
(2013) 03 KL CK 0054
In the High Court Of Kerala
Case No : WP (C) No. 6153 of 2013 (T)

Maggie Davis

APPELLANT

Vs

State of Kerala, The Commissioner of Excise, The Deputy
Excise Commissioner and Circle Inspector of Excise

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 03 KL CK 0054

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : B. Krishna Mani, Smt. N.V. Sandhya and Sri. D. Kesavan Nair, for the Appellant; C.K. Sherin, Government Pleader for R1-R4, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—This Writ Petition is filed seeking the following reliefs:

(i) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to grant FL-3 (Hotel), Restaurant) licence to the petitioner's hotel "Mookkannoor Tourist Home, Mookkannoor Post, Ernakulam District.

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to dispose of Ext. P2 forthwith.

(iii) Issue an interim direction directing the respondents to grant FL-3 (Hotel, Restaurant) licence to the petitioner's Hotel, "Mookkannoor Tourist Home, Mookkannoor Post, Ernakulam District.

The petitioner is conducting a hotel having four star classification. The petitioner has submitted Exhibit P2 application dated 25.2.2013 for the issue of an FL-3 licence to his hotel. The petitioner complains that no orders have been passed thereon, till date.

A statement has been filed by the 3rd respondent, producing Annexure R3(a)

notification by which, the Foreign Liquor Rules have been amended by adding a new proviso to Sub-rule (3) of Rule 13, which reads as follows:

Provided also that no new licenses under this rule shall be issued.

The explanatory note to Annexure R3(a) states that the Government have decided to appoint a One Man Commission to recommend comprehensive changes in the present Abkari Policy including a review of the FL-3 licenses already granted. The Government have also taken a decision not to grant any more bar licenses till such time as a policy decision is taken on the recommendations, to be made by the One Man Commission. According to the learned Government Pleader, it is in view of Annexure R3(a) that the petitioner's application is not being considered.

2. Adv. Shri B. Krishnamani, who appears for the petitioner places reliance on Exhibit P9 judgment of this Court by which, a direction has been issued to respondents 1 and 2 to consider the application for FL-3 licence submitted by another four star hotel. Therefore, it is contended by the learned counsel for the petitioner that the petitioner may not be discriminated.

3. A perusal of Exhibit P9 judgment shows that the application for issue of an FL-3 licence in the said case was submitted on 8.11.2012. The petitioner in the said case had submitted an earlier application dated 28.3.2012. That application had been rejected for the reason that the hotel did not have a four star classification. Therefore the petitioner therein had obtained a four star classification and had submitted a fresh application. It was in view of the above circumstance that a direction was issued in the said case. It was also noticed that the order appointing a One Man Commission had been passed after the petitioner had submitted his application for FL-3 licence. The said situation does not exist in the present case. The petitioner herein has submitted Exhibit P2 application for an FL-3 licence on 25.2.2013. As per Annexure R3(a), the Foreign Liquor Rules was amended on 12.2.2013, much before the date of Exhibit P2 application. Consequently, as on the date of submission of the petitioner's application, Annexure R3(a) amendment had come into force. The said amendment is not under challenge in this Writ Petition. Therefore, the petitioner is not a person similarly placed, as the petitioner in Exhibit P9. For the above reasons, the directions issued in Exhibit P9 cannot confer any advantage on the petitioner. As far as the petitioner is concerned, since he has submitted an application for the issue of an FL-3 licence after the coming into force of Annexure R3(a), he is bound by the amended Foreign Liquor Rules.

For the above reasons, I do not find any grounds to issue any of the directions sought for in this Writ Petition. The Writ Petition is therefore dismissed. It is made clear that the dismissal of this Writ Petition will not stand in the way of the petitioner submitting a fresh application for FL-3 licence, after the present embargo is lifted.