

(1990) 11 KL CK 0067
In the High Court Of Kerala
Case No : O.P. No. 8990 of 1990

M/s. Hotel Apsara

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Citation : (1991) 1 KLJ 779

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P.C. Chacko, for the Appellant; Molly Jacob, Got, Pleader, for the Respondent

Judgement

K. Sreedharan, J.—When C. M. P. No. 15748/1990 came up for orders, I heard learned counsel appearing on either side in detail. I am disposing of the Original Petition. Petitioner is M/s. Hotel Apsara situated at Chalakudy represented by its partner Shri A. P. Antony. Hotel Apsara was being run by a partnership firm consisting of Shri P. E. Appu and Shri A. P. Antony. This hotel was granted FL3 licence under the Foreign Liquor Rules, hereinafter referred to as "the Rules, with effect from 18-11-1984. That licence was being renewed year after year. During the year 1987 88 Shri P. E. Appu expired. There was some confusion regarding the person to represent the firm. Question also arose as to whether without the junction of the legal heirs of P. E. Appu, FL 3 licence could be renewed. By Ext. P1 notice dated 28-2-1990 2nd respondent directed the petitioner to deposit 21/2 lakhs rupees toward the rental of the licence for the abkari year 1989-90. Since the abkari year was about to expire and only a few days remained, petitioner moved Ext. P2 representation before Government requesting for reduction of the rental to 1/18 of Rs. 5/2 lakhs. In the alternative he also prayed for renewal of the licence for 1990-91 by collecting the entire rental for that abkari year. Since there was delay in the disposal of that representation he moved this court by filing Q, P. 6866/90. By judgment dated 27-7-1990 Government was directed to pass final order on Ext. P2 representation within a

period of six weeks. In compliance with that direction Government issued Ext. P3 order dated 7-9-1990. By that order Government rejected the petitioner's request to collect 1/12 of the rental for the abkari year 1989-90 and directed the petitioner to apply for fresh licence subject to the present rules. This order is under challenge,

2. A statement has been filed on behalf of 2nd respondent. The fact that F13 licence was granted to Hotel Apsara at Chalakudy with effect from 13-11-1984 and that it was being renewed till the end of the abkari year 1987-88 are admitted. On coming to know of the death of Shri P. E. Appu the Assistant Commissioner of Excise directed the licensee to produce a legal heir-ship certificate. Since no particular legal heir was authorised to represent all, a direction was issued to put in application by the Legal heirs and Shri. A. P. Antony. There-upon A. P. Antony and Pv A. Sasidbaran applied for renewal of the licence for the year 1988-89 on the basis of a partnership deed. They produced the original partnership deed only on 27-12-1988. So the licence was not renewed for the abkari year 1988-89. Lates Shri A. P. Antony. Managing Partner of the Hotel submitted an application to the Minister on 8-9-1989, In that, he inter alia stated:

Since the Bar was not functioning in the last year, our firm it not liable to pay licence fee for the period the Bar was not functioning. Hence it is humbly prayed that Bar licence be renewed for functioning in the year 1989-90, making it clear to collect the licence fee for this year only.

In the light of this request petitioner was directed to remit the licence fee for the year 1989-90. That direction was conformity with Rule 14 of the Rules. If new licence is to be issued then petitioner's hotel has to satisfy the conditions prescribed in the rules.

3. Petitioner has no dispute to the claim that he has to satisfy the conditions of the rules for getting licence subject to the provisions contained in Rule 13(3) of the rules. According to him, the restrictions relating to distance from educational institutions, temples, Church, mosque or burial grounds will not apply to his case because his licence was in existence on the date of commencement of the Foreign liquor (Amendment) Rides, 1986, which was introduced with effect from 1-4-1986. It is his further case that privilege of sale of foreign liquor is to be purchased on payment of an annual rental fixed by the Government Payment of an annual rental is with reference to the abkari year. Government have no power to realise the rental for an abkari year which has expired and during which period the licensee had not availed of the privilege, In the instant case petitioner had not availed of the privilege during the abkari year 1989-90. So, he should not be compelled to pay the rental of that year. He is claiming privilege for sale of foreign liquor In his hotel during the abkari year 1990-91. The rental fixed by the Government for that period alone can be claimed by the Government. As per Rule 14 of the rules, he concedes that he is liable to pay the whole rental for the abkari year 1990-91, eventhough major portion of that year has expired by now.

4. Rule 13 (3) of the Rules was amended by S. R. O. No. 349/86/TD dated 28-3-1986. The amendment so brought out reads:

But no such licence shall be issued to Hotels or Restaurants which are located within 200 meters from any educational institution, temple, church, mosque or burial ground. However renewal of licence to bars which are in existence on the date of commencement of the Foreign Liquor (Amendment) Rules, 1986, may be allowed subject to the condition that objections, if any, which had been raised, will be considered and decided by the Excise Commissioner.

This restriction relating to the location of the hotel within 200 meters from the Institution mentioned above it is argued, is not to apply in the case of bars which were in existence on the date of the amendment. The amendment came into force with effect from 1-4-1986. Petitioner's hotel had the bar licence during the abkari years 1985-86 and 1986-87. It was renewed during 1987-88 as well. So, to such a bar, the restriction regarding the location, it is argued, is not to apply.

5. Learned Government Pleader on the other hand, took the stand that the petitioner is not entitled to the benefit of the above exception brought out by the amendment. The bar licence to the petitioner's hotel was not renewed during the abkari years 1988-89 and 1989-90. To such a bar, it is argued, the restriction regarding the location must also apply because the application seeking the licence for 1990-91 can never be treated as an application for renewal of the licence; This argument - at the first blush appears to be quite attractive. But on a closer scrutiny, I find it difficult to accept the same. If the interpretation now given by the learned Government Pleader is to be accepted the wording adopted in the amendment should have been differently worded. After the words "renewal of licence to bars which are in existence on the date of commencement of the Foreign Liquor (Amendment) Rules, 1986" words ""which continue to be in existence there-after" should also have been added, in the absence of those words, the benefit of that provision must enure to those licensed bars which existed as on 1-4-1986 If a licensed bar was in existence on 1-4-1986, it can continue to function under an FL3 licence, for the subsequent period even if it is located within the 200 meters from any educational institutions, temple, church, mosque or burial ground provided it satisfies their conditions in the Rules.

6. Learned counsel representing the petitioner has expressed an apprehension that he may be denied licence on the ground that his hotel is not a "2 Star Hotel" as contemplated by the latter portion of Rule 13 (3) of the Rules (S R; Of. No. 496/82 dated 15-4-1982). This apprehension is, ill conceived because it was during the continuance of that provision petitioner was granted licence with effect from 18-11-1984. Since the licence was granted while S. R. O. No. 496/82 was in force, the respondents will not be justified in invoking that provision to deny the licence at this distance of time.

7. Learned Government pleader raised a contention that the, petitioner's application cannot be considered as one for renewal of the licence but it is to be

considered as one for, grant of fresh licence,.Whether it is treated as an application for renewal at for fresh licence, the situation will not change. The fact that petitioner was a licence on 1-4-1986 is not in dispute So, he cannot be denied licence on the basic of the (restriction regarding location. Further the) procedure to be fallowed for renewal and grant of fresh licence are virtually one and the same. Reference may be made to the decision in N.S, Shethna v. Vinubhai[(AIR 1967 SC 1036), M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, and Vamakshy v. State of Kerala (1983 KLT 53). Thus, I hold that the application for renewal of a licence in law stand cm the sane footing a grant of a fresh licence. As stated earlier, the privilege of sale of foreign liquor is being sold on payment of annual rental.! That rental must necessarily relate to abkari year. Abkari years 199-89 1989-90 have expired. During those two abkari yew, petitioner had or availed of the privilege to sell foreign liquor in his hotel. Therefore, no rental far that period can be claimed from him. He has applied for licence For the year 1990-91. He will have to pay the entire rental for that year in view of Rule 14 of the Rules. Petitioner"s application for licence for the, abkari year 1990-91 should be disposed of as expeditiously as possible, in the light of the observations made earlier, within two weeks from the date of receipt of a copy of the judgment. Third respondent, The Commissioner of Excise or the Assistant Excise Commissioner, Thiruvananthapuram, as the case may be, may consider the application and issue licence as stated, above.

The Original Petition is disposed of in the above terms. Issue photo copy of the judgment to the parties on usual terms.