (C) Nos. 4768/2019; 29520 of 2019; 12475 of 2019 and 8291 of 2019) raising common issues, with the consent of learned counsel for the parties are being decided by a common judgment.

4. The first respondent(s) are private limited companies holding FL 11 licence under the Kerala Abkari Act² to vend/serve foreign liquor at their hotel(s). Section 67(2) of the Act empowers the Commissioner to impose fine on any person or persons holding a licence or permit under the Act for the violation by way of reconstitution, alteration or modification without the permission of the Commissioner of any deed on the strength of which any licence is granted. Sub-section (3) of Section 67 of the Act provides that where a partnership firm or a company having a hotel (restaurant) holding a license under this Act has, without the previous permission of the Commissioner,

2 The Act

reconstituted, altered or modified any deed constituting such partnership or Board of Directors of the company, on the strength of which such license is granted, the Commissioner may, on payment of the fine imposed under sub-section (2) and on an application from such licensee and subject to the other provisions of this Act and the rules made thereunder, regularize such reconstitution, alteration or modification after accepting such fee as may be prescribed by rules.

5. In these appeals, the first respondent(s) had, through separate writ petitions (described above), *inter alia*, questioned before the High Court demand(s) raised by the Excise Commissioner for regularizing FL11 license held by the first respondent(s). Those demand(s) were raised on the ground that first respondent(s), being a company, had reconstituted its Board without prior permission, therefore, were liable to fine under sub-section (2) of Section 67 of the Act as also fee leviable under Rule 19 (iv) of Foreign Liquor Rules, 1953 for regularizing the licence.
6. The demand raised for such regularization was based on the rule position as it stood on the date when the Board was reconstituted. However, when the regularization order came to be passed, the rule stood

amended as a result the second proviso to Rule 19(iv) i.e., the charging provision stood deleted from the rule book. The first respondent impugned the demand note on the ground that since the demand was based on a provision which was not in existence on the date when the regularization order was passed, the fee for regularization as contemplated under the said proviso was not leviable.

7. The learned Single Judge framed multiple issues, relevant being issue no.1 which is extracted below:

“Which is the relevant law to be applied for payment of fee for regularization of unauthorized reconstitution of Board of Directors, whether it be the law as on the date of reconstitution or whether the law as on the date of passing the impugned orders allowing regularization is to be applied?”

8. The learned Single Judge thereafter considered the relevant Rule 19 which, on the date of reconstitution of the Board of the first respondent(s), read as follows:

“Rule 19

(i) Under no circumstances shall any licence obtained under this notification be sold, transferred or sub rented without the previous sanction of the Excise Commissioner.

(ii) Reconstitution of partnership by addition or deletion of members or

reconstitution of Directors in a company resulting in change of ownership which owns/manages or operates any licence issued under this rule shall be deemed to be transfer of licence.

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

(iv) Change of name of licensee may be allowed on payment of Rs.2 Lakhs (rupees two lakhs only).

Provided that such change shall be allowed only if the incumbent in whose name the licence is to be granted is eligible otherwise for obtaining a licence under these rules;

Provided further that the constitution/re-constitution of a partnership or Director Board of a company of a hotel which does not have two star classification will be allowed on payment of Rs.2,00,000/- (Rupees two lakhs) for each partner/ director opted out of the partnership or Director Board of the company and on payment of Rs.20,00,000 (Rupees twenty lakhs) for each partner/ director inducted into the partnership or Director Board of the company, as the case may be.

Provided also that change of name of licensee of a hotel which do not have two star or above classification shall be allowed on payment of Rs.20,00,000 (Rupees twenty lakhs only).

(v) Notwithstanding anything contained in this rule, in the case of death of a licensee of a proprietorship concern or partner or a director of a partnership firm or a director of a company that hold an FL-3 licence, the change of name of

licensee, the reconstitution of partnership or Board of Directors of a Company, as the case may be, will be allowed on payment of Rs.2 lakhs (Rupees two lakhs only) even if the hotel is not having star classification.

(Note. - 'Hotel' includes classified restaurants and such other hotels or restaurants having classifications or certificate issued by concerned Government departments, on the strength of which, FL-3 licences have been obtained.)

9. The learned Single Judge found that on the date on which application for regularization was submitted and when the order of regularization was passed, the second proviso, which enabled levy of the specified fee, stood omitted from the rule book. Accordingly, it took the view that the fee leviable thereunder could not have been imposed/ demanded. The view taken by the learned Single Judge was upheld by the impugned order of the Division Bench of the High Court passed in writ appeals preferred by the appellant(s).
10. The submission of the learned counsel for the appellant (State of Kerala) is that the fee for regularization is chargeable because the licensee has violated the terms of the licence, therefore, the date on which such violation takes place, should be the determining factor. And as on the date of

reconstitution of the Board, the proviso existed in the rule book, the fee prescribed thereunder was leviable. Accordingly, he submits, the view taken by the High Court is an erroneous view and is liable to be set aside.

11. *Per contra*, on behalf of the respondent companies, it is submitted that sub-rule (iv) provides that change of name of licensee may be allowed on payment of Rs. 2 lakhs. Likewise, under sub-rule (iii) reconstitution of partnership or Directors of a company may be allowed on charge of certain fee. This fee is chargeable only when such change/ reconstitution is allowed. In the present case, admittedly, the decision to allow such reconstitution was taken after the second proviso was omitted from the rule book. In such circumstances, the view taken by the High Court does not suffer from any infirmity.
12. We have accorded due consideration to the rival submissions and have perused the materials available on record.
13. In the instant case, no application was moved for regularization or for permission to reconstitute the Board while the second proviso existed in the rule book. Admittedly, regularization/ permission was

granted after the proviso was omitted from the rule book.

14. A plain reading of the rule including the proviso in question would indicate that the fee is leviable when permission is granted/ allowed. This is clear from use of the expression "allowed on payment of...". Therefore, the law as it stands on the date when decision is taken to regularize/ permit/ allow a change, or reconstitution, would apply. This we say so, because no right accrued or crystallized in favour of the State to realize /impose fee on mere reconstitution of the Board. Because fee became imposable only when reconstitution was permitted/ allowed. In our view, therefore, the view taken by the High Court does not suffer from any infirmity.
15. At this stage, the learned counsel for the appellant submits that the High Court has erred in interpreting the "Note" appended to Rule 19 and, therefore, this issue may be considered and decided.
16. Since we find that the writ petitioners before the High Court had assailed the demand raised by the Abkari Department and that issue would be governed by the decision on the first issue, which we have already affirmed, a decision on other issues is rendered

academic in nature which can be considered and decided in an appropriate case.

17. We, therefore, leave the aforesaid question open for consideration in any other appropriate case. Subject to above, the appeals are dismissed.

18. Pending application(s), if any, shall also stand disposed of.

.....J
[MANOJ MISRA]

.....J
[MANMOHAN]

New Delhi
January 13, 2026

ITEM NO.2

COURT NO.14

SECTION XI-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NOS.10772-10774/2025

[Arising out of impugned final judgment and order dated 09-12-2024 in WA No. 1806/2024, judgment and order dated 09-12-2024 in WA No. 1844/2024 and judgment and order dated 09-12-2024 in WA No. 1870/2024 passed by the High Court of Kerala at Ernakulam]

STATE OF KERALA & ORS.

Petitioner(s)

VERSUS

M/S. ALANKAR ELITE INNS AND HOTELS (P) LTD Respondent(s)

IA No. 82106/2025 - CONDONATION OF DELAY IN FILING, IA No. 82104/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

WITH

SLP(C) No. 21572/2025 (XI-B)

IA No. 162447/2025 - CONDONATION OF DELAY IN FILING, IA No. 162445/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 13-01-2026 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE MANMOHAN

For Petitioner(s) :Mr. Jayanth Muth Raj, Sr. Adv.
Mr. C. K. Sasi, AOR
Dr. Kk Geetha, Adv.
Ms. Meena K Poulose, Adv.

For Respondent(s) :Mr. S.P.Chaly, Sr. Adv.
Mr. Roy Abraham, Adv.

**Ms. Reena Roy, Adv.
Mr. Adithya Koshy Roy, Adv.
Mr. Yaduinder Lal, Adv.
Mr. Saraswata Mohapatra, Adv.
Mr. Himinder Lal, AOR**

**UPON hearing the counsel the Court made the following
O R D E R**

- 1. Leave granted.**
- 2. The appeals are dismissed in terms of the signed order which is placed on the file.**
- 3. All pending applications shall stand disposed of.**

**(KAVITA PAHUJA)
ASTT. REGISTRAR-cum-PS**

**(SAPNA BANSAL)
COURT MASTER (NSH)**