

(2012) 12 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 1912 of 2012

Member Secretary (HRACC) and Others	APPELLANT
Vs	
Emerald Regency and Others	RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Citation : (2013) 1 KLJ 244 : (2013) 1 KLT 264

Hon'ble Judges : Thottathil B. Radhakrishnan, J; A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : P. Parameswaran Nair, for the Appellant; C.C. Thomas, (Sr.) M.G. Karthikeyan, Nireesh Mathew and R. Padmaraj (GP), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These writ appeals are filed by the Member Secretary (HRACC) in the Ministry of Tourism, essentially on behalf of the Union of India. The only issue that arose for consideration before the learned Single Judge was the effect of G.O. (P) No. 192/2011/TD dated 9.12.2011 issued by the Government of Kerala restricting issuance of FL-3 licence only to hotels having 4 star classification and above, on the requirement of clause 8(1) of the revised guidelines of the Tourism Ministry of the Union of India. That clause enjoins, among other things, that wherever bar licence is prohibited for a hotel as per the local law, the bar will not be mandatory and wherever bar is allowed as per local law, then the hotel will have to obtain bar licence first and then apply for classification to the Ministry of Tourism. This is in the context of the prescription in that clause that bar licence is necessary for 4 star, 5 star, 5 star delux, heritage classic and heritage grand categories.

2. While the learned Single Judge decided the writ petitions on 16.8.2012, G.O. (P) No. 192/2011/TD dated 9.12.2011 stood declared as void and inoperative, as per the judgment of the Division Bench rendered in Swendra Das. B v. State of Kerala, 2012 (3) KHC 653 (DB). Though appeals are stated to have been admitted by the Hon"ble Supreme Court of India against that judgment, no order of stay of operation of that judgment of this Court is granted. The Hon"ble

Supreme Court also recorded the submission on behalf of the State of Kerala that applications pending for FL-3 licences would be considered within a period of eight weeks and thereafter, the applicants who are found successful will be granted licences, in accordance with law.

3. Do the relevant provision of G.O.(P) No. 192/2011/TD continue to govern? It has been declared void and inoperative by the competent court, viz., this Court. Obviously therefore, appealing Union of India is justified in saying that the situation now is that the local law in the State of Kerala does not prohibit grant of bar licence to hotels with 3 star classification. It is the clear prescription of the Tourism Department of Union of India that one has to possess bar licence for consideration, for classification, for 4 star and upward. Under such circumstances, we are of the view that these appeals are entitled to succeed.

4. Under the aforesaid circumstances, we required the State Government to state its stand in the light of the afore-noted judgment of the Division Bench, as regards the G.O.(P) No. 192/2011/TD and the matters pending before the Hon"ble Supreme Court. An affidavit is filed in terms of the direction, however, stating that "at present, the Government is granting FL-3 licenses to those who have got an order from the Hon"ble High Court or Supreme Court for granting FL-3 licenses to 3 star hotels". We record that statement only to note that the Government ought to have put its stand straight rather than looking up to the High Court and the Hon"ble Supreme Court to pass orders as to whether FL-3 licences have to be granted to any particular applicant. May be, the Government does not want to take a definite and clear stand on that matter, having regard to the pendency of its appeal before the Hon"ble Supreme Court of India. Yet, we are clear in our mind that the Governmental functions cannot be passed off by saying that it will depend upon whether an individual goes to the High Court or the Hon"ble Supreme Court and gets order on case to case basis. It amounts to failure to take responsibility to exercise power in accordance with the statutory provisions. Any attempt to do so is nothing but shirking one"s responsibility and would result in unauthorized abdication of authority in terms of statutory provisions. That would even amount to attempting to make the judiciary a part of the decision-making process by the executive. Any attempt by the executive authority to provide itself a protective cover against challenges or criticism to its action, by "passing the buck" to the judiciary in regard to final decisions, should be resisted and avoided. The power of judicial review is not intended to be exercised to grant "advance rulings of administrative approvals" to validate executive orders. Judiciary cannot be made a party ex ante in the decision-making process of the executive. See for support, Priya Darshni Dental College and Hospital Vs. Union of India (UOI) and Others, . It should also be remembered that matters relating to abkari which is in the realm of State privilege, cannot be left open by the Government in such a manner.

5. The only practical solution as of now is to have the applications of the petitioners in the writ petitions transmitted to the Regional Director of the

Southern Regional Office of India tourism (Chennai), to consider each of those cases for classification as 3 star to enable the State Government to issue licences on FL-3 applications going by the law as it now stands, subject of course, to the verdict that may be handed down by the Hon"ble Supreme Court in the appeal pending there as against the judgment of this Court in Surendra Das (supra). In the result, the common judgment impugned in these writ appeals is set aside and the writ appeals are ordered, directing that the applications of the writ petitioners pending with the Tourism Department of Union of India shall be transmitted to the Regional Director, India tourism (Chennai), Southern Regional Office, Chennai or such other competent authority who has to decide on such applications. The said officer will decide on those applications within a period of one month from the date of receipt of each of those applications. If the applications are not available in the files, the writ petitioners may present fresh applications to the competent authority. Writ appeals ordered accordingly.