

(2014) 11 KL CK 0142

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 29800 of 2014 (Y)

K.M. Joseph Binoy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0142

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : George Poonthottam, Advocate for the Appellant; Tom K. Thomas, Special Government Pleader and C.K. Sherin, Government Pleader, Advocate for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner had been granted an FL3 licence in respect of a hotel owned by him. His licence has not been renewed after 31.3.2014 for the reason that his establishment comes within the 418 hotels that were identified by the Government as having no sufficient standards for the grant of an FL3 licence. In view of the Abkari Policy 2014-2015, the petitioner's hotel is not entitled to be granted the renewal that has been sought for. The petitioner has therefore sought the following reliefs in this writ petition:-

i) Issue writ of certiorari calling for the records leading to Ext. P4, P8 and P9 to the extent to which renewal has been denied to the petitioner hotel for the reasons stated therein.

ii) Issue a writ in the nature of mandamus directing the 3rd respondent to receive the application and to renew the same for the Abkari year 2014-15 including the petitioner's Hotel among the Hotels which are permitted for renewal as the petitioner Hotel is maintaining the four star classification for the purpose of renewal;

iii) Issue a writ declaring that the non renewal of the licence of the petitioner's Hotel is selective and discriminatory and to declare that Ext. P4 order without

specifying the nature of Hotels to be renewed is arbitrary resulting in hostile discrimination among the licensees who are maintaining the required standard for the purpose of getting the license renewed;

iv) Issue a writ declaring that decisions not to renew the license of Hotel having standard and specifications as contained in the foreign liquor rules as on 1-4-2014 is vitiated as the decision is the one taken by practicing fraud on power which has further resulted in Ext. P8 and P9.

v) Issue a writ of declaring that Ext. P9 amendment of the rules deleting the words "having not less than two star standard and" in Rule 9A of the Foreign Liquor Rules being the consequence of Ext. P8 is illegal, made without following the requirements of law is bad in law and inoperative.

vi) Issue a writ declaring that the substitution of the words five star in Rule 13(3) of the Foreign Liquor Rules as contained in Ext. P9 is discriminatory and unconstitutional.

vii) Issue a writ declaring that the proviso substituted enabling to cancel the renewed license is illegal and unsustainable in law.

viii) Issue a writ declaring that the omission of the words "three star" and 7th and 8th proviso of the Foreign Liquor Rules with five star as substituted is illegal.

ix) Issue a writ declaring that the deletion of the conditions in form FL-3 restricting supply of liquor to five star hotels by substitution of the words so also the second proviso of the conditions as contained in Ext. P9 is bad and illegal.

x) pass any such other order or direction as this Court may deem fit and proper in the interests of justice.

2. According to the counsel for the petitioner, Sri George Poonthottam as per the judgment dated 30.10.2014 in WPC No. 22195/2014 and connected writ petitions, this Court has sustained the Abkari Policy 2014-2015, to the extent it stipulates that hotels having classification of two star and three star are not eligible to be granted FL3 licences. The said judgment has been stayed by a Division Bench of this Court. As per the interim order passed by the Division Bench it is pointed out that, the status quo as on the date of promulgation of the Abkari Policy has been directed to be maintained. The said order of status quo would confer a right of renewal on the petitioner also.

3. It is further submitted by the counsel that, in view of Ground E of the Writ Petition, it has to be held that the Abkari Policy 2014-15 is vitiated by fraud. Therefore, the 418 so called non-standard hotels are also entitled to the renewal of their FL3 licences.

4. Heard. It is true that the contention put forth in Ground E was not advanced before me in the writ petitions already disposed of. However, the fact remains that, as per the judgment in WPC 22195/2014 and connected cases the Abkari Policy 2014-2015 in so far as it has excluded the non-standard hotels from the

eligibility to seek FL3 licences as well as the claims of two star and three star hotels has been sustained. It is true that, the Division Bench has admitted appeals filed against the said judgment and has granted interim orders. However, the said interim order cannot confer any benefit on the petitioner or any other person for the reason that, an interim order is passed in the facts and circumstances of each case and would benefit only the parties to the said case. Therefore, the petitioner cannot claim any relief on the basis of the interim order granted in writ appeals filed before the Division Bench by other parties. Secondly, whether the interim order granted by the Division Bench would entitle even the 418 non-standard hotels whose licences have not been renewed, to claim renewal of their licences is a matter that would have to be decided by the Division Bench itself. As at present, I find no grounds to grant any of the reliefs sought for in this writ petition.

For the above reasons, this writ petition is dismissed following the dictum in the judgment dated 30.10.2014 in WPC 22195/2014 and connected writ petitions.