(2002) 02 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No. 6103 of 2002

Aryans River Resorts Kerala Pvt. Ltd. — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Constitution of India, 1950 — Article 47
Kerala Foreign Liquor Rules, 1953 — Rule 13, 13(3)

Citation : (2002) 02 KL CK 0019

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Vincent Panikulangara, for the Appellant; Rajan Joseph, A.A.G. and George Mecheril, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioner had evolved a project to set up a resort called "Aryans River Resorts Kerala Pvt. Ltd." and one among the objectives of this project is to set up a hotel with bar. The project is almost in the process of completion. On completion he is intending to apply for an FL 3 licence. Taking into account the present policy of the Government, the Foreign Liquor Rules were amended. The amendment of the Foreign Liquor Rules was effected as per Ext. P5 dated 20.2.2002 substituting a new proviso in place of the last proviso to Rule 13(3) of the said Rules. It is to the effect that: "no new licences under this rule shall be issued". Almost a similar proviso under Rule 14 is also omitted by Ext. P5. Ext. P5 further provides that the amendment effected thereby shall be with retrospective effect from 1.7.2001. The petitioner challenges Ext. P5.

2. Two grounds are urged before me. (1) Because of the amendment no new licence will be granted. This will create a monopoly for the existing entrepreneurs to continue their bar hotel. Chances for the new entrepreneurs are thus denied and deprived by reason of this amendment. The petitioner started the project work based on the then policy of the Government, since Rule 13(1) permits grant

of FL3 licence subject to certain conditions. The petitioner''s is a multicrore project. Now everything will be in vain if no new licence is granted. The second contention raised by the petitioner is that the parent enactment does not clothe the Government with the power to amend the rules retrospectively as is done by Ext. P5 with effect from 1.7.2001.

3. Of course, there is some force in the second contention urged by the petitioner. The rule making power vested in the Government is as contained in Section 29 of the Abkari Act. The said section provides that "Government may make rules for the purpose of carrying out the provisions of this Act". The Section further makes it clear that "in particular and without prejudice to the generality of the foregoing provision, the Government may make rules" in respect of the matters specified as item (a) to (r) mentioned in Sub-section (2) of Section 29. This Section does not enable the Government to frame or amend any rule retrospectively.

4. But the retrospectivity will affect only those persons who had been granted licence on any day from 1.7.2001, the date of retrospectivity and until the issuance of Ext. P5 on 20.2.2002. Admittedly by the petitioner, the petitioner had not been granted licence during the said period. The petitioner had not even applied for licence till even now. Retrospectivity may adversely affect, perhaps, a person who have obtained a licence after 1.7.2001 as he may not get it renewed after 1.4.2002 based on Ext. P5. As mentioned above, the petitioner does not have licence. He is yet to apply for one. Therefore retrospectively does not as such in any way affect him. I need not examine the challenge against the retrospectivity at the instance of the petitioner who does not stand adversely affected in any way by that retrospectivity, as the petitioner is only thinking to apply for licence. The petitioner need only worry about the retrospective operation of Ext. P5.

5. Therefore, what is relevant is the first contention regarding the ban on issuance of new licences by deleting the existing last proviso to Sub-rule (3) of Section 13 of the Foreign Liquor Rules and substituting a new proviso that "no new licences under this Rule shall be issued." Monopoly is created in favour of the existing liceneees. In other words, new entrants are prohibited from this field. This is against the intend of Rule 13 itself. Rule 13 provides for grant of licences subject to certain conditions. When the proviso is to the effect that no new licences under this rule shall be issued hereafter, that operates as the deletion of Rule 13 itself. A proviso cannot operate as deletion of the rule itself. This is arbitrary, the petitioner contends. It is thus against the rule itself, which provides for grant of licence.

6. I am unable to accept this contention. The licences so far granted as per Rule 13(3) are only for the year concerned. Those licences have to be renewed every year. The proviso newly introduced is that "no new licences under this rule shall be issued". That means existing licences can be renewed. This shall, necessarily, be subject to the conditions contained in Rule 13 itself. Therefore, the proviso

substituted as per Ext. P5 is not totally contrary or interfering with the operation of Rule 13.

7. Of course, no new licence will be issued hereafter. There was provision as contained in the deleted proviso to grant new licences including in places of the defunct licences. Now that provision is taken away and no new licences shall be issued hereafter. There is no challenge on the ground of legislative competence. When the rule making authority has done so as per Ext. P5 necessarily it has to be taken as a measure in terms of Article 47 of the Constitution of India contained in Fart IV the Directive Principles of the State Policy. It is the constitutional duty of the every State in terms of that Article, that it shall endeavour to bring about prohibition of the consumption except for medical purposes, of intoxicating drinks and of drugs which are injurious to health. Thus Ext P5 amendment introduced substituting a new proviso that no new licences under the Foreign Liquor Rules shall be issued is a bold step taken by the State Government through in its slow pace to achieve the Constitutional good under Article 47 of the Constitution of India.

Original Petition therefore fails, dismissed.

