
(2013) 04 KL CK 0087

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8860 of 2013

Hotel Indraprastha

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 2 KLT 498

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : C.C. Thomas, Nireesh Mathew and M.G. Karthikeyan, for the Appellant; Anitha Ravindran, Government Pleader, for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner has filed this Writ Petition challenging Ext.P8 order of the second respondent rejecting application for FL-3 licence submitted by the petitioner. The only reason for rejection of the petitioner's application is contained in the last paragraph of Ext.P8. The last two paragraphs of Ext.P8 are extracted hereunder:- As directed by the Hon''ble High Court in W.A. No. 2224/2012, the submissions made by the appellant have been examined and the application for FL-3 licence submitted by Dr. Biju Ramesh was re-examined in the light of the submissions made by the appellant.

From the above it is found the applicant has submitted his application for FL3 licence on 20.3.2012. Star classification certificate was obtained for the above hotel only on 23.7.2012 with effect from 20.7.2012. Hence the hotel is not eligible to get FL3 licence at the time of application submitted before the Excise Department. Hence the application for FL3 licence is rejected and accordingly judgment read second paper and court order dt. 5.2.2013 in CCC No. 1867/2012 vide read 4th above are complied with.

According to the Senior Counsel Shri C.C. Thomas who appears for the petitioner Ext.P8 order has been issued on 11.2.2013 rejecting the application for FL-3 licence on the sole ground that the star classification certificate obtained by the

petitioner is dated 23.7.2012, is issued with effect from 20.7.2012 while his application is dated 20.3.2012. Therefore, on the date of submitting his application he was not eligible to apply for such a licence. The reasoning adopted is pointed out to be in violation of the settled law on the point that an application is to be considered in accordance with the law as on the date of consideration of the application. My attention is also drawn to Ext.P11, a subsequent order passed by the very same authority referring to the decisions of this Court as well as the order of the Hon'ble Supreme Court on the point. Therefore, it is contended that Ext.P8 has been issued deliberately to give an impression to this Court that the direction of this Court has been complied with. I have heard the learned Govt. Pleader also. 2. A perusal of Ext.P8 shows that there is no dispute regarding the factual aspects. The petitioner's application for FL-3 licence is dated 20.3.2012. The petitioner's hotel has been granted star classification on 23.7.2012, with effect from 20.7.2012. Ext.P8 order is passed on 11.2.2013. Therefore, as on the date of issuing Ext.P8 order, the petitioner was eligible to be granted an FL-3 licence. However, the second respondent has rejected his application on the ground that as on 20.3.2012, the petitioner's hotel had no valid star classification entitling him to apply for the licence. One fails to understand why the authority should consider the position as on 20.3.2012 while considering an application on 11.2.2013. If the petitioner had no valid star classification on 20.3.2012 the authority could have rejected his application on the said date itself. Having kept the application pending for about an year, having permitted the petitioner to rectify the alleged defect, there is absolutely no justification for projecting the same as a reason for rejecting his application. The inconsistent stand of the second respondent is further evident from Ext.P11 order issued in the case of another applicant, maintaining that it is the law applicable as on the date of consideration of the application that has to be considered. Ext.P11 is dated 2.3.2013 (erroneously shown as 2.3.2012) whereas the impugned order is dated 11.2.2013. It is clear from the above that Ext.P8 has been issued without any proper application of mind. My attention has also been drawn to Ext.P9 order passed by this Court in contempt proceedings wherein it has been found that the issue of the impugned order Ext. P8 was only to avoid further proceedings in the said petition. Paragraphs 8 and 9 of Ext.P9 order read as follows:-

8. Prima facie, the attempt that was made by the respondent by passing Annexure R2(b) order is only to avoid the further proceedings in this petition because by a long line of decisions including Full Bench decision of this Court reported in State of Kerala Vs. Raveendran Pillai, , it has been settled by this Court that the eligibility of an applicant to get an FL-3 licence is to be determined with reference to the date of consideration of the application and that principle has been adopted and followed by the respondents themselves in several cases before this Court. Therefore, I am of the view that the facts of this case discloses a prima facie case under the Contempt of Courts Act and further proceedings are to be initiated. Therefore, I refer the case to a Division Bench for further

proceedings against the respondent.

For the above reasons Ext.P8 is set aside. Respondents 1 and 2 are directed to consider the petitioner's application afresh and to pass appropriate orders thereon, in accordance with law, as expeditiously as possible and at any rate within a period of six weeks of the date of receipt of a copy of this judgment.