

(2016) 02 KL CK 0007

In the High Court Of Kerala

Case No : W.A. No. 189 of 2016 in W.P. (C) 36844/2015

State of Kerala and Others

APPELLANT

Vs

Saj Holdings (P) Ltd.

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : (2016) 02 KL CK 0007

Hon'ble Judges : K. Surendra Mohan and P.V. Asha, JJ.

Bench : Division Bench

Advocate : K.C. Vincent, Government Pleader, for the Appellant; George Poonthottam, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—1. The State of Kerala and others are in appeal before us against the judgment of the learned Single Judge allowing W.P.(C) No. 36844 of 2015. The Writ Petition was filed by the respondent, a company incorporated under the Companies Act engaged in the Hospitality Industry. The respondent company was having a three star classification issued by the Ministry of Tourism. By virtue of its three star classification, the company had been granted an FL-3 licence to conduct a bar at their hotel. Accordingly, they were conducting a bar attached hotel from the year 2011 onwards. The FL-3 licence issued to them has been produced as exhibit P1 in the Writ Petition. Exhibit P1 shows that, the said licence was being renewed, from year to year.

2. In the above circumstances, there was a change in the policy of the Government of Kerala whereby, the eligibility for being granted an FL-3 licence was confined to hotels having five star classification and above. Therefore, hotels like that of the respondent with lower star classification became ineligible to claim renewal of their FL-3 licences. The policy was under challenge before this Court in a batch of Writ Petitions. During the pendency of the Writ Petitions, the FL3 licences issued to hotels like the respondent and others were being renewed on the basis of an interim order granted by the Apex Court. Thus, the FL3 licence

issued to the petitioner was also renewed up to 31.03.2015. While so, on 30.12.2014, as per Exhibit P4, it was decided by the Government that hotels like the respondent's that were issued with FL-3 licences would be granted FL-11 licences with permission to conduct Beer/Wine Parlours.

3. In terms of exhibit P4, the respondent was also granted an FL-11 licence with effect from 01.04.2015. In the above circumstances, the respondent's hotel upgraded its facilities and submitted an application for the grant of a five star classification. The respondent's application was duly considered and the hotel has been granted a five star classification by the Ministry of Tourism, Government of India. In view of the above, as per exhibit P7 dated 25.11.2015, the respondent sought for the renewal of the FL-3 licence granted to it. Since the said application was not considered, the respondent approached this Court seeking the issue of necessary directions, by filing WP(C) No. 36844 of 2015.

4. A statement was filed by the third respondent in the Writ Petition. It was contended that, though the respondent company was holding an FL-3 licence up to 31.03.2015, the same was not renewed for the year 2015-16, in view of the change in the Abkari Policy. Later on, they had applied for the grant of an FL-11 licence, in accordance with the stipulations in the Government Order dated 30.12.2014 which extended the said benefit to 418 hotels that were listed in the case before the Supreme Court, and were having FL-3 licences as on 31.03.2014. It was accordingly that the respondent was issued with an FL-11 licence on 04.04.2015. It was pointed out that, as per the proviso to Rule 13(3) of the Foreign Liquor Rules, the licence of a Bar hotel that remains defunct for more than six months either during the period of validity of the licence or after its expiry shall not be renewed. The respondent's FL-3 licence had expired on 31.03.2015 and had not been renewed. For the said reason, it was contended that the remedy of the respondent was to submit an application for the issue of a fresh FL-3 licence. Since the present application was for the renewal of a defunct FL-3 licence, it is contended that the said application could not be considered.

5. The learned Single Judge after considering the respective contentions held that, the FL3 licence originally issued to the respondent's hotel had not become defunct, that the same had been converted into an FL-11 licence that the respondent was continuing to hold and that for the said reason, the legal fiction that is contained in exhibit P4 amendment justifies a conclusion that the FL-3 licence had continued to be in force. In the above view of the matter, the learned Single Judge has directed renewal of the licence of the respondent, provided he satisfies all the other requirements for the grant of such renewal. The State is aggrieved by the said direction.

6. According to the learned Government Pleader, the proviso to Section 13(3) interdicts specifically the grant of renewal of a bar licence where the licence has remained defunct for more than six months either during the period of validity of the licence or after its expiry. In the present case, it is pointed out by the counsel that, the FL-3 licence of the petitioner had expired on 31.03.2013 after which, it

was not renewed. The respondent was granted an FL11 licence in accordance with the terms of exhibit P4 amendment. The learned Government Pleader points out that, in exhibit P4 it has been specifically provided that the licence issued under Rule 11B shall not be treated as a renewal of the FL-3 licence in his name. It has further been provided that, the earlier FL3 licence granted to him shall be deemed to be an FL-11 licence for the purpose of issuance of a licence under the said sub rule. According to the learned Government Pleader, the said amendment was brought into force, to take care of the interests of the workers of the hotels that were granted with FL-3 licences earlier. Holders of such FL-11 licences, cannot be considered to be persons in whose favour, FL-3 licences had been renewed. The said view, according to the learned Government Pleader, would entitle all the 418 hotels that were granted with FL-11 licences to claim renewal of their former FL-3 licences though they had not been renewed. The claim of continuity put forward by the respondent, according to the learned Government Pleader would enable all the 418 hotels that were granted with FL-11 licences to claim renewal of their former FL-3 licences, though they had not been renewed. The claim of continuity put forward by the respondent, according to the learned Government Pleader, is without any basis. Therefore, it is contended that, the learned Single Judge has seriously erred in holding that the respondent was entitled to the renewal of his FL-3 licence that was initially issued to him. It is further pointed out that, the respondent was at liberty to make a fresh application for the grant of an FL-3 licence, which would be duly considered. Such an application would have to be supported by a fresh permission from the local authority permitting the bar hotel to function within its local limits. The power of the local authority to object to the starting of a five star hotel within its limits is also violated by the process now adopted by the respondent. Therefore, the learned Government Pleader seeks interference with the judgment of the learned Single Judge.

7. Advocate George Poonthottam who appears for the respondent, vehemently opposes the contentions of the learned Government Pleader. According to the learned Counsel, the proviso to Section 13(3) of the Foreign Liquor Rules has no application to the case of the respondent's hotel. Though it is true that as per the proviso, a defunct FL-3 licence cannot be renewed, it is contended that in the case of the FL-3 licence granted to the respondent's hotel, the licence had continued to be valid all throughout. Though there was a change in the Abkari Policy of the Government during the year 2014, the FL-3 licence granted to the respondent's hotel had been renewed up to 31.03.2015 pursuant to an interim order granted by the Supreme Court. It was during the validity of the FL3 licence of the respondent that, exhibit P4 amendments were introduced on 30.12.2014. Though the Abkari Policy disentitled the respondent hotel from seeking renewal of the FL3 licence, exhibit P4 amendment granted continuity of the FL-3 licence for the purpose of seeking an FL-11 Beer/Wine Parlour licences. According to the Government, the said amendment was introduced with the object of protecting the interests of the employees who had become jobless. However, the fact

remains that the FL-3 licence was renewed and continued to be operative though as an FL-11 licence. It was in the meantime that, the respondent had upgraded his hotel to a five star hotel. The status of the hotel as a five star hotel entitled the respondent to the conversion of his FL-11 licence into an FL-3 licence, which was only a converse of what has been permitted by exhibit P4. The stand adopted by the appellants herein that the respondent should apply for the grant of a fresh licence, according to the learned counsel, is, in the said circumstances, without any justification whatsoever. The learned Single Judge has considered the issues in the proper perspective and has directed the consideration of the application of the respondent as one for renewal. It is contended that, there are absolutely no grounds to interfere with the judgment of the learned Single Judge.

8. Heard. The facts in this case are not in dispute. It is not in dispute that the respondent had been issued with an FL-3 licence and that he had been conducting a bar hotel from the year 2011 onwards. It is also not in dispute that his FL3 licence was being renewed from year to year, permitting him to continue to conduct his bar attached hotel, until there was a change in the Abkari Policy of the Government in the year 2014. The Abkari Policy had been the subject matter of challenge before this Court in a number of writ petitions filed by the owners of the bar attached hotels, who had been denied FL-3 licences. As per interim orders passed by the Supreme Court, the FL3 licences issued to the said hotels were directed to be renewed. Accordingly, the FL-3 licence issued to the said hotels were renewed. Thus, the FL-3 licence issued to the respondent hotel also continued to be in force up to 31.03.2015. It was in the above circumstances that, on 30.12.2014, exhibit P4 amendments were introduced. As per sub rule 11B to Rule 13 that was introduced, it was provided that, an FL-11 licence shall be issued to hotels to which FL-3 licences granted were in force as on 31.03.2014, on the request of the licensees. It is a condition for the grant of the FL-11 licence under the said Rule that, the licence shall not be treated as a renewal of FL-3 licence in his name. It is further provided that, the FL-3 licence earlier issued shall be deemed to be an FL-11 licence for the issuance of the licence under the said sub rule and that the licence issued under the said Rule shall not be treated as renewal of the same. Therefore, by a fiction introduced by sub rule 11B, it has been provided that the earlier FL-3 licence issued to the respondent would be treated as an FL-11 licence issued under the sub-rule and the FL-11 licence issued under the sub-rule shall be treated as a renewal of the earlier FL-3 licence. Therefore, what has been provided by sub-rule 11B is that, the earlier FL3 licence issued to the respondent would be treated as an FL-11 licence for the issue of the FL-11 licence under the rule which was also treated to be a renewal of an earlier FL-11 licence. Thus, the licence issued to the respondent continued to be renewed. It did not become inoperative or defunct. It is true that, it has been made clear in sub rule 11B that the licensee shall not treat the licence granted under sub rule 11B as a renewal of the FL3 licence in his name. The said clarification has to be understood only as an indication that the licensee shall not be entitled to conduct a bar on the premises with respect

to which his FL3 licence had been renewed. Therefore, the factual position is that the respondent's licence exhibit P1 that stood renewed up to 31.03.2015 continued to remain operative though in a different form as an FL11 licence issued under sub rule 11B of Rule 11(3) of Foreign Liquor Rules.

9. As rightly found by the learned Single Judge, a licence can become defunct only when it is not renewed by an act or omission on the part of the licensee. In the present case, as already found above, the authorities had renewed the licence, from 01.04.2015 as an FL-11 licence, conversion being under sub rule 11B of rule 13 of the Foreign Liquor Rules. It is not in dispute that, as of now the respondent has upgraded his establishment into a five star hotel and by exhibit P7 produced along with the Writ Petition, he has been granted a five star classification. Therefore, he has become entitled to seek for the renewal of his FL3 licence even under the present Abkari Policy of the Government. The above being the position, the respondent was certainly within his rights to have sought for the renewal of his FL-3 licence. The licence initially issued to the respondent was all along being renewed and kept alive from 2011 onwards. All along his establishment has been functioning at the present place. Therefore, there is no question of the said establishment seeking the grant of a fresh FL-3 licence or a fresh No Objection Certificate from the local authority concerned. It is an admitted fact that for the grant of a fresh licence, compliance with all the formalities would have to be undertaken afresh. We are not satisfied that any purpose would be served by compelling the respondent to undertake the said procedure afresh, especially considering the fact that the establishment has been functioning at its present location, without any complaints from any quarter.

For the foregoing reasons, we find no grounds to admit this appeal or to interfere with the judgment of the learned Single Judge. This Writ Appeal is accordingly dismissed confirming the judgment of the learned Single Judge.