
(2013) 01 KL CK 0009

In the High Court Of Kerala

Case No : WA. No. 975 of 2010 in WPC/3170 of 2009

N.M. Karthikeyan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2013) 01 KL CK 0009

Hon'ble Judges : S. Siri Jagan, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : K.P. Satheesan, Sri. K.K. Gopinathan Nair, Sri. M.R. Jayaprasad, Sri. P. Mohandas Ernakulam, Sri. Mathew Sunny and Sri. Anoop. V. Nair, for the Appellant; Anitha Reveendran, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—These two appeals raise a common question of law and are also against a common judgment in two writ petitions, viz., W.P. (C). Nos. 3170/2009 and 25230/2009 in both of which facts leading to the writ petitions are similar. In both the cases, the appellants applied for transfer of an existing licence in the name of another person prior to 1.4.2007. At the time when they filed the applications, as per the rules prevailing then, the appellants were entitled to have the transfer sanctioned by the Government, which were recommended by the concerned Excise officials. But, unfortunately for the appellants, the law changed by amendment of the rules with effect from 1.4.2007. As per the amendment rules, which are produced as Ext. P5 in W.P. (C). No. 25230/2009, for transfer also, the hotel for which transfer of licence has been applied, should have 3 Star classification. Admittedly, the hotels to the owners of whom the licences were sought to be transferred, did not have that qualification. The Government considered the applications filed by the appellants only after coming into force of the amended rules. Therefore, they applied the amended rules to the applications and rejected the same on the ground that, as per the amended rules, for transfer also, 3 Star classification is mandatory, which was not satisfied

in the case of the appellants. The appellants challenged the orders of the Government by filing the writ petitions. By the common judgment in the two writ petitions, which is impugned in these appeals, a learned Single Judge of this Court dismissed the writ petitions relying on the decision of the Full Bench of this Court in W.A. No. 544/2008, which, according to the learned Single Judge, holds the field and which lays down that the rules applicable are the one prevailing as on the date of consideration of the application and not the one as on the date of application. The appellants are challenging the common judgment of the learned Single Judge in the writ appeals. The contention of the appellants is that they having filed applications for transfer prior to coming into force of the rules and at the relevant time, the rules permitted such transfer even without a 3 Star classification, it is discriminatory and unjust to reject their applications solely on the ground that subsequent to the filing of the applications, the law changed. According to the appellants, the ratio of the decision in W.A. No. 544/2008 by the Full Bench does not apply to the facts of their case, since the facts are distinguishable. The appellants would contend that in the decision of the Full Bench relied upon by the learned Single Judge, the question was not relating to transfer of an existing licence, but only consideration of an application for a fresh licence. According to the appellants, both the facts situation are totally different. Therefore, according to them, the decision relied upon by the learned Single Judge does not apply to the facts of the cases of the appellants.

2. On the other hand, the learned Government Pleader would contend that the issue is covered by the decision of the Supreme Court in State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc., The learned Government Pleader would further contend that the ratio of that decision is to the effect that all applications in respect of licences under the Abkari Act have to be considered in accordance with the law as on the date of consideration of the applications and not in accordance with the law obtaining on the date of filing of the applications. Therefore, according to the learned Government Pleader, the issue is squarely covered by the decision of the Supreme Court in B. Six Holiday Resorts" case (supra) and consequently the writ appeals are liable to be dismissed.

3. We have considered the rival contentions in detail. The only question arising for consideration in these appeals is as to whether the decision in B. Six Holiday Resorts" case (supra) applies to the facts of these cases. As we have already stated, the contention of the appellants is that that decision applies only to applications for fresh licences under the Abkari Act and does not apply to the application for transfer of an existing licence. We are unable to agree with the proposition put forward by the appellants. We are of opinion that the ratio of the decision in B. Six Holiday Resorts" case (supra) is to the effect that any application in respect of the licences under the Abkari Act has to be considered in accordance with the policy of the Government obtaining as on the date of the consideration of the application as revealed by the rules as obtaining on the date of consideration of the application. We do not find any merit in the contention that the decision of the Supreme Court in B. Six Holiday Resorts" case (supra) is

confined to only applications for fresh licences and does not apply to the applications for transfer of licences. This is clear from the discussion of the Supreme Court in that decision, particularly paragraph 27, which reads thus:

27. It is true that in Kuldeep Singh case there were no statutory rules and what was considered was with reference to a policy. But the ratio of the decision is that where licence sought related to the business of liquor, as the State has exclusive privilege and its citizens had no fundamental right to carry on business in liquor, there was no vested right in any applicant to claim an FL-3 licence and all applications should be considered with reference to the law prevailing as on the date of consideration and not with reference to the date of application. Whether the issue relates to amendment to Rules or change in policy, there will be no difference in principle. Further, the legal position is no different even where the matter is governed by statutory rules, is evident from the decisions in Hind Stone (supra) and Howrah Municipal Corporation (supra).

We are of opinion that the ratio of that decision is to the effect that notwithstanding the fact that the applications have been filed prior to the change of policy and change of rules, the law to be applied is the law obtaining as on the date of consideration of the applications. Here admittedly as on the date of consideration of the applications, the appellants were not entitled to have their applications for transfer of licence allowed insofar as they did not have the essential qualification of 3 Star classification for the hotels, to which the licences were to be transferred. The policy of the Government as on the date of consideration of the applications of the appellants was that for transfer of existing licences also, the transferee hotel should have 3 Star classification. Therefore, clearly, the appellants are not entitled to transfer of the licences insofar as clearly the rules stipulate that, for such transfer, the hotels should have 3 Star classification. Therefore, we do not find any merit in these appeals and accordingly, the same are dismissed.