
(2006) 01 AHC CK 0128

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 660 of 2004

Hotel Hindustan International

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 01 AHC CK 0128

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal and Mukesh Prasad, for the Appellant; U.K. Pandey and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, filed under Article 226 of the Constitution of India, petitioner claimed the following relief's :

I. issue a writ order of direction in the nature of certiorari, quashing the Revisional order dated 07.05.2004, passed by the respondent No. 1, in Excise Revision No. 5 of 2004. (Annexure-XII).

II. Issue a writ order or direction in the nature of certiorari, quashing the Appellate order dated 08.01.2004, passed by the respondent No .2 (Annexure-IX).

III. Issue a writ order or direction in the nature of certiorari, quashing the demand notice dated 16.10.2003 issued by the District Excise Officer, Varanasi (Annexure-IV).

IV. A ward cost of the petition to the petitioner.

2. Petitioner runs a hotel with a restaurant and bar. Petitioner had a bar licence in Form FL-7A. Vide Government Order dated 10.01.1995 petitioner was required to obtain a composite licence in Form FL-6A and accordingly, a demand notice

dated 31.01.1995 was issued by District Excise Officer, Varanasi requiring the petitioner to deposit the balance amount of Rs. 3 lacs, in as much as a sum of Rs. 3 lacs had already been deposited. Petitioner filed writ petition No. 294 of 1995, Hotel Hindustan International v. State of U.P. and Ors., in which Government Order dated 10.01.1995 and demand notice dated 31.01.1995 were challenged. It may be mentioned here that by amendment dated 25.06.1994 2 new category of licence were introduced, namely, composite licence in Form FL-6 and composite licence in Form FL-6A, Form FL-6 was for 1, 2 and 3 Star hotels and Form FL-6A was for 4 and 5 Star hotels for sale of liquor in the premises of the hotel. Form FL 7-A was retained by the aforesaid amendment for consumption of liquor in the premises of restaurant of 4 and 5 Star hotel. In the said writ petition, claim of the petitioner was that since it was only selling/serving the liquor in the premises of the restaurant, no composite licence was required in Form FL-6A and it could not be compelled to take a composite licence in Form FL-6A for selling/serving the liquor in the hotel premises. The writ petition was dismissed on 09.10.2003 by the Division Bench of this Court. It may be mentioned here that in the aforesaid writ petition, petitioner claimed that it was a 4 Star hotel. In the order dated 09.10.2003 this Court has mentioned that the petitioner is 4 Star hotel. Petitioner was also having a licence in FL 7-A, which was for the consumption of liquor in the premises of restaurant of 4 or 5 Star hotel. At no stage, petitioner had disputed that its hotel was not of 4 Star hotel. To the contrary, in the writ petition No. 294 of 1995 in para 1 it has been admitted that the petitioner is 4 Star hotel. After the dismissal of the writ petition, demand notice dated 16.10.2003 has been issued by the District Excise Officer, Varanasi demanding a sum of Rs. 20,40,000/- differential amount of licence fee for the period 1994-95 to 2002-03, It appears that the petitioner had paid licence fee as applicable to FL-7A while the petitioner has been held liable to obtain a composite licence in Form FL-6 and was also liable to pay annual licence fee accordingly. Thus, the demand of balance amount had been raised. Petitioner filed appeal before the Excise Commissioner. In the appeal petitioner alleged that 4 Star status was granted to the petitioner hotel from 14.07.1988 for a period of three years by Hotel and Restaurant Approval and Classification Committee, Department of Tourism, Government of India and, thereafter, inspite of their best efforts they could not fulfill the new guidelines of the Department of Tourism, hence they could not apply for the renewal of classification, A certificate of Department of Tourism dated 02.11.2003 has been annexed showing that hotel has been unclassified w.e.f. 13.07.1991. In para 3 it has been stated that since the hotel of the petitioner ceased to be classified as 4 Star hotel w.e.f. 13.07.1991, fee was to be paid according to the rates applicable for unclassified hotel on the basis of number of rooms. Additional Excise Commissioner (Administration), appellate authority vide order dated 08.01.2004 dismissed the appeal. Thereafter, the petitioner filed revision before the State Government. Principal Secretary vide its order dated 07.05.2004 rejected the revision by the impugned order.

3. Heard Sri Bharatji Agrawal, learned Senior Advocate, assisted by Sri Mukesh Prasad, learned Counsel for the petitioner and Sri U.K. Pandey, learned Standing Counsel.

4. Counter and rejoinder affidavits have been exchanged, thus with the consent of the parties, present writ petition is being disposed of finally.

5. Learned Counsel for the petitioner submitted that the hotel of the petitioner was not 4 Star during the period in dispute for which demand was raised. He submitted that the petitioner was issued a certificate by Hotel and Restaurant Approval and Classification Committee, Department of Tourism, Government of India classifying the petitioner hotel as 4 Star category w.e.f. 14.07.1988 for a period of three years. Certificate is annexure No. 3 to the writ petition. He submitted that after the expiry of the aforesaid period, petitioner had not applied for reclassification after 13.07.1991, thus, vide letter dated 02.11.2003 Member Secretary (HRASS), Department of Tourism informed the petitioner with reference to the letter dated 24.10.2003 that the petitioner had not applied for reclassification after 13.07.1991 and it automatically becomes unclassified. Further, referred a letter dated 09.11.1995 issued by the Department of Tourism, Government of India to the Excise Commissioner, Government of U.P., Varanasi certifying that the petitioner is classified hotel on the approved list of Department of Tourism, their application for reclassification under 3 star category is accepted by Regional Director, Government of India, Tourist Office, New Delhi. Hotel awaiting re-classification remains on the approved list and enjoys all the facilities entitled to classified hotel. In the letter, Department of Tourism had strongly recommended the approval of bar licence on priority basis. On the basis of aforesaid letters, it is submitted that the petitioner was recognized as a 4 star hotel only for a period of three years and w.e.f. 13.07.1991 it became unclassified and thus, the demand raised treating the petitioner hotel as 4 Star is not justified,

6. Learned Standing Counsel submitted that the petitioner was holding a licence FL-7A which was applicable to the 4 and 5 Star hotel for consumption of liquor in the premises of restaurant of hotel. He submitted that after the Government Order dated 10.01.1995 petitioner was asked to get its licence converted into a composite licence in FL-6A which was applicable to 4 or 5 Star hotel for sale of liquor in the premises of the hotel. In the writ petition no.294 of 1995 petitioner challenged the demand notice dated 31.01.1995 and the Government Order dated 10.01.1995 and claimed that it was 4 star hotel and at no stage it was disputed that it was not 4 Star hotel. Thus, it is not open to the petitioner to say that the hotel was not 4 Star hotel. He submitted that after the expiry of period of three years for which certificate classifying the petitioner hotel as 4 Star hotel was issued, if the petitioner had not moved any application for further certificate, it does not mean that the petitioner hotel ceased to be 4 Star. It is not the claim of the petitioner that any facility which was available earlier when the petitioner had been classified as 4 Star hotel has been reduced. He further submitted that

Principal secretary in its letter has stated that in the website and in other communication media petitioner hotel is being shown as 4 Star hotel. Print of website had also been produced.

7. Having heard learned Counsel for the parties, I do not find any merit in the case. Admittedly, petitioner hotel was certified as 4 Star hotel by the Department of Tourism w.e.f. 14.07.1988 for a period of three years. Merely because the petitioner could not applied for further extension of the certificate and as such has not been issued any certificate for 4 Star category, it did not ceases to be 4 Star. Petitioner all along represented its hotel being 4 Star hotel. Petitioner was holding licence in FL 7-A which was for the consumption of liquor in the premises of restaurant of 4 or 5 Star hotel. When the petitioner was asked to get the composite licence in Form FL 6-A in view of the Government Order dated 10.01.1995 which was for 4 or 5 Star hotel for the sale of liquor in the premises of hotel and in the writ petition No. 294 of 1995 challenging the demand notice dated 31.01.1995 and Government Order dated 10.01.1995 petitioner stated that it was a 4 Star hotel. The writ petition was decided by the Division Bench of this Court on 09.10.2003. In the order dated 09.10.2003 it has been stated that the petitioner is a 4 Star hotel. At no stage in any of the proceeding upto 09.10.2003 petitioner has disputed the category being 4 Star hotel. It appears that when after the dismissal of writ petition No. 294 of 1995 the demand for the differential amount had been raised for the period of 1994-95 to 2003-04, petitioner for the first time disputed the category of 4 Star hotel. In my opinion, it is not open to the petitioner to dispute the category of the hotel when it all along claimed that the hotel was of 4 Star category. Demand notice dated 16.10.2003 issued by District Excise Officer, Varanasi appears to be only consequential to the dismissal of the writ petition No. 294 of 1995 vide order dated 09.10.2003 by which the Government Order dated 10.01.1995 forcing the petitioner to obtain the composite licence in Form PL 6-A and the demand notice dated 31.01.1995 raised for the differential of licence fee for the year 1994-95 has been upheld.

8. For the reasons stated above, present writ petition has no merit and is accordingly, dismissed.