
(2014) 09 KL CK 0129
In the High Court Of Kerala
Case No : Writ Appeal No. 1121 of 2014

K.V. Sadanandan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0129

Hon'ble Judges : P.D. Rajan, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : T.A. Shaji (Sr.) and M.A. Asif, Advocate for the Appellant; K.P. Dandapani, Advocate General, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—These Writ Appeals arise out of the judgment dated 2.6.2014 passed by the learned Single Judge disposing of a batch of Writ Petitions including those Writ Petitions filed by the appellants.

2. The appellants are holders of FL3 licences. The Government passed an order dated 2.4.2014 (G.O. (M.S.) No. 56/2014/TD dated 2.4.2014), in which, the following decisions are taken:

"6. Government examined the request of the Excise Commissioner in the light of the judgment of the Hon''ble Supreme Court, the legal opinion of the Advocate General and all aspects of the issue and are pleased to order the below:

(i) the action of the Excise Commissioner in having cancelled the FL3 licences of the 8 hotels is ratified.

(ii) The renewal of FL3 licences of hotels, except 418 non standard bar hotels mentioned in the judgment of the Supreme Court, be provisionally done, as an ad interim arrangement, subject to the following conditions.

(a) The renewal shall be purely provisional or ad interim subject to it's cancellation or withdrawal before it's date of completion.

(b) The renewal shall be subject to the decision to be taken by the Government as a matter of policy on the recommendation of the One Man Commission.

(c) The renewal will be subject to the decision taken by the Government immediately after the cessation of the model code of conduct for the election.

(d) Full rental as per the current fee will be collected with a rider that the licensees shall be entitled for proportionate reduction in the unexpired period and also entitled to be refunded in the event of cancellation.

(iii) The issue of renewal of the FL3 licences of the non-standard bar hotels mentioned in the Supreme Court order is deferred till the receipt of the recommendations of Secretary (Taxes) on the report of the One Man Commission and it's consideration by the Government. The Secretary (Taxes) will submit the report within one month."

3. The appellants and other writ petitioners challenged the Government Order dated 2.4.2014. The learned Single Judge disposed of the Writ Petitions as per the judgment dated 2.6.2014, holding that the proper course would be to dispose of the Writ Petitions with a direction to the State Government to take a final policy decision on the question of renewal of FL3 licences issued earlier to the 418 hotels referred to in the report of the Comptroller and Auditor General of India, expeditiously and at any rate, within an outer limit of one month from the date of the judgment, namely, 2.6.2014. The outer limit for taking policy decision was further extended.

4. The prayer made by the writ petitioners in the Writ Petitions was mainly to quash the order dated 2.4.2014 passed by the Government. The writ petitioners also prayed for the issue of a writ of mandamus to the respondents concerned to renew the FL3 licences in favour of the petitioners. The learned Single Judge did not consider the validity or otherwise of the order dated 2.4.2014 evidently since it was felt that a policy decision would have been the right solution for the situation. The learned Single Judge also did not issue any writ of mandamus to renew the FL3 licences in favour of the petitioners.

5. The writ petitioners challenged the judgment of the learned Single Judge in these Writ Appeals. When the Writ Appeals came up for hearing, a Division Bench of this Court passed an interim order dated 14.8.2014, which reads as follows:

"1. These writ appeals are filed by persons who complained before the learned single Judge that their applications for renewal of FL-3 licence were not being considered in terms of the existing rules. Noticing different aspects, the learned single Judge ordered the writ petitions putting a time frame for the Government to come out with necessary policy for the current abkari year. This was done because, the abkari policy had not come into place thereby leaving the scenario quite flexible and operative under the previously existing rules.

2. As a consequence of the amendment of the Foreign Liquor Rules in 2012, certain litigations arose and that ultimately reached the Hon''ble Supreme Court

in Civil Appeal Nos. 3196-3198/2014. That matter was decided by Their Lordships by judgment dated 05.03.2014. Thereafter, the Government took up the matter again for consideration. It was noticed that in the light of the aforesaid decision of the Apex Court and other facts evident from the different communications referred to in G.O. (Ms). No. 56/2014/TD dated 2.4.2014, it was necessary to consider the Excise Commissioner's Report and request for necessary orders for renewal of hotels including non-standard hotels, as the licence period of those hotels were to expire on 31.3.2014.

3. By that time, the one man commission had submitted report on 06.03.2014. Even in that Government Order dated 02.04.2014, it is stated that action is being taken to formulate policy decision in the matter. Normally, abkari policy is conceived and brought into force year to year to modulate dealing in abkari matters on the basis of abkari years. The legal opinion of the learned Advocate General was also obtained, and the Government examined all relevant matters and had issued two decisions. The first was that it ratified the Excise Commissioner's action of having cancelled FL-3 licences of 8 hotels. The second decision was on the question of renewal of FL-3 licences of hotels. There, the Government decided that renewal of FL-3 licences of hotels, except 418 non-standard bar hotels mentioned in the judgment of the Supreme Court, be provisionally done as an ad interim arrangement, subject to the conditions stipulated in that Government Order.

4. Therefore, while FL-3 licensees other than the 418 referred to above were entitled to have their applications processed for renewal, the 418 had to wait. The issue of renewal of FL-3 licences of those 418 non-standard bar hotels mentioned in the Supreme Court order was deferred till receipt of recommendations of Secretary, Taxes on the report of the one man commission and its consideration by the Government.

5. The appellants before us are those who are denied renewal for the time being on the premise that they are among the 418 such non-standard bar hotels. Issue relating to each such establishment will be as to whether such establishment is to be treated as a non-standard hotel or whether it satisfies the prescribed standards in terms of the relevant laws. The consideration of this cannot be kept aside for too long. As rightly pointed out by the learned Advocate General, different litigations crop-up regarding those renewal applications as well.

For the aforesaid reasons, an interim order is issued as hereunder:

Noticing the time limit extended by the learned single Judge, we are sure that the learned Advocate General will place before us, the policy of the Government for perusal by the Court on 26th August, 2014.

By the aforesaid day, the Secretary, Taxes and the Excise Commissioner will ensure that appropriate inspection is conducted in all the 418 so-called non-standard bar hotels and definite report about each establishment is made available along with a consolidated tabular statement as to the views of the

Excise Department and the Government regarding their eligibility for renewal notwithstanding whether renewal applications were accepted from them or not.

Issue three sets of the copy of this order to the Advocate General and to the parties."

6. The Secretary to the Government issued a letter dated 18.8.2014 to the Excise Commissioner, Thiruvananthapuram, stating that the direction issued by this Court in the interim order dated 14.8.2014 necessitated a course of action within a definite time frame. It is not in dispute that a team of officers commenced the work of inspecting the bar hotels which forms part of the 418 bar hotels having FL3 licence. It is submitted that 105 bar hotels were inspected by the team within a period of five days and the inspection of the rest of the hotels was in progress.

7. The Writ Appeals were taken up for further hearing on 26.8.2014 on which day, a statement dated 23.8.2014 was filed by the Secretary to the Government, Taxes Department, stating that the Government took a policy decision on 22.8.2014, as per G.O. (MS). No. 139/2014/TD dated 22.8.2014. That Government Order was produced before the Division Bench as Annexure B to the statement dated 23.8.2014. The Division Bench took note of the policy decision of the Government and expressed the view that the policy decision has necessarily to find expression through statutory provisions. It was also noticed that the policy decision would become law only if further action was taken. Taking on record the policy decision and observing that further action was required on the basis of the policy decision, the Division Bench adjourned the Writ Appeals to 17.9.2014.

8. Meanwhile, challenging the policy decision of the Government as well as the subsequently framed Rules, several Writ Petitions were filed. It is submitted that a learned Single Judge of this Court did not grant any interim order. Challenging those orders, Writ Appeals were filed. Meanwhile, similar Writ Petitions pending before the learned Single Judge were sent to the Division Bench. Several other Writ Petitions were filed and later, they were considered by the Division Bench, in which the Rules were also challenged. The Division Bench did not grant any interim order in favour of the writ petitioners. Some of the writ petitioners challenged that order before the Supreme Court. The Supreme Court, as per the order dated 11.9.2014, held that it would be just and proper if the learned Single Judge of the High Court continues to hear the matters. The Supreme Court further directed that status quo shall be maintained till 30.9.2014 so that, by that time, the learned Single Judge would take a final decision in the pending Writ Petitions. It is submitted that the writ petitions are being heard by the learned Single Judge from 18.9.2014 onwards.

9. When these Writ Appeals came up for hearing before us on 17.9.2014, the learned Advocate General submitted that the Writ Appeals have become infructuous, since the policy decision and the subsequent amendment to the

Rules were challenged in separate Writ Petitions. The learned counsel appearing for the appellants submitted that the Writ Appeals have not become infructuous and, accordingly, the Writ Appeals were posted for arguments.

10. The learned senior counsel appearing for the appellants submitted that as per the interim order dated 14.8.2014, a team of officers have inspected 105 bar hotels having FL3 licence out of the 418 bar hotels. It is necessary to continue that process and finish the inspection and submit a report in compliance with the interim order dated 14.8.2014. The learned senior counsel submitted that though the order dated 2.4.2014 as such does not survive in view of the subsequent policy decisions and amendment to the Rules, the matter as such has not become infructuous since the steps taken as per the interim order dated 14.8.2014 are not completed. It is also submitted by the learned senior counsel that the question of renewal of FL3 licences is also a matter arising for consideration and the subsequent events do not debar the courts from considering those facts.

11. The learned senior counsel also submitted that the 418 bar hotels are not functioning as such from 1.4.2014 not because of any act on the part of the licensees or due to their omission but because of the orders passed by the Government prohibiting them from running the bar hotels. The learned senior counsel pointed out that if the state of affairs as of now continue to exist for a few days more, a contention is likely to be put forward against the appellants and others that the fifth proviso to Rule 13(3) of the Foreign Liquor Rules would apply forbidding renewal of the licences and on that ground also the Writ Appeals have not become infructuous.

12. The main challenge in the Writ Petitions, from which the Writ Appeals arose, was against the Government Order dated 2.4.2014. The prayer for renewal of licences was ancillary. If the Government Order dated 2.4.2014 were to continue in existence, the question of renewal of licences would not arise at all. In other words, the prayer for the issue of a writ of mandamus to renew FL3 licences in favour of the appellants and others would arise only in the event of this Court allowing the Writ Petitions and quashing the Government Order dated 2.4.2014. Therefore, the question to be considered is whether the challenge against the Government Order dated 2.4.2014 would survive in view of the subsequent policy decision taken by the Government on 22.8.2014 and the subsequent amendment of the Foreign Liquor Rules and also on the ground that the policy decisions as well as the amendment of the Rules are under challenge in a batch of Writ Petitions filed by the appellants and others. The further question to be considered is what will be the impact of the order of the Supreme Court dated 11.9.2014 ordering status quo till 30.9.2014 on these Writ Appeals.

13. The question can be answered this way: If the policy decision dated 22.8.2014 taken by the Government is upheld, would the challenge against the order dated 2.4.2014 survive? We are of the view that the said challenge would not survive if the policy decision of the Government dated 22.8.2014 were to be

upheld by the learned Single Judge of this Court in a batch of Writ Petitions which are being argued from 18.9.2014 onwards. If so, we have no hesitation to hold that the Writ Appeals have become infructuous, since the relief prayed for in the Writ Petitions have become infructuous.

14. It is submitted by the learned senior counsel for the appellants that the fifth proviso to Rule 13(3) of the Foreign Liquor Rules is likely to be put against them in the event of expiry of the period of six months from 1.4.2014. There is no case for anybody that these Bar hotels were closed down on account of any act on the part of the licensees. The bar hotels were closed down only due to the orders passed by the Government prohibiting running of those Bar hotels. Therefore, we are of the view that the fifth proviso to sub-rule (3) of Rule 13 of the Foreign Liquor Rules would not stand in the way of renewing the licences in case ultimately it is found that the policy decision of the Government dated 22.8.2014 is not valid and that the appellants and other writ petitioners are entitled otherwise to get their licences renewed. At the same time, we are also of the view that the fifth proviso to Rule 13(3) of the Foreign Liquor Rules cannot be taken as a ground to hold that these Writ Appeals have not become infructuous.

15. The contention put forward by the learned senior counsel for the appellants that since the inspection of the Bar hotels having commenced as per the interim order dated 14.8.2014 directing inspection of 418 bar hotels, and since the process having not completed, the Writ Appeals should be kept alive for completion of that process, is not sustainable. The interim order dated 14.8.2014 was passed by the Division Bench at a time when the policy decision of the Government was not taken. Subsequently when the policy decision dated 22.8.2014 was placed before the Division Bench, the said Bench did not pass any order directing continuation of the inspection of the rest of the bar hotels in compliance with the interim order dated 14.8.2014. It is true that there was no direction by the Division Bench to stop further inspection. We are of the view that the Division Bench would have thought it fit to direct inspection of the bar hotels only to save time and to see that in the event of the appellants succeeding in the Writ Appeals, time need not be wasted for considering FL3 licence renewal applications. The interim order was not intended as a complete measure to arrive at a finding as to whether the appellants and other petitioners should be allowed to continue to run the bar hotels. It was only an arrangement subject to the final decision in the Writ Appeals and also to enable the Division Bench to mould the relief in case it becomes necessary. Since the relief cannot be granted in these Writ Appeals in view of the subsequent developments, the state of affairs which took place as per the interim order dated 14.8.2014 need not be taken note of. Since the main issue is pending before the learned Single Judge in a batch of Writ Petitions, the appellants and others are entitled to put forward a contention before the learned Single Judge on this aspect. We make it clear that this judgment would not stand against the petitioners in making such a contention before the learned Single Judge. In other words, inspection of 105 bar hotels by the team pursuant to the interim direction of this Court dated 14.8.2014 would

not be a ground either in favour of the petitioners or in favour of the Government with respect to the merits of the matter which is to be considered by the learned Single Judge in the pending Writ Petitions.

Accordingly, we hold that the Writ Appeals have become infructuous and we dismiss the Writ Appeals as infructuous subject to the observations as above with respect to the fifth proviso to Rule 13(3) of the Foreign Liquor Rules.