



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 5TH DAY OF AUGUST 2026 / 14TH SRAVANA, 1948

WP(C) NO. 27762 OF 2024

PETITIONER/S:

**SOPHY, AGED 47 YEARS
W/O. KUNJUPALU, KITTAN HOUSE, THANNISSERI P.O.,
IRINJALAKUDA, THRISSUR DISTRICT, PIN - 680701**

**BY ADVS.
SRI.Ranjith Thampan
SRI.V.M.KRISHNAKUMAR
SMT.P.R.REENA**

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY DEPARTMENT OF LABOUR AND
REHABILITATION,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001**
- 2 TODDY WORKERS WELFARE FUND BOARD,
REP. BY CHIEF WELFARE FUND OFFICER,
ULLOOR GARDEN, PAROTTUKONAM,
THIRUVANANTHAPURAM, PIN - 695044**
- 3 DISTRICT LABOUR OFFICER, CIVIL STATION,
KALYAN NAGAR, AYYANTHOLE, THRISSUR, PIN - 680003**

CNR : KLHC011282332024



2026:KER:59925

4 COMMISSIONER OF EXCISE,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM, PIN - 695001

5 SOJIL P.S., S/O. SADANANDAN,
PANIKKATTIL HOUSE, PAPPINOVATOM,
SN PURAM, KODUNGALLUR, THRISSUR DISTRICT-680685
LICENSEE, TODDY SHOP NO.148, PONJANAM,
IRINJALAKUDA RANGE, THRISSUR, PIN - 680702

Addl.R6 SECRETARY,
DEPARTMENT OF TAXES, SECRETARIAT,
THIRUVANANTHAPURAM 695 001
(IS IMPEAED AS ADDITIONAL R6 AS PER ORDER DATED
20/11/2025 IN I.A. NO.04/2025 IN WPC NO.27762/2024)

BY ADV
SHRI.M.C.JOHN
SMT. CHITHRA P.GEORGE, GP
SHRI. RENIL ANTO KANDAMKULATHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

***'C.R'*****JUDGMENT**

The petitioner is the wife of the late K. J. Kunjupalu, who was an employee of toddy shop No.148, Ponjanam, Irinjalakuda Range, Mukundapuram Taluk, Thrissur District. On the death of Kunjupalu on 20.05.2024, the petitioner claimed appointment in the toddy shop where he was working, on compassionate grounds. Such a claim was raised on the basis of Exhibit P5, which is titled as *"2009- ൽ പരിഷ്കരിച്ച കേരള കള്ളു ചെത്ത് വ്യവസായ ബന്ധ ക്രമീകരണ നിയന്ത്രണ ചട്ടങ്ങൾ"*. A perusal of Exhibit P5, which is on record along with I.A. No.1 of 2024 in the above writ petition, will indicate that it has been executed in the form of an industrial settlement between the representatives of the workmen employed in the industry and the representatives of the employers, and was signed in the presence of an Additional Labour Commissioner. It is not



necessary to examine the terms of the settlement in detail for the purposes of this case, as there appears to be no dispute regarding the applicability of its terms and since the petitioner was denied employment solely on account of the operation of Rule 7(37) of the Kerala Abkari Shops Disposal Rules, 2002 (hereinafter referred to as '*the 2002 Rules*'), which prohibits the employment of women in any capacity in a toddy shop. The petitioner has thus approached this Court challenging the constitutional validity of Rule 7(37) of the 2002 Rules.

2. Sri. Ranjith Thampan, the learned Senior Counsel appearing for the petitioner, on the instructions of Adv. V. M. Krishnakumar, submits that the question before this Court is no longer *res integra*. It is submitted that Rule 7(37) of the 2002 Rules initially prohibited the employment of women in foreign liquor shops as well. It is submitted that this Court struck down the prohibition insofar as it



related to foreign liquor shops in ***Sanuja and Others v. Kerala State Beverages Corporation Ltd. and Others, 2017(1) KLT 44***. It is submitted that in ***Sanuja (supra)***, this Court followed the judgment of the Supreme Court in ***Anuj Garg and Others v. Hotel Association of India and Others, (2008) 3 SCC 1***. It is submitted that a similar Rule in the Foreign Liquor Rules, 1953 (Rule 27A of the Foreign Liquor Rules) was struck down by this Court in the judgment reported as ***Dhanyamol v. State of Kerala, 2015 (4) KHC 791***. It is submitted that in the light of the law laid down in the aforesaid judgments, Rule 7(37) of the 2002 Rules cannot be sustained and ought to be struck down as it is a clear violation of Articles 14, 15, 16 and 21 of the Constitution of India.

3. Adv. Chithra P. George, the learned Government pleader appearing for the official respondents, submits that the impugned Rule was clearly intended to



protect women from being exploited and being subjected to any sort of harassment at the workplace. Referring to the observations in the unreported common judgment of this court dated 12.02.2025 in WP(C) No. 14042 of 2022 and 3686 of 2023, she pointed out that toddy shops are often situated at very remote places and that the rule-making authority was bound to ensure that women are not employed in such toddy shops to ensure their safety and well-being. It is submitted that Article 14 of the Constitution of India only prohibits class discrimination and does not prohibit a reasonable classification. The learned Government pleader placed reliance on the judgment of the Supreme Court in ***Mohd. Hanif Quareshi and Ors. v. The State of Bihar, AIR 1958 SC 731***, in support of her contention that reasonable classification is always permissible in law. The learned Government Pleader placed reliance on the judgment of the Supreme



Court in ***C. B Muthamma v. Union of India, (1979) 4 SCC 260*** and submitted that men and women cannot be treated as equal in all occupations, since the requirements of a particular employment, the sensitivities of sex, the peculiarities of different social sectors and the handicaps of either sex may warrant differential treatment. It was further contended that, where such differentiation is justified by relevant considerations, the same would not offend the principle of equality. She then referred to ***Kerala Public Service Commission v. Manjusha, 2009 (4) KLT 878*** to contend that a Division Bench of this Court had taken the view that women could be excluded from consideration for the post of Night Watchman. Placing reliance on the said judgment, she contended that, having regard to the nature and requirements of particular posts, exclusion of women from certain employment opportunities may, in appropriate circumstances, be justified. She



further relied upon the judgments of this Court in ***A. M Shaila v. Chairman, Cochin Port Trust, 1995 KHC 522*** and ***Vanitha Avakasa Samrekshana Action Council, Cochin and Ors v. Chairman, Cochin Port Trust and Ors, MANU/KE/0993/2001*** to contend that, while discrimination against a person solely on the ground of sex is unconstitutional, the State is not precluded from making distinctions based on sex where such distinction is founded on other relevant considerations. The learned Government pleader also submitted that a similar issue was considered by a Division Bench of the Punjab and Haryana High Court in ***Raghubans Saudagar Singh v. The State of Punjab and Ors., AIR 1972 P&H 117***. It is submitted that, in that case, the Court was considering whether a prohibition in the employment of women in men's jails could be struck down as discriminatory and violative of Article 16 of the Constitution of India. It is submitted that the Division



Bench of the Punjab and Haryana High Court found that while no discrimination on the ground of sex alone is permissible, disparities of either sex, which patently add to or detract from the capacity and suitability to hold a particular post or posts, the State would be entitled to consider this factor in conjunction with others and bring in a suitable regulation. It is submitted that the said judgment also holds that where the impugned provision has a clear *nexus* to the objects sought to be achieved, it cannot be held to violate the Constitution. The learned Government Pleader also submitted that there is always a presumption of constitutionality and the Court should generally lean in favour of upholding the constitutionality of the provisions as the legislature and its delegates must be deemed to be aware of the needs of its people, especially when laws are made to deal with problems made manifest by its experience and where the discrimination is based on



adequate grounds.

4. The learned Government Pleader also submits that liquor trade is *res extra commercium* and therefore, the petitioner cannot claim any fundamental right. The learned Government Pleader also submitted that the provisions of Article 19(1)(g) r/w. 19(6) and the provisions of Articles 39(e) and 21 of the Constitution of India place an obligation on the State to provide protection to women, and the impugned Rule can only be seen as a discharge of such obligation by the State.

5. Sri. M.C. John, the learned counsel appearing for the 5th respondent, supports the contentions taken by the learned Government Pleader and has also contended that this Court in ***Sanuja*** (*supra*) had clearly refrained from striking down Rule 7(37) of the 2002 Rules to the extent it applies to toddy shops. It is pointed out that there is a structural difference between a toddy shop and a



foreign liquor shop. It is submitted that in a foreign liquor shop there is no loose sale of liquor, and the problems that may arise in toddy shops may not arise in a foreign liquor shop. In other words, it is submitted that this Court must keep in mind the above difference between a toddy shop and a foreign liquor shop while deciding whether the law laid down by this Court in ***Sanuja*** (*supra*) must be extended to toddy shops also.

6. Having heard the learned Senior Counsel appearing for the petitioner, the learned Government Pleader and the learned counsel appearing for the 5th respondent, I am of the opinion that the petitioner is entitled to succeed.

7. In ***Anuj Garg*** (*supra*), the Supreme Court was considering the constitutional validity of the Punjab Excise Act, 1914, which prohibited employment of any man under the age of 25 years or any woman in any part of such



premises in which liquor or intoxicating drug is consumed by the public. The following observations of the Supreme Court (paragraph numbers given as they appear in the SCC report) are of considerable significance in the case on hand:-

“24. The impugned provision provides for wide restrictions. It prohibits employment of any woman in any part of the premises where liquor is being served. It would prohibit employment of women and men below 25 years in any of the restaurants. As liquor is permitted to be served even in rooms, the restriction would also operate in any of the services including housekeeping where a woman has to enter into a room; the logical corollary of such a wide restriction would be that even if service of liquor is made permissible in the flight, the employment of women as air hostesses may be held to be prohibited.

25.

26. When a discrimination is sought to be made on the purported ground of classification, such classification must be founded on a rational criteria. The criteria which in absence of any constitutional provision and, it will bear repetition to state, having regard to the societal conditions as they prevailed in early 20th century, may not be a rational criteria in the 21st century. In the early 20th century, the



hospitality sector was not open to women in general. In the last 60 years, women in India have gained entry in all spheres of public life. They have also been representing people at grassroot democracy. They are now employed as drivers of heavy transport vehicles, conductors of service carriages, pilots, et. al. Women can be seen to be occupying Class IV posts to the post of a Chief Executive Officer of a multinational company. They are now widely accepted both in police as also army services.

27-42.....

43. Instead of prohibiting women employment in the bars altogether the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is the State's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as the one embodied under Section 30) from societal conditions would be oppressive on the women and against the privacy rights.

44-49.....

50. The test to review such a protective discrimination statute would entail a two-pronged scrutiny:

(a) the legislative interference (induced by sex



discriminatory legalisation in the instant case) should be justified in principle,

(b) the same should be proportionate in measure.”

In the facts of this case, it is not possible to hold that the impugned Rule is either justified in principle or is proportionate in nature. As observed by the Supreme Court, instead of prohibiting the employment of women in toddy shops altogether, the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated, and it should also ensure circumstances of safety which inspire confidence in women to work wherever they want and choose any profession they want. In ***Sanuja*** (*supra*), this Court followed the judgment of the Supreme Court in ***Anuj Garg*** (*supra*) and declared as follows:-

‘9. Having gone through the decisions relied upon by the learned counsel for the petitioners, I am of the opinion that the condition contained in the notification and the stipulation in R.7(37) of the Rules as also condition No. 36 contained in the Foreign



Liquor Rules as well as in Ext. P2 Government Order to the effect that women cannot be engaged to work in foreign liquor shops are violative of Art.14 and Art.15 of the Constitution of India and are therefore unsustainable.”

The decision in ***Mohd. Hanif Quareshi*** (*supra*) on which considerable reliance was placed by the learned Government Pleader to argue that Art.14 of the Constitution of India forbids class legislation and it does not forbid reasonable classification for legislation does not, in my view, come to the aid of the State to justify the prohibition contained in Rule 7(37) of the 2002 Rules, as I have already concluded that the impugned Rule is neither justified in principle nor is it proportionate in nature.

8. In ***Muthamma*** (*supra*), certain provisions of the Indian Foreign Service (Conduct & Discipline) Rules, 1961 were under challenge on the ground that they violate Articles 14, 15 and 16 of the Constitution of India as Rule 8(2), *inter alia*, provided that a woman member of the



service shall obtain the permission of the Government in writing before her marriage is solemnised and that at any time after the marriage, a woman member of the service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service and Rule 18(4) provided that no married woman shall be entitled as of right to be appointed to the service. Paragraph 7 of the judgment reads thus:-

“7. We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter-affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And,



likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules."

While the learned Government Pleader may be right in contending that the observations in paragraph 7 recognise that *'requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity'* that by itself cannot justify the Rule under challenge in this case, as the above observation only reiterates that except where the differentiation is demonstrable, the rule of equality must govern. In the facts of this case, the differentiation is clearly not demonstrable.

9. In ***Manjusha*** (*supra*), the writ petitioner was a candidate included in the ranked list for the post of Night Watchman, but was superseded by another candidate solely on the ground that she was a woman. The Public



Service Commission sought to justify the exclusion by relying on the Note to Rule 5(b) of the Special Rules for the Kerala Last Grade Service. Though the petitioner succeeded before the learned Single Judge, in appeal, the Division Bench, having regard to the nature of the duties attached to the post, held that such posts could be considered unsuitable for women candidates and accordingly allowed the appeal. The Punjab and Haryana High Court in ***Raghubans Saudagar Singh*** (*supra*) has approved the prohibition of employment of women in men's jails. The decision in ***A. M Shaila*** (*supra*) relates to the appointment of Shed Clerks in the Cochin Port Trust and the exclusion of women from consideration. Similarly, in ***Vanitha Avakasa Samrekshana Action Council*** (*supra*), the question was regarding the exclusion of women from consideration for appointment as Shore Mazdoors in the Cochin Port Trust. However, the observations in the



judgments in ***Manjusha*** (*supra*), ***A. M. Shaila*** (*supra*), ***Vanitha Avakasa Samrekshana Action Council*** (*supra*) and ***Raghubans Saudagar Singh*** (*supra*) and the findings therein have no application to the facts of this case. In those cases, the Court concluded that it would be hazardous for women to be employed as Night Watchmen/Shed Clerks and Shore Mazdoors/in jails and it was legitimate for the State to prohibit women from holding such posts in order to ensure efficiency in public service. Such a situation does not arise in the facts of this case. While it is suggested that the impugned Rule was incorporated keeping in mind the safety of women, there is no material to suggest that the considerations which weighed with the Court while deciding those cases apply to the facts of this case also. Moreover, in light of the findings of the Supreme Court in ***Anuj Garg*** (*supra*), the view expressed in the cases referred to above must be held



confined to the facts of those cases alone. For the same reasons, I find no support for the impugned Rule in the unreported common judgment of this Court dated 12.02.2025 in WP(C) Nos. 14042 of 2022 and 3686 of 2023.

10. The contention raised on the basis that trade in liquor is ***Res extra commercium*** cannot be accepted. A similar contention was taken in ***Anuj Garg (supra)*** and it was held:-

"27. Occupation/service in the management of hotel industry is a specialised job. It requires specialised skill. To deprive a large section of successful young men and women from obtaining any job for which they have duly been trained, in our opinion, would be wholly unjust. The State cannot invoke the doctrine of "res extra commercium" in the matter of appointment of eligible persons. The said principle could have been invoked if the State intended to adopt a policy of prohibition. It is one thing to say that the trade in liquor is regulated but it is another thing to say that such regulations which are principally in the area of manufacture, sale, export and import of intoxicants should be allowed to operate in other fields also."



For the sake of reiteration, it may be stated that while the State has an obligation to ensure that women are not subjected to harassment and must have a safe environment to work, such a responsibility on the State machinery cannot be achieved by prohibiting women from working in whatever industry they choose to work, as observed by the Supreme Court in **Anuj Garg** (*supra*).

11. In such circumstances, I have no hesitation to hold and declare that Rule 7(37) of the 2002 Rules is unconstitutional and violative of Articles 14, 15, 19 and 21 of the Constitution of India. In the light of the aforesaid declaration, any condition that may have been imposed in the license issued to the 5th respondent on the basis of the provisions of Rule 7(37) of the 2002 Rules also cannot sustain. The claim of the petitioner shall be considered *dehors* the provisions of Rule 7(37) of the 2002 Rules.

CNR : KLHC011282332024



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The writ petition is allowed in the manner
indicated above.

Sd/-

GOPINATH P.

JUDGE

ajt

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2026:KER:59925

APPENDIX OF WP(C) NO. 27762 OF 2024**PETITIONER EXHIBITS**

- Exhibit P1** TRUE COPY OF THE REGISTRATION CUM IDENTITY CARD ISSUED UNDER KERALA TODDY WORKERS WELFARE FUND SCHEME 1969 TO KUNJIPALU.K.J
- Exhibit P2** TRUE COPY OF THE DEATH CERTIFICATE OF PETITIONER'S HUSBAND KUNJUPALU DATED 31.05.2024
- Exhibit P3** TRUE COPY OF THE MARRIAGE CERTIFICATE OF PETITIONER AND KUNJUPALU DATED 06.05.2005
- Exhibit P4** TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO RESPONDENTS 1 TO 3 DATED 17.07.2024 BEFORE RESPONDENTS 1 TO 3
- Exhibit P5** TRUE COPY OF THE KERALA TODDY TAPPING INDUSTRIAL RELATIONS REGULATION RULES REVISED IN 2009 WITH TYPED COPY

**RESPONDENTS
EXHIBITS**

- Exhibit R1(a)** True copy of Form of Option dated 20.06.2014 submitted by the petitioner.
- Exhibit R1(b)** True copy of covering letter bearing No.RWF/173 dated 22.09.2014 forwarded by Assistant Manager, Rubber Wood Factory to the Manager (Panda), Plantation Corporation of Kerala Ltd.
- Exhibit R1(c)** True copy of letter dated 26.12.2011 signed by the petitioner.
- Exhibit R1(d)** True copy of letter Panda/F/1090 dated 04.06.2016 issued to the petitioner.
- EXHIBIT R5(a)** A TRUE COPY OF THE LICENCE NO.320 DATED 01.10.2023 IN RESPECT OF TS 0.45/2023-'PONJANAM' ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, THRISSUR
- EXHIBIT R5(b)** A TRUE COPY OF THE JUDGMENT DATED 21.08.2024 IN WPC NO.21407/2024 OF THIS HONBLE COURT