
(2013) 12 KL CK 0056

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5818 of 2013 (B)

M/s. PTS Hotels India Private Limited

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Foreign Liquor Rules — Rule 13(3)
Kerala Municipalities Act, 1994 — Section 447

Citation : (2014) 1 ILR (Ker) 385 : (2014) 1 KLJ 294 : (2014) 1 KLT 54

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : C.C. Thomas, Sri. A.V. Thomas, Sri. Nireesh Mathew and Sri. M.G. Karthikeyan, for the Appellant; C.K. Sherin, Sr. Government Pleader for R1-R4 and Sri. K.D. Babu, SC, Kozhikode Corporation for R5, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner is a private limited company represented by its Managing Director. The petitioner has constructed a hotel that is classified as a four star hotel by Ext. P1 certificate issued by the Ministry of Tourism, Government of India. The petitioner had submitted an application for the issue of an FL-3 licence under Rule 13(3) of the Foreign Liquor Rules on 11.2.2013. However, in view of Ext. P2 amendment, prohibiting the issue of bar licences, the said application has not been considered. Therefore, without prejudice to his right to pursue the application for FL-3 licence, the petitioner has submitted Ext. P3 application for the grant of an FL-11 licence for the conduct of a beer/wine parlour u/s 13(11) of the Foreign Liquor Rules. As per Ext. P4 the application submitted by the petitioner along with its enclosures has been returned to him, directing him to produce copy of a Clearance Certificate/No Objection Certificate from the local authority. The requirement of such a Clearance Certificate is mandated by Ext. P5 ordinance, it is pointed out. The contention of the petitioner is that Ext. P4 is unsustainable and liable to be set aside. According to him, Ext. P5 ordinance does not apply to the grant of a licence to conduct a beer/wine

parlour. The learned Senior Counsel Shri. C.C. Thomas places reliance on the explanation to sub-section 10 of the ordinance to contend that, an FL-11 licence not having been mentioned in the said provision, the requirement of obtaining a Clearance Certificate does not apply to the said category at all. The establishments to which the requirements of the ordinance would apply are, a toddy shop, a foreign liquor shop, a foreign liquor retail shop, an FL-9 establishment or a bar hotel. Since the establishments to which the provision is to apply have been enumerated, such of those establishments that are left out are not liable to comply with the said requirement, it is contended. Therefore, he seeks the issue of appropriate directions quashing Ext. P4 and directing Ext. P3 application to be accepted and considered without insisting on production of a Clearance Certificate from the local authority.

2. The contentions of the petitioner are refuted by Smt. C.K. Sherin, the learned Govt. Pleader who represents respondents 1 to 4. It is pointed out by the learned Govt. Pleader that, Ext. P5 ordinance has defined an abkari shop to include inter alia, a foreign liquor shop also. My attention is drawn to the definition of foreign liquor contained in Rule 1A of the Foreign Liquor Rules to contend that beer is also included therein. Reliance is placed on the decision of this Court in K. Krishna Kumar and Others Vs. State and Others, to point out that this Court has already held that a beer parlour is also a foreign liquor shop. For the above reasons, it is contended that Ext. P4 is perfectly justified and not liable to be interfered with by this Court.

3. A statement has been filed on behalf of the third respondent. The petitioner has filed a reply affidavit in answer to the contentions in the statement. Adv. K.D. Babu appears for the fifth respondent. I have heard the counsel appearing for the contesting parties.

4. The facts of the case are not in dispute. The only question that arises for consideration is whether the requirement of a Clearance Certificate/No Objection Certificate from the local authority applies to an establishment that proposes to start a beer parlour. The term "foreign liquor" is defined in Sub Section 13 of Section 3 of the Abkari Act in the following words:-

Foreign Liquor.- "Foreign Liquor" includes all liquor other than country liquor.

Provided that in any case in which doubt may arise the Government may declare by notification what, for the purposes of this Act, shall be deemed to be "country liquor" and what "foreign liquor".

The expression "liquor" has been defined in Sub Section 10 of Section 3 as follows:-

Liquor:- "Liquor" includes spirits of wine, arrack, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol.

(Emphasis supplied)

Sub Section 12 of Section 3 defines Country Liquor as follows:-

Country Liquor:- "Country Liquor" means toddy or arrack

The above definitions show beyond any doubt that the expression "foreign liquor" includes beer also. The Foreign Liquor Rules are framed under the provisions of the Abkari Act. Rule 1A of the Foreign Liquor Rules defines foreign liquor as follows:-

1A. Definition:- "Foreign Liquor" in these Rules means and includes all wines, spirits, beer, cider, fenny and other fermented liquors and plain rectified spirit including absolute alcohol intended to be used for the manufacture of liquors meant for human consumption into the State by sea or land or air, whether manufactured in India or outside. (Emphasis supplied)

It is clear from the above that beer is an item that has been uniformly included within the expression "foreign liquor" by both the Abkari Act as well as the Foreign Liquor Rules.

5. As per Ext. P5 ordinance, Section 447 of the Kerala Municipality Act, 1994 (the "Act" for short) has been amended by inserting Sub Sections 7 to 10 therein. Sub Sections 7 to 10 of the amended Section 447 of the Act are extracted hereunder for convenience of reference:-

7. Notwithstanding anything contained in the Abkari Act, 1077 (1 of 1077) or in any other law for the time being in force, no person shall, without previous permission in writing of the Municipality and otherwise than in accordance with the conditions specified in the permission, establish an Abkari shop within a municipal area.

8. While granting permission to establish an Abkari shop near an educational institution or place of worship, the distance limit prescribed in the Abkari Act for the time being in force or the rules framed thereunder shall be complied with and the Municipality shall not grant permission to establish an Abkari shop within the said distance limit.

9. A Municipality shall be competent, in the interest of public peace or morality or on the grounds of convenience or nuisance, to order shifting from one place to another or closing of an Abkari shop within a period not exceeding fifteen days, as may be directed in this behalf.

10. Notwithstanding anything contained in this section, the provisions of sub-sections (7) to (9) shall not be applicable to any Abkari shop existing on the 25th day of November, 2012, the date of commencement of the Kerala Municipality (Second Amendment) Ordinance, 2012 (64 of 2012), or, subject to all existing legal provisions, for re-establishing the toddy shops existing on the said date, in the area within the boundaries allotted for establishing them.

Explanation:--"Abkari shop" means a toddy shop or a foreign liquor shop or a foreign liquor retail shop or an establishment having FL-9 licence or a bar hotel,

under the Abkari Act, 1077 and the rules made thereunder.

(Ordinance No. 33 of 2013 dt. 26.4.2013)

6. Sub Section 7 mandates that "previous permission" in writing of a Municipality as well as compliance with the conditions specified in such permission is necessary before an "abkari shop" could be located within a Municipal area. It is further provided in Sub Section 10 that the provisions of Sub Sections 7 to 9 shall not apply to any abkari shop that was existing on the date of commencement of the amendments. The explanation provides that an "abkari shop" means a toddy shop or a foreign liquor shop or foreign liquor retail shop or FL-9 establishments or a bar hotel under the Abkari Act, 1077 and the Rules thereunder. Therefore, the question to be decided is whether a beer parlour for the conduct of which an FL-11 licence is sought, would come within the meaning of an "abkari shop" contemplated by the explanation.

7. According to the Senior Counsel Shri. C.C. Thomas, the explanation has referred only to an FL-9 establishment and a bar hotel. If FL-11 establishments had been in the contemplation of the rule making authority, the same would have been specifically included, since FL-9 establishments and bar hotels have been specifically made mention of. It is contended that, various other establishments have been similarly left out. Examples are, establishments to which FL-4, FL-4A, FL-6, FL-7, FL-8, FL-10 and FL-12 licences are issued. It is contended that for the above reasons, the requirements of Ext. P5 ordinance are not necessary to be complied with while submitting an application for FL-11 licence.

8. Though the contention of the learned Senior Counsel appears to be attractive at first blush, the same cannot be accepted on a closer scrutiny of the provision. The explanation opens with the words, "abkari shop" means, which indicates that the said expression includes within the scope of its meaning, the various establishments mentioned in its definition. They are:-

i) a toddy shop,

ii) a foreign liquor shop,

iii) foreign liquor retail shop and an FL-9 establishment having FL-9 licence and a bar hotel, under the Abkari Act, 1077 and the Rules made thereunder. Therefore, the establishments sought to be included within the meaning of an abkari shop are the establishments mentioned in the said provision, as contemplated by the Abkari Act, 1077 and the Rules made thereunder. It is therefore clear that the establishments included within the meaning of an abkari shop are to carry the very same meanings attributed to them under the Abkari Act and the Rules. In the above perspective, a foreign liquor shop should also necessarily carry the meaning attributed to it under the said Act and the Rules.

9. Though Rule 13 of the Foreign Liquor Rules contemplates the grant of various categories of licences, only one establishment has been referred to by its

licencee. The same is, an FL-9 establishment. Though a bar hotel is granted an FL-3 licence, instead of referring to the licence, the same has been referred to as a bar hotel in the explanation. This is a clear indication that the establishments have not been referred to on the basis of the category of licence issued to them. Therefore, the alleged omission to mention a beer parlour by specifically referring to it as an FL-11 establishment is not of any consequence at all. In fact, there does not appear to be any omission at all. The expression "foreign liquor shop" would rope in all the establishments that answer the definition of a foreign liquor shop under the Abkari Act and the Rules thereunder. As already noticed above, Rule 1A includes beer in the expression "foreign liquor". The question as to whether a beer parlour is a foreign liquor shop or not was considered by this Court in *Krishna Kumar v. State of Kerala* (supra). The issue in the said case was whether the prohibited distance rule of maintaining the distance of 400 mtrs. from an educational institution, applicable to a foreign liquor shop, was applicable to a beer parlour also. It has been held by this Court that beer parlours which function on the basis of FL-11 licences are also foreign liquor shops. It has been noticed in the said judgment that in view of Rule 2(o) of the Kerala Abkari Shops Disposal Rules 2002 all words and expressions used and not defined in the said rules shall have the meanings respectively assigned to them in the Act and the rules framed thereunder. Therefore, the expression, foreign liquor shop would also include an establishment functioning on the basis of an FL-11 licence.

10. It is further contended by the learned Senior Counsel that the use of the expression foreign liquor retail shops after referring to a foreign liquor shop was unnecessary, if the wider meaning were to be attributed to the expression "foreign liquor shop". The fact that both the expressions have been employed simultaneously indicates that different meanings have been attributed to each of the said expressions. It is true that the expressions referred to above have been used simultaneously. But, the said fact cannot advance the case put forward by the petitioner. This is for the reason that if at all any expression is to be considered as unnecessary, it can only be the expression, "foreign liquor shop". By employing the expressions foreign liquor retail shops and FL-9 establishments, both retail and wholesale foreign liquor outlets are included. Therefore, it was unnecessary to use the expression foreign liquor shop, if it were not with an intention to include all the other establishments that were left out. It follows from the above discussion that the explanation to Section 447 of the Act, introduced by Ext. P5 ordinance would take in an FL-11 establishment also. Therefore, it is found that Ext. P4 is justified. In view of the above the writ petition fails and is accordingly dismissed. No costs.