
(2013) 03 KL CK 0023

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6558 of 2013

Seaport Hotels Cochin (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 2 KLT 505

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi and Reji George, for the Appellant;
C.K. Sherin, Government Pleader, for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is aggrieved by Ext.P1 order of the 1st respondent, by which an application for an FL3 licence submitted by him has been rejected. Ext.P2 is the said application. The two grounds on which Ext.P2 has been rejected are: (i) that a school is situated 160 meters away from the hotel; and

(ii) that a house situated near the hotel is being used as a weekly prayer hall of Grace Community.

According to Sri Jaju Babu, who appears for the petitioner, the report of the Excise Commissioner, Ext.P8, does not refer to the school as a proper, recognised educational institution. Nor does a prayer hall qualify as a Church coming within the ambit of the Rule, Therefore, according to the learned counsel the matter requires to be considered afresh by the 1st respondent. I have heard the learned Government Pleader also. The learned Government Pleader points out that as per the present policy of the Government, the decision is not to grant any fresh FL3 licence.

2. Heard. Para.2 of Ext.P1 that contains the reasoning of the Government in rejecting the petitioner's application as well as the concluding paragraph are reproduced hereunder:

2. The application was forwarded by the Excise Commissioner vide letter cited 3rd above. On examination of the report of the Excise Commissioner, it is found that a school is situated 160 metres away from the Hotel. Apart from this there is a dwelling house bearing No. 9/904 of the Grama Panchayat owned by one Mr. George which is used as a weekly prayer hall of Grace Community, New India Church of God Centre located 75 metres away from the Hotel. As such it is evident that this said licence though a private dwelling house is a place of public worship. Government have examined the proposal in detail, in view of the judgments of the Hon''ble High Court and the Hon''ble Supreme Court. Since a prayer hall being used by the Grace Community is situated within the prohibited distance 200 metres from the hotel, the application is rejected.

3. In contrast, a perusal of Ext.P8 report of the Excise Commissioner reveals a totally different situation. The relevant portion of Ext.P8 reads as follows:

The nearest objectionable institution is the "Thekkanmalipuram Juma Masjid", which is situated 210 meters away from the hotel. But a house having building No. Xvii/78 of Elamkunnapuzha Grama Panchayat, owned by one Kochappu Sudarsanan Kattupadath in which Vivekananda Public School is functioning. The school is not recognized or approved by Government or Panchayat and is situated 160 meters away from the hotel. Another dwelling house No. 9/904 of the Grama Panchayat owned by one Ittikunnath John George, is used as a weekly prayer hall of certain persons belongs to Grace Community, New India Church of God Centre is located 75 meters away from the hotel. The above institutions is also not approved by Panchayath as a church or devotional institution and it is only a private dwelling house. The nearest FL 3 hotel "M/s Kottaram Bar" is situated 205 meters away from the hotel.

4. It is clear from the above that according to the 2nd respondent, what is referred to as a school is not actually a school, but some institution that is functioning from a house. It is also evident that the prayer hall that is functioning from another house also cannot qualify as a religious institution coming within the scope of the prohibition in the relevant rule. At any rate, the second respondent has not reported that the said institutions qualify as a ground for such prohibition. It is therefore clear that the 1st respondent has misread or misunderstood the report of the Excise Commissioner while referred to the same in Ext.P1.

5. Apart from the above, the Note appended to R. 13(1) of the Foreign Liquor Rules clearly stipulates the nature of an Educational Institution or Church that can qualify as a ground for rejecting a licence under the said Rules. The relevant portions of the said Note are extracted hereunder:

Note:- (1)(a) "Educational Institution" means schools or Colleges under the control of the State Education Department or Central Board of Education and which has been duly recognised by the Government;

(b)....

(c) "Church" means a public place where prayer is offered by Christians.

A perusal of the above clearly shows that an educational institution to qualify as a ground for rejecting an application for licence should be a school or college under the control of either State Education Department or Central Board of Education and which has been recognised by the Government. There is no indication in the report of the Excise Commissioner that the school in the present case satisfies any of the above conditions. Similarly, the house referred to by the Excise Commissioner, where weekly prayers are conducted by the Grace Community, also does not satisfy the definition of a Church as is evident from a perusal of the provision of law. For the above reasons, the reasoning in Ext.P1 is unsustainable. Ext.P1 is therefore set aside.

6. With respect to the contention of the learned Government Pleader that the present policy of the Government does not permit the grant by a fresh FL3 licence and for the said reason, the application of the petitioner could not be considered, the learned counsel for the petitioner places reliance on Ext.P3 judgment of this Court in W.P. (c) No. 7566 of 2012 by which, a direction was issued as early as on 27.03.2012 to the 1st and 2nd respondents to take a final decision on the petitioner's application for the issue of an FL3 licence, before expiry of the said Financial Year. About an year has been elapsed thereafter. The petitioner is not responsible for the said delay and cannot be prejudiced on the said ground. Therefore, the present change in the Abkari policy cannot be a ground to deny the grant of an FL3 licence to the petitioner. For the above reason, the application submitted by the petitioner would have to be considered in compliance with the directions in Ext.P3 judgment. For the foregoing reasons, the 1st respondent is directed to consider Ext.P2 application for an FL3 licence submitted by the petitioner, as expeditiously as possible and to pass appropriate orders thereon, in accordance with law, at any rate, within a period of six weeks of the date of receipt of a copy of this judgment.

This Writ Petition is disposed of as above.