

(2015) 03 KL CK 0294

In the High Court Of Kerala

Case No : Writ Petition (C). No. 23814 of 2013 (B)

Sreebala Developers and Hotel Pvt. Ltd.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0294

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : N. Raghuraj and K. Amminikutty, for the Appellant; Tom K. Thomas, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J—Ext.P15 order passed by the Government rejecting the petitioner's request for grant of FL-3 license to Soorya Galaxy, Kozhikode is under challenge in this writ petition.

2. The petitioner is a private limited company engaged in the business of conducting hotels, motels, restaurants and other hospitality centres.

3. The petitioner company is running a hotel by name "Soorya Galaxy" at Kozhikode which was granted Ext.P1 Four Star Classification Certificate. On the strength of Ext.P1, the petitioner submitted Ext.P2 application for FL3 license for the hotel. The petitioner alleges that after conducting necessary enquiries, all the excise authorities concerned viz. the Deputy Commissioner of Excise, the Joint Commissioner of Excise and the Commissioner of Excise positively recommended grant of FL-3 license to the petitioner's hotel as per Exts.P4 to P6 reports as early as in July/August 2012. The petitioner further points out that this Court vide Ext.P3 judgment in August 2012 had directed the first respondent before whom Exts.P4 to P6 reports were placed to pass orders on Ext.P2 application within one month. However, the Secretary to Government who had all the relevant materials/reports recommending grant of FL-3 license to the petitioner's

hotel, did not pass any orders on the application for FL-3 license submitted by the petitioner; it is alleged. The petitioner moved this Court with a Contempt Case wherein the first respondent submitted that necessary directions have been issued to pass orders in the matter on 15.10.2010. On the basis of the said submission, the petitioner withdrew the Contempt of Court Case. The petitioner alleges that later, the petitioner came to know that the first respondent raised an unnecessary query directing the respondents 2 to 4 to ascertain whether the petitioner's hotel is situated within the prohibited distance of an educational institution, an issue which was already addressed in Exts.P2 to P4 reports. The Joint Commissioner of Excise, who conducted a personal inspection submitted Ext.P11 report dated 7.11.2012, stating that the petitioner's hotel is situated beyond the prohibited distance. The petitioner alleges that the first respondent who ought to have passed an order on Ext.P2 application thereafter, instead of doing so, raised another query requiring the 2nd respondent to ascertain whether the implication of the petitioner in a case registered by the CBI has any bearing in the matter of grant of FL-3 license to the petitioner's hotel. The Joint Commissioner of Excise vide Ext.P13 report dated 26.12.2012 reported that the registration of the above case by the CBI is not an objection for the issuance of FL-3 license and that the denial of license to the petitioner is against the provisions of the Foreign Liquor Rules. The Commissioner of Excise also vide Ext.P14 report intimated the first respondent that the registration of CBI case is not an objection for granting FL-3 license to the petitioner's hotel. Therefore, the petitioner was again constrained to file Contempt of Court Case No. 194/2013 in January 2013. Pending consideration of the same, Ext.P15 order rejecting Ext.P2 application was produced before this Court. Ext.P15 was issued stating that the application was rejected in the light of Ext.P2 amendment to the Foreign Liquor Rules dated 12.2.2013 by which it was provided that no new FL-3 license should be issued. The petitioner points out that the petitioner's application ought to have been considered in accordance with the law prevailed at the time when the competent excise authorities had considered the same and not on the basis of the amendment which came into existence later. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the State, they gave thrust to Ext.P16 amendment on the basis of which Ext.P15 was ordered.

5. I have heard the learned counsel for the petitioner and the learned Special Government Pleader in the matter.

6. It is crucial to note that in the counter affidavit filed by the first respondent, the first respondent has failed to answer the legal contentions urged in the writ petition. The crux of the allegation is that the respondents have deliberately sat on Ext.P2 application without any justifiable reason and thereby delayed its consideration despite specific directions issued by this Court vide Ext.P3 judgment and Ext.P7 order. Evidently, Ext.P2 application was submitted as early as on 20.6.2012. It is not in dispute that the 4th respondent vide Ext.P4 report

dated 26.7.2012 recommended to grant FL-3 license to the petitioner. In Ext.P4 report, the 4th respondent had clearly mentioned the distance between the petitioner's hotel and L.P. School as 307 metres along the pathway commonly used by the public. Similarly, the 4th respondent had also reported about the pendency of a case registered by the CBI under the provisions of Prevention of Corruption Act against a few officials of Indian Tourism, Cochin and 8 hotels including the petitioner's hotel. Later, the third respondent also had reported that the petitioner's hotel is located beyond the prohibited distance of the school in question vide Ext.P5 letter addressed to the second respondent as early as on 27.7.2012. Considering Exts.P4 and P5 reports, the second respondent as per Ext.P6 letter addressed to the first respondent had recommended the grant of FL-3 license to the petitioner's hotel. Thus, it is evident that all the competent excise authorities had considered the credentials of the petitioner for FL-3 license on merits and had recommended grant of FL-3 license to the hotel. The first respondent instead of complying with the directions in Ext.P3 judgment raised unnecessary queries vide letter dated 25.8.2012 requiring the second respondent to forward an authenticated sketch showing the distance between the petitioner's hotel and the nearest school. The first respondent also raised another objection that the certificates enclosed with Ext.P2 application were in the name of the former Managing Director of the petitioner company. It is evident from the record that the grant of FL-3 license was delayed only on account of the laches on the part of the respondent. The petitioner points out that the first respondent, who had repeatedly raised queries while considering the petitioner's application for FL-3 license, without a demur granted FL-3 license to M/s. Malappuram Hotels Ltd. vide order dated 22.10.2012 (Ext.P22) and on the strength of that bar license was issued to the said hotels and the bar commenced functioning on 2.11.2012. This would indicate that the petitioner was subjected to gross discriminatory treatment at the hands of the first respondent. The facts now placed on board would reveal that the objections raised by the first respondent against the grant of FL-3 license to the petitioner ultimately turned out to be baseless and unnecessary. The first respondent who had all the material inputs by January 2013 itself to grant FL-3 license to the petitioner waited till 20.3.2013 to reject Ext.P2 application falling back on an amendment to Foreign Liquor Rules which came into existence in the meanwhile. This Court, in *Kallada Hotels & Resorts v State of Kerala* (2012 (2) KLT 167) and in *Shiju v State of Kerala* (2013(4) KLT SN 15 (C. No. 13)), has categorically stated that the law that is applicable should be the law as on the date when application is considered by the Excise Commissioner in terms of Rule 13B(2). The judgment rendered by the learned Single Judge of this Court in Shiju's case was assailed by the Government in W.A. No. 1215/2013. Pending consideration of the said writ appeal, respondents 1 and 2 granted license to the petitioners therein, a true copy of which is produced as Ext.P23. W.A. No. 1215/2013 was later dismissed by a Division Bench of this Court upholding the view taken by the learned Single Judge in Shiju's case as evident from Ext.P24. The case of the petitioner is exactly similar to the case of the petitioner in Shiju's case and

therefore the petitioner is entitled for the same reliefs.

The Apex Court in *State of Kerala and Others Vs. B. Surendra Das Etc.*, AIR 2014 SC 2762 : (2014) AIRSCW 3968 : (2014) 3 SCALE 421 has ordered that the State Government will not proceed to deny FL-3 license to hotels with classification of four star and above by resorting to their deletion under Rule 13(3) until the report of One Man commission is received and until it takes action against the non-standard restaurants which have been permitted under the 6th and 7th proviso of Rule 13(3). In view of the above, the respondents are bound to take back Ext.P2 application which was rejected pursuant to Ext.P15 order.

In the result, this writ petition is allowed. Ext.P15 is quashed. It is hereby declared that Ext.P2 application submitted by the petitioner is liable to be considered in accordance with law/rules prevailing prior to Ext.P16 amendment and the petitioner is entitled to get FL-3 license de hors Ext.P16. The respondents are directed to take back Ext.P2 application and issue FL3 license to the petitioner's hotel within a period of two weeks from the date of receipt of a copy of this judgment.

However, it is made clear that this judgment as well as the grant of FL-3 license to the petitioner hotel shall be subject to the final outcome of the decision of the Division Bench in W.A. No. 1746/2014 and connected cases wherein the policy decision of the Government in the matter is pending consideration.