
(2012) 08 KL CK 0146

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 7755 of 2012 (T)

K.K. Residency

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

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

Citation : (2012) 08 KL CK 0146

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : C.C. Thomas and Sri. M.G. Karthikeyan, for the Appellant; N.N. Girija, CGC, Sri. P. Parameswaran Nair, ASG of India and Sereena George, Government Pleader, for the Respondent

Judgement

Justice Antony Dominic

1. Petitioner was issued a licence in form FL-3 under the Kerala Foreign Liquor Rules (in short "the Rules") framed under the Kerala Abkari Act. Such licence was issued on the strength of three star classification. The licence was renewed till 31.3.2012. Prior to the expiry of the licence, the period of the classification certificate issued by the Ministry of Tourism also expired. Although the petitioner submitted an application for re-classification, orders were not passed. At the same time, the licence in form FL-3 was renewed subject to the condition that the re-classification certificate should be produced on or before 30.6.2012. It is in the meanwhile that the petitioner has filed this writ petition contending that in view of the 7th proviso to Rule 13(3) of the Rules, inserted by G.O.(P). No. 67/2010/TD dated 15.3.2010 w.e.f. 1.4.2010, to the effect that all FL-3 licences not having the requisite Star classification and are functional during 2009-10, shall be regularised, respondents cannot insist for the production of re-classification certificate issued by the Ministry of Tourism, Government of India. During the pendency of this writ petition, in Hotel Malika Residency Vs. State of Kerala and Others, , this Court considered the impact of the 7th proviso to Rule

13(3) of the Rules and held thus:-

The next question to be considered is whether the expiry of the validity of the three star classification certificate can be held out against the petitioner to decline renewal of Ext.P1 licence. As per R.13(3) which stood in force in the year 2006, an FL-3 licence could have been issued only to hotels which have obtained three star, four star, five star, five star deluxe, heritage, heritage grand or heritage classic, classification from the Ministry of Tourism of the Government of India. The petitioner's hotel had a valid three star classification when Ext.P1 licence was first issued on 8.8.2006.

Though as per the rules, privately run two star hotels ceased to be eligible to apply for the grant or renewal of a FL-3 licence with effect from 1.4.1993, the Government was periodically granting existing licencees time till 31.3.2007 to upgrade their hotels to two star standards. Later by the 6th proviso to R.13(3) which was introduced with effect from 1.4.2007 it was stipulated that all existing licences not having three star and higher classification (which was the requirement "as on 31.3.2007) and are functionals as on 31.3.2007 shall be regularized. Thus, the licences issued to hotels which did not have three star classification were regularized, if they were functional as on 31.3.2007. Later the 7th proviso was introduced in R.13(3) of the rules with effect from 1.4.2010 as per G.P.(P).67/2010/TD dated 15.3.2010. The 7th proviso to R.13(3) reads as follows:-

Provided also that all FL-3 licences not having the requisite star classification and are functional during 2009-10 shall be regularized

The explanatory note to the Government order dated 15.3.2010 reads as follows:

As per G.O.(Ms).55/2010/TD dated 5th March,2010 Government have announced the Abkari Policy for the year 2010-11 in which it is decided to regularize all FL-3 licences not having the requisite star classification and are functional during 2009-10 and to enhance the rental of the FL-4 licence from Rs. 8 Lakhs to Rs. 15 Lakhs. It is also decided to extend the period of payment of gallonage fee upto 10th May of every year and to exclude liquor transferred from one FL-9 premises to another FL- 9 premises of Kerala State Beverages Corporation and godown breakage of liquor in FL-9 premises from the purview of sale of liquor

It is stated in the explanatory note quoted above that as per the Abkari Policy for the year 2010-11, the Government have decided to regularise all FL-3 licences not having the requisite star classification and were functional during 2009-10. The petitioner's hotel was admittedly having a three star classification which was a prerequisite for a fresh grant in the year 2006. The petitioner's bar hotel was functioning during the year 2009-2010. The three star classification certificate issued to the petitioner's hotel was valid only till 30.4.2011. Notwithstanding that fact, the FL-3 licence issued to the Managing Partner of the petitioner firm was renewed for the year 2011-2012 without demur. The FL-3 licence issued to the Managing Partner of the petitioner firm was not suspended or revoked after

30.4.2011 on the ground that the petitioner's hotel no longer has a valid three star classification. If in terms of the 7th proviso to R.13(3) of the rules, a FL-3 licence not having the requisite star classification and was functional during 2009-2010 is entitled to have the licence regularized, I find no reason why the petitioner from which admittedly was running the bar hotel on the strength of a validly renewed FL-3 licence during the year 2009-2010 and thereafter also, without any objection being raised by the respondents, should be denied renewal of the licence on the short ground that the validity of the three star classification certificate issued to the petitioner's hotel has expired. I therefore find no merit or force in the contention of the learned Government Pleader that the 7th proviso to R.13(3) has no application to the case on hand. In view of the fact that a fresh FL-3 licence could have been issued in the year 2009-2010 only to hotels having three star classification and above, it cannot be said that the 7th proviso to R.13(3) does not apply to three star hotels which had the requisite qualification for sometime or that it applies only to licences governed by the 6th proviso. In the absence of any express stipulation to the effect that the 7th proviso to R.13(3) of the rules will not govern hotels which had the requisite classification for sometime, I find no reason to hold that the petitioner firm cannot claim the benefit of the 7th proviso to R.13(3) of the rules.

2. A perusal of the above shows that the petitioner whose licence was also functional during 2009-10 are entitled to the benefit of the 7th proviso. If that be so, respondents could not have insisted that the petitioner should produce the re- classification certificate for the continued functioning of its FL- 3 licences.

Clarifying the position as above, the writ petition is disposed of.