

(2002) 07 KL CK 0091

In the High Court Of Kerala

Case No : W.A. No. 910 of 2002, O.P. No. 7112 of 2002 and connected cases

B. Six Holiday Resorts (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Kerala Foreign Liquor Rules, 1953 — Rule 13(3)

Citation : (2003) 1 KLT 984

Hon'ble Judges : B.N. Srikrishna, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : L. Nageswara Rao, C.C. Thomas, M.G. Karthikeyan, Nireesh Mathew, Joseph George, K.P. Dandapani, Santhosh Mathew, Elvin Peter, Deepu Thankan and Leena Joseph, for the Appellant; M. Ratna Singh, General, for the Respondent

Judgement

B.N. Srikrishna, C.J.—These connected cases raise the same issue of law, though under slightly differing factual matrices. It would be convenient to dispose of all these cases by a common judgment. For the purpose of appreciating the factual matrix in which the question of law arises, it would be sufficient to refer in detail to the facts in O.P. No. 7112 of 2002.

2. O.P. No. 7112 of 2002

(a) The petitioner is a private limited company running resort hotels in different areas and does business in the tourism industry within the State of Kerala. It has constructed resorts near Munnar, a well known tourist holiday place in Kerala. by investing huge amounts. The hotel resort at Munnar is classified as "approved restaurant" by the Central Government in the Ministry of Tourism. The respondents are the State of Kerala and the Commissioner of Excise.

(b) On 11.12.2000 the petitioner applied for an FL-31 licence which would permit it to serve liquor in its restaurant. This application was not processed expeditiously. The petitioner, therefore, filed Writ Petition O.P. No. 824 of 2001 for a direction to the respondents to expeditiously consider its application for

FL-3 licence. This, Original Petition was disposed of by a judgment dated 9.1.2001 directing the respondents to consider the application of the petitioner on merits within three weeks from the date of receipt of a copy of the judgment. At the time when the application was made one Sunil Kumar was the Managing Director of the petitioner company and he had been convicted in an Abkari offence. The said Sunil Kumar resigned from the post of Managing Director and one V. Anil Kumar was appointed as the new Managing Director. Despite the said information being furnished to the respondents, the application of the petitioner was once again rejected by order dated 19.5.2001 on the ground that the Managing Director had a conviction under the Abkari Act.

(c) The petitioner filed another Writ Petition O.P. No. 17106 of 2001 challenging the second rejection order. This Original Petition was disposed of by judgment dated 20.6.2001 in which this Court pointed out that the disqualification of the erstwhile Managing Director could not debar consideration of the application made by the petitioner which was now headed by a new Managing Director about whom there was no such difficulty. The court, therefore, directed that the respondent Commissioner should hear the petitioner and make a fresh order on the application.

(d) On 6.10.2001 the application of the petitioner was again rejected on the following four grounds:

(i) The petitioner was only an "approved restaurant" and not a "classified restaurant" within the meaning of Rule 13(3) of the Foreign Liquor Rules (hereinafter referred to as "the Rules").

(ii) The appropriate facilities as contemplated by Rule 13(3) of the Rules were not provided in the petitioner's hotel.

(iii) Only hotels run by the Keraia Tourism Development Corporation and the Indian Tourism Development Corporation were entitled to FL-3 licence under Rule 13(3) of the Rules.

(iv) In any event, it was the policy of the Government not to grant any fresh licence.

(e) The petitioner challenged the order dated 6.10.2001 rejecting his application by O.P. No. 31993 of 2001 before this court. This Original Petition was disposed of by a learned single Judge by the judgment dated 6th November, 2001 (Ext. PI). The learned Single Judge disagreed with the three grounds put forward for rejection. Relying on a judgment of the Division Bench of this court in State of Kerala and Ors. v. Sahadevan and Ors. 1992 (2) KLJ 927 he held that "classified restaurant" in Rule 13 could only mean "approved restaurants" and the FL-3 licence could not be rejected on this ground. The learned Single Judge held that the petitioner had a right to be considered for grant of FL-3 licence as long as it had complied with the statutory requirements. However, the learned Single Judge was of the view that if the Government had bona fide taken a policy decision not

to grant FL-3 licence for the time being, then a mandamus could not be issued to the State Government to compel it to grant an FL-3 licence contrary to its policy. In this view of the matter, the learned Single Judge dismissed the Original Petition.

(f) The petitioner carried the matter in appeal by W. A.No. 3975 of 2001. This appeal was disposed of by a Division Bench of this court by its judgment dated 14.12.2001 (Ext. P2). The Division Bench held that, on the basis of a vague statement of Government policy, the statutory authority and the State Government could not abdicate their functions under the validly framed Rule s. Hence, the Division Bench disagreed with the learned Single Judge that the application filed by the petitioner was validly rejected on the ground of policy consideration. The Division Bench set aside the order of the learned Single Judge and directed the Excise Commissioner to decide the petitioner's application for FL-3 licence within a period of two weeks by a speaking order in accordance with the provisions of Rule 13(3) of the Rules.

(g) On 19.12.2001 the petitioner made another representation placing on record all the aforesaid facts and reiterating that it was entitled to be considered for grant of a FL-3 licence as per Rule 13(3) of the Rule which prevailed on the date of its application and continued till that date.

(h) By an order made on 27th December, 2001 the Excise Commissioner once again rejected the application of the petitioner. Though the Excise Commissioner purportedly stated in the said order that the petitioner's case had been examined in detail in the light of the Division Bench judgment of this Court in W.A.No. 3975 of 2001, unfortunately, the Commissioner reiterated the same ground, viz. that the status of "restaurant approved" from the Ministry of Tourism Government of India, did not qualify for the status of "classified restaurant" under Rule 13(3). On this ground the application was rejected.

(i) The Petitioner filed C.C.C. No. 60 of 2002 alleging contempt of court on the part of the respondents by deliberately ignoring the judgment of the Court in O.P. No. 31993 of 2001 and reiterating the same grounds which had been overruled by this Court.

(j) When the contempt case C.C.C. No. 60 of 2002 came up for hearing before a Division Bench of this Court, the Division Bench, after hearing the learned Advocate General, went on record that it was not satisfied that the order of the Commissioner of Excise dated 27.12.2001. was not prima facie contempt of the Court. However, on being told that the old Excise Commissioner retired and a new one had just taken charge, in order to give a last chance, the Division Bench adjourned the matter to 22nd February, 2002, expressing hope that, by the time the matter appeared next, the requisite order would have been passed by the new Excise Commissioner.

(k) On 20.2.2002 the Government of Kerala purportedly in exercise of its powers u/s 18A read with Sections 24 and 29 of the Abkari Act I of 1077 amended Rule

13(3) by adding a proviso to the effect: "on new licences under this rule shall be issued" and declared that the amendment to Rule 13(3) would come into effect from 1.7.2001. A copy of the notification is produced at Ext. P6.

(I) The application of the petitioner was finally rejected by the order of the Excise Commissioner dated 20.2.2002 (Ext. P7) by placing reliance on the amended rules.

3. Being aggrieved, the petitioner is before this court to challenge the validity of Foreign Liquor (Amendment) Rule s, 2002 dated 20.2.2002 (Ext.P6) adding the proviso to Sub-rule (3) of Rule 13 of the Rule s.

4. The learned senior counsel for the petitioner, Sri. Nageswara Rao, urged four contentions in support of the petition:

(A) that the action of the respondents in rejecting the application of the petitioner by successive orders and, finally, amending the proviso by the notification dated 20.2.2002 was vitiated by bad faith, was unreasonable and arbitrary and liable to be interfered with by this court;

(B) hat the proviso added to Rule 13(3) actually goes beyond the main provision of Rule 13 and is, therefore, bad;

(C) that the proviso was amended only to defeat and by-pass the judgment of this court, as with effect from 1.4.2002 even the said proviso had been deleted; and,

(D) giving retrospective effect to the proviso is beyond the rule making power of the State Government.

5. Ground (A) :

In support of this ground, the learned counsel for the petitioner relied on the judgment of the Supreme Court in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, . In paragraph 47 of this judgment the Supreme Court pointed out that the power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous, or directed to an unauthorised end, or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules, they are unreasonable and ultra vires", (as observed by Lord Russel of Killowen, C.J. in Kruse v. Johnson 1898 2 QB 91. Further, in paragraph 52 of the judgment the Supreme Court summarised the law by observing thus: "The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in

conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it".

6. We are unable to accept this contention of the learned counsel for the petitioner. Though, as a general principle, the Legislature cannot be imputed with bad faith, bad faith can be attributed to the rule making authority, which is the executive. In the instant case, merely because the amendment was made retrospectively it is difficult to infer bad faith, unreasonableness or arbitrariness on the part of the rule making authority. Nor is it possible for us to hold that the rule was amended only for the purpose of defeating the right of the petitioner from being considered for a FL-3 licence. Upon our query, the learned Advocate General clarified that, for the Abkari year 2001-02, no FL-3 licence had been granted during the period from 1st April, 2001 to 30th June, 2001, nor during the period from 1st April, 2001 to 20th February, 2002. It is, however, submitted that whatever FL-3 licences were validly held as on 31st March, 2001 were renewed in the Abkari year 2001-02 and also during the current Abkari year 2002-03, despite there being further amendment to Rule 13. If it was only a question of challenge to the action of the executive in repeated rejection of the applications being declared as unreasonable, there might have been an arguable case for the petitioner. The present petition, however, impugns the validity of the retrospective amendment made in Rule 13(3) of the Rule by the notification dated 20.02.2002 (Ext. P6). We are unable to accept that the retrospective amendment, per se, can either be characterised as vitiated by bad faith, unreasonableness or arbitrariness or that it can be struck down on any such ground.

7. Ground (B) :

Learned counsel then contended that the added proviso has the effect of nullifying the main provision of Rule 13(3) and, therefore, it is bad and it must be struck down. He relied on the observations of the Supreme Court in *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, . at paragraph 27. In our view, this judgment is no authority for the proposition canvassed. This judgment was concerned with the interpretation to be put on a proviso and, for the purpose of construction of a statute, what would be the ambit of an explanation or proviso to the statutory provision. In connection with this the Supreme Court observed that a proviso is meant to be an exception to something within the main enactment or to qualify something enacted there in which but for the proviso would be within the purview of the enactment. In fact, in paragraph 30, at sub-paragraph (c), the Supreme Court has reproduced from "Sarathi on Interpretation of Statutes", where the view has been expressed "Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers".

8. Again, in *Ayyasami Vs. State of Tamil Nadu*, the exercise was one of

interpreting the import of a proviso. In paragraphs 14 and 15 the Supreme Court reiterated the cardinal principle of interpretation that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. The proviso is to carve out an exception to the main enactment.

9. In our judgment, these two authorities are not authorities for the proposition canvassed, namely that the proviso which has the result of defeating the main enactment is bad in law. In fact, the boot seems to be on the other foot. If the plain language of the proviso leads to a result of annulment or repeal of the main section, the courts are bound to interpret it to be so. The proposition canvassed by the learned counsel for the petitioner cannot, therefore, be accepted.

10. Ground (C) :

In our view, the contention that the proviso was retrospectively amended so as to defeat the import of this court's judgment does not have much substance. The question is whether the State Government has the power to retrospectively amend the rule by adding the proviso. Even if it was done to get over the difficulty created by the inconvenient judgment, if it is valid, and operates to remove the hurdle created by the judgment of a court, by itself, the amendment cannot be declared to be bad. It is difficult to accept this contention also.

11. Ground (D) :

The learned counsel appears to be on firmer ground when he contends that the notification dated 20.2.2002 is bad to the extent it gives retrospective effect to the proviso added to Rule 13(3) of the Rules. In *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, (paragraph 5), the Supreme Court observed: "The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the Legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the persons or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect. (See in this connection *Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others*, *Modi Food Products Ltd. Vs. Commr. of Sales Tax, U.P.*, and *General S. Shivdev Singh and Anr. v. The State of Punjab and Ors.* 1959 PLR 514."

12. In *Hukam Chand etc. Vs. Union of India (UOI) and Others*, (vide Paragraph 8), the Supreme Court pointed out that the underlining principle is that, unlike sovereign legislature, which has power to enact laws with retrospective operation, the authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The

difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled.

13. In *Regional Transport Officer, Chittoor and Others Vs. Associated Transport Madras (P) Ltd. and Others*, (paragraph 4), the Supreme Court observed: "The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication". To same effect is the judgment of a Full Bench of this Court in *R.K.V. Motors & Timbers v. R.T.O.* 1982 KLT 166.

14. With this formidable array of precedents the learned Advocate General found it difficult to sustain the retrospective effect given to the proviso added by the amendment notified on 20.2.2002, since there is no provision in the Kerala Abkari Act, which empowers the rule making authority to make rules retrospectively. The learned Advocate General, therefore, frankly conceded that he would not be able to sustain the validity of the retrospective effect given to the proviso in Rule 13(3).

15. In the result, we accept and uphold the contention of the petitioner that the retrospective effect given to the proviso added to Rule 13(3) of the Rules from 1st July to 19th February, 2002 is bad in law and that the rule can be validly upheld only as becoming effective from 20.2.2002. We accordingly strike down the aforesaid retrospective effect of the proviso to Rule 13(3) of the Rule s.

16. The direct consequence of striking down the retrospective effect given to the newly added proviso would mean that, at no point of time when the successive applications of the petitioner were rejected was there any inhibition against consideration of the petitioner's application for grant of FL-3 licence on the ground of changed policy. The learned counsel for the petitioner, therefore, contends that the application of the petitioner ought to be considered and granted on the basis of the law which stood on the date of his first application on 11.12.2000, or at any rate, on 19.12.2001 when the application was reiterated.

17. Learned counsel for the petitioner drew our attention in this connection to the judgment of this court in the case of *G. Mohandas v. State of Kerala and Ors.*, O.P. No. 3455 of 1996. The applications therein had been made on 4.10.1994 and 6.6.1995 for grant of FL-3 licence. These applications were rejected by the State authorities; while the Original Petition challenging the said action of the authorities was pending in the court, an amendment was made in the rule with effect from 12.1.1994 introducing a disqualification, if the hotel was situated within the prohibited distance from certain type of institutions. After the

original petition of the petitioner succeeded, a direction was made for reconsideration of the application for FL-3 licence, which was once again rejected on the ground of the newly amended Rule containing the distance rule. This action was once again challenged by O.P. No. 3455 of 1996. It was pointed out therein that FL-3 licences which had been granted to Four Star Hotels without reference to the distance rule prior to the 1996 amendment, had not been cancelled and renewal of such licences had also not been refused. The affidavit of the Government also indicated that it was proceeding on the basis that licences already granted prior to 1996 amendment regarding the distance rule would be governed by the then existing rule and not by the amended rule and that renewals of such licence would not be affected by the newly introduced distance rule. This court was, therefore, of the view that the State authorities should consider the last application submitted by the petitioner therein prior to 26.3.1996 as pending and pass appropriate orders in such applications in accordance with law applying the rules in existence prior to the 1996 amendment. This judgment of the Division Bench was carried to the Supreme Court in appeal in State of Kerala and Ors. v. G. Mohandas, SLP (Civil) No. 16343 of 1998. The SLP was dismissed by the Supreme Court on 27.2.2002 by the following order:

"It is not disputed that the Rules were amended on 23rd March, 1996 with effect from 5th September, 1990. It is also not disputed that the respondent was granted FL3 licence on 10th June, 1996 prior to the amended Rules came into force and inasmuch as the other licences of FL-3 are allowed to continue to run bar.

In view of the aforesaid fact, we do not find it a case for interference. The SLP is accordingly, dismissed".

18. Relying on the above order, the learned counsel for the petitioner contends that, in the case of the petitioner the application was made initially on 11.12.2000 and was reiterated on 19th December, 2001. If the proviso were not to operate as on 19.12.2001, the application made by the petitioner fully complied with the rules. It is only by wrongly relying on the retrospectivity of the proviso that the petitioner has been put out of consideration. Hence, the learned counsel contends that the petitioner must be held entitled to the FL-3 licence at least as on 19.12.2001. If such a licence had been given to him, the petitioner's licence would have been renewed on 1.4.2002, as done in the case of all other licences without applying the added proviso to Rule 13(3) of the Rules, as the proviso operated only during the period from 20.2.2002 to 31.3.2002, after which it was deleted. This submission appears to be justified, in our view. The petitioner is entitled to be considered for grant of FL-3 licence as on 19.12.2001 without application of the newly added proviso to Rule 13(3) of the Rules.

19. Though the learned Advocate General raised a contention that there is no fundamental right to trade in liquor relying on the judgment of the Supreme Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, ,

we need not be detained thereby for we proceed on the footing that there is no such fundamental right. Nonetheless, the petitioner is entitled to be considered on the basis of the rule which existed, without hostile discrimination, along with others similarly situated. Though the learned Advocate General tried to draw a distinction between the case of G.Mohandas (supra) and the case of the petitioner, it appears to us that the distinction is merely one of form and not of substance. In Mohandas (supra) the bar was on account of the 1996 amendment introducing the distance rule; in the case of the petitioner, the bar arose on account of the amended proviso. Barring this distinction, the principle in Mohandas (supra) must equally apply to the case of the petitioner, in our view.

20. It is urged for the petitioner that on 27th December, 2001 there was clear contempt by the respondents and that the contempt application should be allowed and the Government, which was the contemner, ought not to be heard unless the contempt is purged. In our view, it is not necessary to go into this question of contempt, as even otherwise, the petitioner is liable to succeed on the other issue.

21. We shall now consider the short facts of the other cases in order to see what relief could be granted to therein.

O.P.NO. 7868 of 2002

The petitioner's restaurant was held to be an "approved restaurant" by the Government of India Regional Tourist Office on 27.2.2001. After obtaining a licence u/s 447 of the Kerala Municipalities Act for starting a hotel, the petitioner applied for an FL-3 licence on 18.1.2001. Since no action was taken by the Excise Commissioner on the application for grant of FL-3 licence, the petitioner filed O.P. No. 8491 of 2001 to compel consideration of the application. By the judgment dated 5.4.2001 (Ext.P9) the original petition was allowed and the State authorities's were directed to give a personal hearing to the petitioner and to consider the application on merits. On 2.7.2001 the application was rejected on the ground: "Government is not sanctioning fresh FL-3 licence". The petitioner challenged the action of the Government by O.P. No. 29175 of 2001. This original petition was dismissed by the judgment dated, 3.10.2001 by holding that if it was the policy of the Government not to issue fresh licence, no writ of mandamus could be issued. Appeal W.A. No. 3956 of 2001 was allowed by the judgment of a Division Bench dated 7th December, 2001 directing the Excise Commissioner to decide the application for FL-3 licence made by the petitioner in accordance with law within a period of two weeks by a speaking order (Ext.P12). On 24.12.2001 the application was once again rejected on the very same ground that "approved restaurant" was not a "classified restaurant" within the meaning of Rule 13(3) of the Rules. C.C.C. No. 211 of 2002 was filed by the petitioner alleging contempt of court by flouting the orders of this court. When the petition came up for hearing on 21.2.2002, it was pointed out that the notification dated 20.2.2002 retrospectively amending the proviso to Rule 13(3) of the Rules had already been issued. Hence, this original petition was brought to challenge the

amended rule. This original petition must succeed in the view that we have taken in O.P. No. 7112 of 2002.

O.P. No. 9963 of 2002

The petitioner's application for FL-3 licence was made on 24.1.2001. It was rejected on 30.6.2001 on the ground: "Government is not granting fresh FL-3 licence as a policy" .O.P. No. 29725 of 2001 filed by the petitioner to challenge the said action was dismissed. Appeal W.A. No.4053 of 2001 was allowed on 19th December, 2001 with a direction that the application for FL-3 licence made by the petitioner be considered within a period of four weeks, in accordance with law, by a speaking order. The application was once again rejected on 16.1.2002 by the order at Ext. P6 on the ground that the petitioner's restaurant was neither a Three Star, or above, nor a heritage, nor a "classified restaurant" as prescribed, for eligibility for FL-3 licence under Rule 13(3) of the Rules and on the ground, that the status of "approved restaurant" given by the Government of India did not amount to "classified restaurant" within the meaning of Rule 13(3). In the meanwhile, the petitioner filed C.C.C. No. 229 of 2002 alleging contempt of court on the part of State authorities. Pending the said contempt of court case, the notification dated 20.2.2002 was issued retrospectively amending the rules. Hence, O.P. No. 9963 of 2002 is filed to challenge the retrospective amendment to the rules and to hold the respondents guilty of contempt of court and to grant appropriate reliefs. This original petition would have to be allowed for the same reasons as O.P. No. 7112 of 2002.

W.A. No. 910 of 2002

In this case, the application for FL-3 licence was made on 5.2.2001. As there was delay in considering the application, the appellant filed O.P. No. 3347 of 2002 which was disposed of on 20.2.2002 with a direction to consider the application within three months. On the same day, the notification dated 20.2.2002 retrospectively amending Rule 13(3) and adding the proviso to Rule 13(3) was brought into force. O.P. No. 7448 of 2002 was brought to challenge the retrospective amendment of the proviso to Rule 13 (3). Though the retrospectivity given to the proviso was challenged, the original petition was dismissed on the ground that, even if the retrospectivity was not considered, the application of the appellant for FL-3 licence had to be considered on the basis of the law which stood on the date of consideration; since the application was rejected on 20.2.2002, on which date the law had been amended, the appellant had to fail. In the view that we have taken, the Appeal succeeds and the appellant's application must be considered in the light of the law which stood on 5.2.2001, following the observations of the Supreme Court in G.Mohandas (supra). Hence this appeal had to be allowed.

W.A. No. 951 of 2002

In this case, the application for FL-3 licence was made by the appellant on 20.3.2001 and rejected by the State authorities on 23.10.2001. The appellant

challenged it by O.P. No. 37043 of 2001 was allowed by the judgment dated 12.12.2001 (at Ext.P4) with a direction to reconsider the matter within a period of one month from the date of receipt of a copy of the judgment. In the meanwhile, the impugned notification dated 20.2.2002 was brought into force. The appellant filed O.P. No. 7614 of 2002 challenging the amendment of the proviso to Rule 13 (3) of the Rules. This original petition was dismissed by the learned Single Judge on the ground that, whatever might have been the law on the date of the application, the law as it stood after the amendment had to be applied. This appeal also succeeds for the same reasons as the earlier cases.

W.A. No. 962 of 2002

The appellant applied for FL-3 licence on 1.2.2001 on the footing that its restaurant had been given the status of an "approved restaurant". On 19.6.2001, the application was rejected on the ground that the restaurant did not have any prescribed facilities. This order was challenged in O.P. No. 19864 of 2001 which was allowed by the learned Single Judge on 15.1.2002 with a direction to the State Government to reconsider the matter. The appellant filed W.A. No. 196 of 2002 which was allowed on 25.1.2002 with a direction to the Excise Commissioner to reconsider the matter within four weeks strictly in accordance with the applicable rules and also by taking into account other orders granting licence in similar cases. When this application was pending consideration, the notification dated 20.2.2002 came into force retrospectively amending Rule 13(3). On 20.2.2002 the Excise Commissioner rejected the appellant's application on the ground of the rules having been changed. This appellant challenged the said order in O.P. No. 8029 of 2002. The original petition was dismissed by the learned Single Judge on the ground that the retrospective amendment made would take in the case of the appellant. It was further held that, even if there was no retrospectivity attached to the proviso, the application of the appellant being still under consideration on 20.2.2002 had to be considered according to the law which stood on that date and, therefore, the application was rightly rejected. In view of our judgment in O.P. No. 7112 of 2002, this appeal would have to be allowed on both the grounds; Firstly, the retrospectivity given to the added proviso to Rule 13(3) of the Rules is invalid. Secondly, the application of the appellant had to be considered on the basis of the law which stood on 1.2.2001 and the fact that licences granted to others were renewed by the authorities even after 1.4.2001.

W.A.No. 1423 of 2002

In this appeal, the application for FL-3 licence was made on 13.12.2000 and rejected by giving erroneous reasons. The appellant challenged it in O.P. No. 3867 of 2001. This original petition was allowed on 14.2.2001 with a direction to the State authorities to consider the application within one month. By the order made on 26.6.2001, the application was rejected once again. Another writ petition, O.P. No. 20588 of 2001 was brought to compel the authorities for consideration of the application. This Original Petition was allowed on 18.12.2001

with a direction to the State authorities to consider the application of the appellant within one month. O.P. No. 7952 of 2002 brought again for the same purpose was rejected on the ground that, in view of the amended proviso to Rule 13(3) of the Rules, the claim of the appellant had to be considered in the light of the amendment made in the proviso. Hence, this appeal. This appeal would have to be allowed for the same reasons as above.

W.A.No. 1444 of 2002

In this case the application for FL-3 licence was made by the appellant on 12.12.2000. That application was rejected. The appellant filed O.P. No. 3809 of 2001 challenging the action of the State authorities. This original petition was disposed of on 14.2.2001 by the learned Single Judge directing the State authorities to consider and dispose of the application for FL-3 licence within a period of six weeks. On 25.1.2001 the application of the appellant was recommended by the Excise Commissioner. On 12.2.2001 two similarly situated persons were granted FL-3 licences, namely, Summer Sand Restaurant, Velloor P.C., Pampady, Kottayam and R.C. Park Restaurant, Kunnamkulam, Thrissur, (vide Exts. P4 and P5). On 28.6.2001, the appellant's application was rejected. The appellant challenged the rejection by O.P. No.20477 of 2001 which was allowed on 18.12.2001 by Exts. P6 judgment with a direction to the State authorities to reconsider the application within one month. Since nothing was done, the appellant filed another writ petition O.P. No. 7822 of 2002 to compel consideration of its application. The learned Single Judge dismissed the original petition relying on the retrospective amendment made to the proviso to Rule 13(3) of the Rules and also holding that the law as it stands on the date of consideration of the application should be applied. Hence, this appeal. For the reasons given while allowing O.P. No. 7112 of 2002, this appeal has to be allowed.

22. Hence, the following orders :

(a) It is hereby declared that the retrospective effect given to the proviso to Rule 13 (3) of the Rules by the notification dated 20.2.2002 is bad and unenforceable. The notification shall be enforceable only from the date of its issue, i.e. 20th February, 2002.

(b) O.P. No. 7112 of 2002 is allowed and the respondents are directed to consider the application made by the petitioner on 11.12.2000 as reiterated by the application dated 19th December, 2001 on the basis of the rules which were operative as on 19th December, 2001 and if other FL-3 licences granted during the Abkari year 2000-01 have been renewed for the Abkari year 2001-02 and thereafter, the petitioner shall also be entitled for such renewals.

(c) O.P. No. 7868 of 2002 is allowed. The petitioner's application for FL-3 licence made on 18.1.2001 shall be considered on the basis of the rules in force on that day; renewals of licence being permitted as done in other cases for the Abkari year 2001-02 and thereafter.

(d) O.P. No. 9963 of 2002 is allowed. The application for FL-3 licence made by the petitioner on 24.1.2001 shall be considered on the basis of the rules which stood on that day. If other licences have been renewed for the Abkari year 2001-02 and thereafter the petitioner shall also be entitled for such renewals.

(e) W. A. No. 910 of 2002 is allowed and the judgment of the learned Single Judge under appeal is set aside. The respondents are directed to consider the application for FL-3 licence made by the appellant on 5.2.2001 on the basis of the rules which stood as on that date, renewals, being permitted for the Abkari Year 2001-02 and thereafter as done in other cases.

(f) W.A. No. 951 of 2002 is allowed and the judgment of the learned Single Judge under appeal is set aside. The respondents are directed to consider the application for FL-3 licence made by the appellant on 20th March, 2001 on the basis of the rules which stood as on that date; renewals of licence being permitted for the Abkari year 2001-02 and thereafter as done in other cases.

(g) W.A. No. 962 of 2002 is allowed and the judgment of the learned Single Judge under appeal is set aside. The respondents are directed to consider the application for FL-3 licence made by the appellant on 1.2.2001 on the basis of the rules as it stood on that date; renewals being permitted for the Abkari year 2001-02 and thereafter as done in other cases.

(h) W.A. No. 1423 of 2002 is allowed and the order of the learned Single Judge under appeal is set aside. The application for FL-3 licence made by the appellant on 13.12.2000 shall be considered on the basis of the rules as applicable on that date; renewals of licence being permitted for the Abkari year 2001-02 and thereafter on the same basis as done in other similar cases.

(i) W.A. No 1444 of 2002 is allowed and the judgment of the learned Single Judge under appeal is set aside. The respondents, are directed to consider the application for FL-3 licence made by the appellant on 12,12.2000 on the basis of the rules which stood as on that date; renewals of licence being permitted for the Abkari year 2001-02 and thereafter on the same basis as done in other similar cases.

(j) C.G.C. Nos. 60, 211 and 229 of 2002

In the facts and circumstances of the case, we do not consider it necessary to proceed in contempt jurisdiction. Hence, these Contempt of Court cases are closed.