

(2014) 12 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 31039 (D), 6153, 24788, 30395, 30973, 30960, 30959, 31098, 31070, 31060, 31054, 31047, 31038, 30961, 31193, 31536, 31216, 31239, 31166, 31157 and 31273/2014 and 31807/2013

Excalibur

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 12 KL CK 0021

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : C.C. Thomas, Senior Advocate, Nireesh Mathew and M.G. Karthikeyan, Advocate for the Appellant; C.K. Sherin, Government Pleader, Advocate for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioners in these writ petitions are all persons conducting hotels with four star classifications issued by the Ministry of Tourism, Government of India. They have not been granted licences to conduct Bars for the reason that, four star hotels are not eligible to apply for the grant of Bar licences as per the Abkari Policy, 2014-2015 of the State. Though the petitioners had tried to submit applications for the grant of Bar licences (FL-3 licence), their applications were not accepted in view of the Abkari Policy 2014-15. Since common claims and issues arise for consideration in all the writ petitions, they are considered and disposed of together.

2. As already noticed above, the petitioners are all hotels classified as four star by the Ministry of Tourism, Government of India. They have obtained all the other necessary certificates from the concerned authorities and have acquired eligibility for the grant of an FL-3 licence. It is their contention that, they satisfy all the necessary conditions and parameters stipulated by the Abkari Act, 1077 as well as the Foreign Liquor Rules, for the purpose of being granted the privilege

of conducting Bars in their hotels. Their applications have not been accepted or considered for the sole reason that, they have been held to be ineligible to apply for such licences by the Abkari Policy, 2014-2015. The respective counsel places reliance on the decision in Xavier's Residency Vs. State of Kerala, where a batch of writ petitions challenging the Abkari Policy 2014-2015 were disposed of with the following directions:--

"In the result, it is ordered as follows:--

1. The challenge against the Abkari Policy 2014-2015, by the hotels classified as two star, three star and by hotels having no classification fails. The writ petitions filed by them are therefore dismissed.
2. The Abkari Policy 2014-2015, to the extent, it excludes hotels having Four Star and Heritage category hotels from the eligibility to be granted FL-3 licences under the Foreign Liquor Rules is set aside, being arbitrary and violative of Art. 14 of the Constitution. The consequential amendments to the Foreign Liquor Rules as well as the proceedings of the Excise Commissioner cancelling the licences of such hotels are also set aside. The writ petitions filed by them are allowed as above.
3. The Abkari Policy 2014-2015 is sustained in all other respects, except to the extent indicated above."

Appeals have been filed against the said judgment by the State as well as petitioners in the said writ petitions. All the appeals are pending consideration of the Division Bench. It is submitted by the learned Senior Counsel Shri. C.C. Thomas, who appears for the petitioner in WPC 31039/2014 that though the appeal of the State has been admitted, the prayer for stay of operation of the judgment has been declined by the Division Bench, after hearing. Therefore, according to the respective counsel appearing for the petitioners in these cases they are entitled to the benefit of the dictum in the judgment referred to above. In view of the above, they seek the issue of a direction to the State as well as the Excise Commissioner to accept their applications and to consider them in accordance with law, within a stipulated time.

3. I have heard the respective counsel appearing for the petitioners in these writ petitions as well as the learned Govt. Pleader who represents the State.

4. In view of the dictum laid down by the judgment in Xaviers Residency v. State of Kerala (supra) that exclusion of four star hotels from the category of hotels eligible to seek the issue of FL-3 licences by the Abkari Policy 2014-2015 is bad, the petitioners are justified in their contentions. The petitioners are certainly entitled to seek the benefit of the dictum laid down by this Court, the operative portion of which I have already extracted above. In the light of the finding that hotels with four star classification are also eligible to be granted FL-3 licences, it is only appropriate that the applications submitted by the petitioners herein are accepted by the Excise Authorities and considered in accordance with law.

In view of the above, these writ petitions are allowed. The Excise Commissioner as well as the State of Kerala are directed to accept the applications for FL-3 licences submitted by the petitioners in these writ petitions provided, they have a subsisting four star classification, subject to their satisfying all other prescribed conditions of eligibility. The applications shall be considered and appropriate orders shall be passed thereon in accordance with law, as expeditiously as possible and at any rate, within a period of two months from today.