
(2002) 01 KL CK 0034
In the High Court Of Kerala
Case No : W.A. No. 178 of 2001

Abraham

APPELLANT

Vs

Assistant Excise Commissioner

RESPONDENT

Date of Decision : 14-01-2002

Acts Referred:

Kerala Foreign Liquor Rules, 1953 — Rule 14, 24

Citation : (2002) 2 ILR (Ker) 6

Hon'ble Judges : B.N. Srikrishna, C.J;K. Thankappan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Srikrishna, C.J.—Appeal admitted. Notice made returnable forthwith. Respondents waive service through the Government Pleader. By consent appeal called out for hearing and heard.

2. This appeal impugns the order of the learned single Judge dated 16.10.2000 dismissing the Original Petition. The appellant is the original petitioner who held an FL-3 licence upto 31.3.1988. The licence lapsed thereafter as he did not have the financial facility to bring the hotel upto the required star standard and renew the licence further. Thus, the bar of the appellant remained defunct from 1988-89 onwards. On 25.12.1995, the appellant made an application, Ext. P2 for renewal of the FL-3 licence and to shift the bar to another location in the same city. Nothing happened thereafter till he moved this Court in O.P. No. 31766 of 1999. Pursuant to a direction made therein, the Excise Commissioner considered the application of the appellant and rejected the same by order dated 17.3.2000 (Ext. P4). Being aggrieved thereby, the petitioner preferred O.P. No. 10403 of 2000 which has been dismissed by the impugned order of the learned Single Judge. Hence, the petitioner has come up in appeal.

3. The learned counsel for the appellant placed reliance on Rule 14 of the Foreign Liquor Rules (hereinafter referred to as "the Rules") which reads as under:

"If any of the licences referred to in Rule 13 is granted in the course of a financial year, the full annual fee shall be paid and the licence shall expire at the end of the financial year.

Provided that renewal of the licence of Bar Hotels which did not/do not function on the expiry of valid licence can be permitted on payment of an additional rental of Rs. 25,000/- (Rupees Twenty Five Thousand only) for each year of defunction, over and above the annual rental of the year of renewal, subject to the observance of other rules in this regard."

4. Learned counsel for the appellant contends that the proviso to Rule 14 of the Rules is specifically intended for renewal of defunct licences by levying a penalty of Rs. 25,000/- for each year of defunction and, therefore, a case of such renewal which falls within Rule 14 of the Rules cannot be treated on par with an application for fresh licence. Learned counsel contends that, for issuance of a fresh licence, there is no question of Rs. 25,000/- per year.

5. We are unable to accept the contention for more than one reason. In the first (SIC) lace, the proviso permits renewal upon payment of penal fee "subject to the observance (SIC) other rules in this regard". Obviously, the other rules have also to be complied with. The Proviso to Rule 14 of the rules does not say that the rules to be complied with are (SIC) rules which were in existence on the date on which the licence was issued. In our view, apart from payment of penal fee, the rules which are in existence on the date on which renewal is sought are required to be complied with. We re fortified in our view by a judgment of the Division Bench of this Court in Writ Appeal No. 2990 of 2000 (decision dated 26.6.2001 per P.K. Balasubramanyan and T.M. Hassan Pillai, JJ.).

The Division Bench in the above judgment took the view that no one has a fundamental right to trade in liquor as reiterated by the Supreme Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, Licence to trade in liquor is merely a privilege given to the licensee and, on the expiry of the licence, no right survives in the licensee, if the licence has not been renewed. The Division Bench was of the view that renewal of licence stands practically on the same footing as grant of fresh licence and that, in a case where the licence had become defunct or had not been renewal for a long period of time, the claimant cannot have a right of renewal by relying on the proviso to Rule 14 of the Rules by contending that, however long the period of disruption may be, the authority is obliged to renew the licence. We respectfully agree with this view.

6. We are of the view that the excise authorities rightly understood the proviso to Rule 14 as requiring compliance with the rules which were in existence on the date on which the application was made, that is, in the year 1995. The learned Judge found nothing wrong with the action taken by the authorities. The first contention fails.

7. The next contention urged by the learned counsel is that the application dated 25.12.1995, Ext. P2, had twin prayers. First, there was a prayer for renewal of

licence and secondly, there was a prayer for permission to shift the bar from one location to another within the same Corporation limits. Learned counsel contended that, even if the first prayer cannot be granted, there is no reason for not granting the second prayer under Rule 24 of the Rules. In our view, this contention is misconceived. Rule 24 of the Rules is intended to operate only where the licence exists. Rule 24 merely empowers the Excise Commissioner to permit or order the transfer of any shop from one locality to another, within the town or taluks as the case may be or to order any shop to be closed in the interests of public peace or morality or on grounds of expediency.

8. The conditions stipulated in rule 24 can only apply for a running shop with a valid licence. As far as the appellant is concerned, there was no shop at all and the licence had expired long ago on 31.3.1988. Unless the appellant succeeds in getting the licence renewed, there is no question of applying Rule 24 and permitting the shifting of the shop. On that ground also, the authorities were right in rejecting the application.

9. Learned counsel relied on two judgments of this Court reported in *State of Kerala v. Abdulla Kunhi* 1998 (2) KLJ 620 and *M.R. Tourist Home v. State of Kerala* 1999 (2) KLJ 1140. Having read these two judgments, we are of the view that the Division Benches which decided the judgments were not even called upon to go into the contentions urged here, but the Division Bench which decided W.A. No. 2990 of 2000 went squarely into and decided the first contention.

In the result, we find no reason interfere with the judgment of the learned Single Judge. The Writ Appeal is accordingly dismissed. There will be no order as to costs.