(1998) 07 KL CK 0033

In the High Court Of Kerala

Case No : W.A. No. 1192 of 1998

State of Kerala APPELLANT

Vs

Abdulla Kunhi RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1998) 2 KLJ 620

Hon'ble Judges : S. Marimuthu, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : M.K. Damodaran, for the Appellant; C.C. Thomas, M.G. Karthikeyan and Nireesh Mathew, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—Heard Advocate General, Mr. M.K. Damodaran, for the appellants and Mr. C.C. Thomas for the respondent. The above Writ Appeal has been filed against the judgment of K.S. Radhakrishnan, J. in OP. 10183 of 1998 dated 12-6-1998. Respondent herein, as petitioner in the Original Petition, filed the said OP praying to call for the records leading to Ext.P3 and quashing the same; for a mandamus directing the Assistant Excise Commissioner, Ernakulam to renew Ext.P1 licence forthwith and to declare that the respondent is entitled to get his licence renewed as per Ext.P2 application and for other reliefs. Respondent is the managing partner of the firm M/s. Seven Stars, Periyar Hotel, Aluva which firm was issued with an FL-3 licence under the Foreign Liquor Rules (for short ''the Rules'') in order to conduct a Bar Hotel at Periyar Hotel, Aluva by order dated 30-6-1990. A copy of the said licence is produced and marked as Ext.P1. Subsequently the licence was transferred into the name of the respondent by order dated 15-2-1995. The fact of transfer is endorsed in Ext.P1 licence and the respondent conducted the business upto 31-3-1995. The business become defunct from 1-4-1996 and, therefore, the licence was not renewed due t6 financial difficulties and also personal inconvenience of the partners.

2. The respondent submitted Ext.P2 application dated 16-4-1998 to the Assistant Excise Commissioner to renew Ext.P1 licence. The said application was recommended and forwarded by all the authorities, namely, appellants 4 to 6 and placed before the Excise Commissioner for necessary orders. The Excise Commissioner, by Ext.P3 order dated 30-5-1998, rejected Ext.P2 application. Ext.P3 reads as follows:

No. XC6-7602/98.

Board of Revenue (Excise) Thiruvananthapuram, 30-5-1998.

From: The Secretary (Excise)

To: Sri. Abdulla Kunhi, M/s. Seven Stars Periyar Hotel Ltd., Aluva, Ernakulam Dist.

Sir,

Sub:--Abkari--FL-3 licence--renewal request, for 98-99--Periyar Hotel Complex--Aluva--Reg.

Ref:--Your application dated 16-4-98.

In the reference cited Sri Abdulla Kunhi, Managing Partner, M/s. Seven Stars, Periyar Hotel Ltd., Aluva has requested for the renewal of FL-3 licence No. 86/95-96 of Periyar Hotel Complex, Aluva for 98-99. He has stated that the above FL-3 licence could not be renewed for two years (96-97 and 97-98) due to financial difficulties.

The request of Sri Abdulla Kunhi S/o. Sri Kunhamoo, Onassa PO, Kundapur, Karnataka State who is the present Managing Partner of M/s. Seven Stars, Periyar Hotel Complex, Aluva was examined in detail. The FL-3 licence to Periyar Hotel Complex, Aluva was originally sanctioned as per Board''s order XA3-13685/90 dated 30-6-90 in the name of Sri. P.P. Jacob, the then Managing Partner of the firm ''Seven Stars'' Periyar Hotel Complex, Aluva. Subsequently, as per Order No. XC6-2648/95/K. Dis. dated 15-2-95, the FL-3 licence was transferred in the name of Sri. Abdulla Kunhi, the succeeding Managing Partner. The above FL-3 licence was not renewed from 1-4-96.

The bar licence of Periyar Hotel Complex, Aluva was defunct for 96-97 and 97-98. The applicant, Sri. Abdulla Kunhi is a resident of Karnataka State. It is not clear how the applicant can run a bar hotel efficiently at Aluva as per FL-3 licence conditions. Further the hotel for which FL-3 renewal is applied is having only two star facilities. At present Govt. have fixed minimum three star conditions for bar hotels in private sector. The applicant has also not proved the public need of the FL-3 licence in the case.

In the above circumstances, the application dt. 16-4-98 from Sri. Abdulla Kunhi, Managing Partner of Periyar Hotel Ltd., Aluva, Ernakulam Dist. for renewal of FL-3 licence of Periyar Hotel Complex, Aluva for the year 98-99 is declined.

Yours faithfully, Sd/- for Secretary (Excise)

Respondents contends that the order under Ext.P3 is not tenable and that the appellants ought to have renewed the licence as per Rules 13A and 14 of the Rules. The Assistant Excise Commissioner is competent to renew the licence under Rule 13A as per Rule 14, he is liable to pay the entire licence fee of Rs. 12 lakhs even if the business is conducted for a shorter period. It is also submitted that Ext.P3 order is illegal, arbitrary and discriminatory and also against the principles laid down by the decisions of this Court, especially the Division Bench decision in OP 18951 of 1997 and batch dated 31-3-1998 wherein this court held that any defunct licence can be renewed as per Rule 14 by paying the additional fee of Rs. 25,000/- for each defunct year. It is further submitted that the ground relied on by the authorities for rejecting the application that the respondent is a resident of Karnataka State is not valid in law since the Act or the Rules does not provide that only resident of Kerala alone will be granted licence. Respondent further contended that Ext.P3 is discriminatory since the appellants had renewed similar types of licence and even permitted for shifting in different cases whereas the case of the respondent is only to renew his defunct licence in the same premises. It is submitted by the respondent that the hotel to which Ext.P1 licence was issued is having two star facilities and is situated in an unobjectionable site and hence he is entitled to get his licence renewed in the same premises as per Ext.P2 application.

3. Along with the Original Petition, respondent has filed Exts.P1 to P3.

4. In the Original Petition, a statement was filed by the Excise Commissioner, second appellant herein. It is submitted that Rule 13 prescribing grant of licence of FL-3 hotels specifies that a licence can be issued to hotels having the rating of three star and higher classification from 31-3-1997 as per SRO. No. 218/97 published in Kerala Gazette Extraordinary No. 388/97 dated 31-3-1997. Since the respondent''s hotel is having only two star classification at present, his licence cannot be renewed as such renewal will amount to non-observance of the Rules prevailing on the date of filing the statement (11-6-1998). It is further stated that since the respondent is not financially sound and is incapable of discharging his responsibilities in the matter sitting in Karnataka, he is not entitled for renewal of the licence.

5. While arguing the matter before the learned single Judge, his attention was invited to the judgment of a Division Bench of this Court in OP 18951 of 1997 and batch dated 31-3-1998 wherein the Bench held that the authorities have got power to renew defunct licences. Since the authorities have renewed defunct, licences which were having only two star facilities in very many cases, the learned Judge pointed out that the request of the respondent cannot be rejected. In the concluding portion of his judgment, the learned Judge has observed thus:

4. A statement has been filed on behalf of the second respondent. I heard counsel for the petitioner and the learned Government Pleader. I find the reasons

stated in Ext.P3 cannot be sustained. The Division Bench in the above mentioned judgment has interpreted various provisions of the Act and Rules and has taken the view that respondents have got power to renew defunct licences. It is a case where the hotel was having licence upto 31-3-1996. The same could not be renewed due to financial difficulties. Since the respondents have renewed very many defunct licences, which were defunct for more than 10 to 14 years, I am of the view that there is no justification in not renewing this licence as well. I also do not find any justification in the Board''s statement that the licensee belongs to Karnataka and he could not run the hotel efficiently. With regard to three star hotel facilities, it is seen that petitioner''s hotel was having two star facilities upto 1-4-1996 and that very many hotels which are not having three star facilities have been granted renewal of their licences. Therefore, there is no justification in denying the same to the petitioner. Accordingly, I quash Ext.P3. There will be a direction to the Board of Revenue or the Assistant Excise Commissioner, as the case may be, to renew the petitioner''s licence on his paying an amount of Rs. 50,000/- towards additional fee and Rs. 12 lakhs towards licence fee within a period of two weeks.

6. Aggrieved by the impugned judgment dated 12-6-1998, the State and others have filed the above Writ Appeal which was taken on file by us on 3-7-1998. Interim stay of operation of the judgment in OP was also granted for eight weeks. When the matter came up for hearing on the next occasion, by consent of both the parties, the main appeal itself was taken up for final hearing.

7. Learned Advocate General first invited our attention to Ext.P3 and submitted that since the Board of Revenue has rejected the application for the reasons recorded therein, the respondent is not entitled for renewal of the licence. He would submit that due to financial difficulties, the predecessor of the respondent could not run the business and, therefore, the licence was defunct for two years, namely, 1996-97 and 1997-98. The hotel for which FL-3 renewal is applied for is having only two star, facilities. Since the government have fixed minimum three star facilities for bar hotels in private sector, the licence in question cannot be renewed. Learned Advocate General invited our attention to Rule 13(3) of the Rules. According to him, one of the eligibility conditions is that the applicant-hotel in the private sector should necessarily have at least three star status for the purpose of consideration of grant of FL-3 licence and since the hotel in question is not that of a three star hotel, the respondent is not entitled for renewal as a matter of right. Our attention was drawn to the decision of the Supreme Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., wherein the Supreme Court has held that renewal of licence amounts to a fresh grant of licence. It is further submitted that grant of FL-3 licence is exclusively within the discretion of the authorities concerned and, therefore, a Mandamus compelling the authorities to issue renewal of licence is not correct in law. He would further contend that a business activity in an article like potable liquor is res extra commercium and that it is inherently dangerous and injurious to public welfare and, therefore, the respondent has no

fundamental right to do trade in liquor. Inviting our attention to the ruling of this court in Anandarajan v. State (1993 (2) KLT 523), learned Advocate General submitted that licence is only a grant of privilege to vend liquor as per Sec. 18A of the Abkari Act and, therefore, such grant is based on policy considerations, discretion of the authorities as well as the rules governing the field. Therefore, it was not correct on the part of the learned Judge to have directed grant of renewal of licence.

8. Per contra, Mr.C.C. Thomas made a principal submission that Ext.P3 order is discriminatory in nature and in support of his contention, he relied on Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, wherein the Supreme Court held that State cannot discriminate between citizens carrying on business in liquor. Though the persons who are dealing in Abkari business have no fundamental right, he would submit that this Court can interfere on the ground of discrimination as far as implementation of rule etc. are concerned. According to Mr. Thomas, appellants have renewed similar types of licence and even permitted for shifting in different cases. He submitted that the case of the respondent is only to renew his defunct licence in the same premises and, therefore, the rejection of the same by Ext.P3 is illegal and against the relevant rules. He would further contend that the reasons given by the appellants in rejecting renewal under Ext.P3 are flimsy in nature and that the Division Bench in OP 18951 of 1997 and batch has, after considering Rules 13 and 14 of the Rules, came to the conclusion that the statutory stipulation regarding payment and collection of additional rental at the rate of Rs. 25,000/- for each year of defunction, without fixing any maximum number of years for which additional rental may be received, would show that renewal can be had without any limit regarding year of defunction. It is useful to reproduce paragraphs 26 and 27 of that judgment in the present context:

26. The proviso is obviously a provision incorporated with the specific object of providing an express power of renewal of time expired licences of Bar hotels which did not/do not function on the date of expiry of the valid licence. Such a provision was conspicuously absent in the Rules till it was incorporated for the first time as per G.O. dated 27-2-1991. The renewal as per the proviso can be permitted only oh fulfilling the conditions mentioned in the said proviso. The first condition is that renewal can be permitted only on payment of an additional rental of Rs. 25,000/- for each year of defunction over and above the annual rental for the year of renewal. The second condition is that the licence sought to be renewed must have been one in respect of Bar hotels which did not/do not function on the expiry of valid licence. The third condition is that renewals can be permitted only subject to the observance of other rules in that regard. In the light of the above provision, we do not find any justification for the view now taken by the respondents that renewal can be permitted only in respect of FL-3 licences expired within a maximum period of three years prior to the date of application for renewal and not in cases where the date of expiry is beyond three years from the date of application for renewal. In other words, we do not find

any justification to hold that the number of years of defunction for which payment of additional rental at the rate of Rs. 25,000/- can be paid as a condition for renewal is three years and not more than that. The statutory stipulation regarding payment and collection of additional rental at the rate of Rs. 25,000/- for each of defunction without fixing any maximum number of years for which additional rental may be received would show that renewal can be had without any limit regarding year of defunction, as now contended by the respondents. As the wording of the proviso now stands, there may not be any justification to proceed on the basis that renewal can be permitted only within a period of three years from the date of expiry of the licence and not thereafter.

27. The argument that in the absence of any prescription regarding the time limit within which renewal should be sought for and obtained, it is only just and legal to prescribe a reasonable period of three years as the maximum period for claiming renewal under the proviso cannot be accepted as legal. Acceptance of such a contention would amount to rewriting the proviso itself. If the legislature had intended any such time restriction in the matter of renewals, it would have suitably worded the proviso and prescribed a maximum period of defunction upto which alone renewals can be permitted. Having failed to incorporate in the proviso any express words of limitation regarding the period within which renewal can be permitted, it may not be legally possible for the Government now to take the view that the renewal can be had only within a period not more than three years from the date of expiry of the period of licence. As such, it is difficult to accept the view that under the proviso, no renewal can be had if the years of defunction exceed three years.

9. Before considering the arguments of learned Advocate General, it is useful to reproduce Rules 13(3), 13A and 14 of the Rules:

13(3) Foreign Liquor 3 Hotel (Restaurant) licence:--Licence in this Form may be issued by the Excise Commissioner under orders of Government in the interests of promotion of tourism in the State to Hotels or Restaurants conforming to the standard of Two Star and higher classifications, owned or run by the Kerala Tourism Development Corporation Limited (KTDC) and India Tourism Development Corporation Ltd. (ITDC) and also to hotels having rating of Three Stars and higher classifications. Heritage and Resort hotels as well as classified restaurants where the privilege of sale of foreign liquor in such Hotels or Restaurant, has been purchased on payment of an annual rental of Rs. 12,00,000/- (Rupees twelve lakhs only)....

13A. No licence of any of the above descriptions shall be issued:

(1) If the local needs do not justify the grant of a licence;

(2) If the Commissioner considers for reasons to be recorded in writing that the grant of a licence is likely to have an adverse effect on the revenues of the State;

(3) If the Commissioner considers that there is likelihood of privilege being

misused;

(4) If the applicant has been convicted of any cognizable offence or any offence under the Abkari Act, 1077, the Prohibition Act, 1950(13 of 1950), Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), the Spirituous Preparation (inter state trading and commerce) Control Act, 1955 or Medical and Toilet Preparations (Excise Duties) Act, 1955 (Central Act 16 of 1955); and

(5) If the applicant is not financially sound and is incapable of discharging his responsibilities in the matter. Any person desirous of obtaining a licence may apply to the Commissioner in writing through the Assistant Excise Commissioner of the District concerned. The application shall stamped with court fee label of the value prescribed by law. The Assistant Excise Commissioner or such other officer may be authorised by the Commissioner, shall enquire into all the points mentioned above and submit the application to the Commissioner with his report thereon. He shall while forwarding his report, comment specifically on need for a licence with particular reference to the probable demand for liquor and the number of wholesale, restaurant, club or tavern licences already existing and their location.

If the Commissioner is satisfied on a consideration of the above factors that there is no objection to the grant of licence, he may accord sanction for a licence.

14. If any of the licences referred to in Rule 13 is granted in the course of a financial year, the full annual fee shall be paid and the licence shall expire at the end of the financial year,

Provided that renewal of licences of Bar hotels which did not/do not function on the expiry of valid licence can be permitted on payment of an additional rental of Rs. 25,000/- (Rupees Twenty Five thousand only) to each year of defunction, over and above the annual rental for the year of renewal, subject to the observance of other rules in this regard.

Rule 13 deals with licences for possession, use or sale. The privilege of sale under this licence will be sold in public auction subject to the condition in the sale notification published by the Government from time to time and also subject to the provisions in the Kerala Abkari Shops (Disposal in Auction) Rules, 1974, as amended from time to time. Rule 13(3) was amended and came into force on 12-9-1994. Before 12-9-1994, hotels having two star facilities are entitled to run FL-3 business. The hotels having two star facilities in the private sector were permitted to conduct FL-3 business. Even those hotels who were not having two star facilities were running FL-3 business because they were renewed periodically. Such licensees were granted time upto 30-6-1992 to upgrade their standard to that of two star.

10. It is stated by learned counsel for the respondent that there are more than 150 hotels now functioning and running FL-3 licence within the State though they

are not having two star facilities and also situate within the objectionable site. The rule directing such hotels to upgrade their standard to two star and also the implementation of distance rule were challenged before this Court by a series of Original Petitions. K.J. Joseph, J., by Ext.R1 judgment dated 11-6-1996, disposed of OP 7594 of 1992 and batch. Learned Advocate General, who appeared in those cases, submitted that till a policy decision is taken all the hotels having FL-3 licence will be permitted to continue their business. In view of the above submission, the learned Judge has not gone into the merits of the cases since both sides agreed for a disposal. It is relevant to reproduce paragraphs 2 and 4 of that judgment in this context:

2. I heard the learned counsel for the petitioners as well as the learned Advocate General appearing on behalf of the State and the other respondents. Both sides have agreed that these Original Petitions can be disposed of an agreed conditions stated below without going into the merits of the case and entering into any finding thereon by this court at this juncture.

4. In the light of the above stated facts, Original Petitions are disposed of with a direction to the petitioners in these petitions to abide by the decision taken by the Government regarding the increase in the rental for different types of licences under the Foreign Liquor Rules and it is further declared that the petitioners are liable to pay the increased rent to the Government at the rates applicable in respect of different categories of licences at the relevant time. Regarding the application to distance rule to the existing hotels and restaurants as well as the direction to upgrade the hotel facilities making two star facility as a condition precedent for granting licences under Foreign Liquor Rules would be decided by the Government after taking into consideration all aspects of the matter. Till such a decision is taken, the distance rules as well as the order directing upgradation of the existing hotels and restaurants to keep the two star rating will not be implemented by the Government and the status quo as on today shall be maintained.

Government has taken a policy for 1997-98 and as per the said policy, all the existing bar hotels running FL-3 licences were renewed on payment of Rs. 10 lakhs being licence fee and almost 436 hotels were renewed accordingly.

11. In this case, the hotel in question is a defunct one for the last two years. The relevant rule, therefore, to be followed is Rule 14 which has already been extracted above. As per Rule 14, if a licensee pays Rs. 25,000/- as fine towards each year of defunction over and above the annual rental fee for the year of renewal, he is entitled to get his licence renewed. In fact, government have renewed licences defunct for more than 18 years and they are now functioning. As already noticed, even though time was allowed upto 30-6-1992 to upgrade the standards of the hotels to two star, this court has passed a consent order holding that the matter would be decided by the Government after talking into consideration all aspects of the case. Until such decision is taken, the order regarding upgradation of the existing hotels and restaurants to two star rating

will not be implemented and status quo will be maintained.

12. At the time of hearing, our attention was invited to Exts.R2 to R5 as well filed by the respondent along with his counter affidavit in the appeal in order to prove his case of discrimination. Ext.R2 was issued by the Government of Kerala in G.O. (MS) 27/98/TD dated 3-3-1998 by the Taxes (A) Department, which is the Abkari policy of the Government for the year 1998-99. The government ordered that the Abkari policy for the year 1997-98 will continue for the year 1998-99 also with the modifications indicated therein. Ext.R3 is a communication from the Secretary (Excise) dated 27-10-1997 addressed to one Jossey Abraham, licensee FL-1-66/95-96 Mundakkayam. After the issuance of Ext.R2, government issued a notification as SRO. 231/98 on 6-3-1998 in order to favour a particular contractor at Mundakkayam and restored FL-1 shop abolished on 1-4-1996 and re-numbered as 74-A Mundakkayam. The said FL wholesale shop was functioning at Mundakkayam till the end of 1995-96. All the toddy shops and foreign liquor shops functioned within the objectionable site till 31-3-1996 under the protection of a government order, GO (MS) 121/95/TD dated 19-5-1995 were abolished by the government. FL-1-66 was also abolished as per the said policy. The then contractors and the employees filed OP 4753 of 1996 before this court which was dismissed by judgment dated 19-3-1996 and the writ appeal (WA 663/96) filed against the judgment also was dismissed by judgment dated 16-4-1996. As per the directions of this court, government considered the representation of the contractors and employees and rejected their request by order dated 27-10-1997. The said order of rejection is Ext.R3. Ignoring the judgment of this court and also Ext.R3, government issued a notification dated 6-3-1998 restoring the said shop when there is no provision in the Rules to restore FL shop which is given only in auction. The notification restoring the FL shop for 1998-99, which is abolished on 1-4-1996, is produced and marked as Ext.R4. Ext.R5 is a case relating to a defunct licence. It is dated 2-2-1998. In that case, the application was made on 22-11-1997 and the Board of Revenue passed the order on 2-2-1998. The Assistant Excise Commissioner, Kottayam has recommended the request and he said that it is permissible as per rules. The application was for renewal of the licence and to shift it to a new building within Changanacherry Municipality. The government accorded sanction and passed the following order:

In the above circumstances, under R. 14 and 24 of the Foreign Liquor Rules and as per the recommendation of the Assistant Excise Commissioner, Kottayam, sanction is accorded for the renewal of FL-3 licence No. KT-29/95-96 of Hotel Mareena, Changanacherry, for the year 1997-98 on remittance of an additional rental of Rs. 25,000/- each for each year of defunction in addition to the current year rental of Rs. 10,00,000/- (Rupees ten lakhs only) and for shifting of the licence to building No. XXVI 479 and 504 to 507 of Changanacherry Municipality.

13. Our attention was drawn to yet another proceedings of the Commissionerate of Excise, Trivandrum dated 10-7-1998. In that case, one V.K. Asokan, Managing Partner of FL-3 licence No. TSR 42/97-98, Aramana Bar and Restaurant, Trichur

and T.K. Sajeevan, the new managing partner have made a joint application through the Deputy Commissioner requesting sanction to transfer the FL-3 license of Aramana Bar and Restaurant, Trichur from the name of the former to the name of the latter. The Deputy Commissioner has reported that V.K. Asokan is an accused in Crime No. 228 of 1997 of Anthikad Police Station apart from other crimes registered against him. He was granted bail on the condition that he shall not directly or indirectly involve in the business of toddy or other form of liquor under the Abkari Act till the trial of the cases are over. Hence, the above Bar hotel was closed from 6-2-1998. Subsequently, this Court passed orders on 19-2-1998 clarifying that he can transfer the FL-3 licence as per condition No. 13 of FL-3 licence and that will not be treated as violation of condition of bail. Pursuant to the above order, a new partnership deed was constituted retiring V.K. Asokan and including T.K. Sajeevan as the managing partner and an application was submitted for transfer of FL-3 licence. In his letter dated 2-7-1998, the Advocate General has also opined that there is no scope for appeal or review against the judgment of this Court in OP 11249 of 1998 dated 18-6-1998 wherein this Court directed the respondents therein (State and its officials) to consider Exts.P5 and P6 taking into account the modifications may by this Court in Ext.P7 and take a decision within a period of three weeks though initially there was a direction by the Court not to conduct the shop by T.K. Sajeevan either directly or indirectly, the said restriction was subsequently diluted by this Court by its order, Ext. P7, stating that the petitioners can transfer the licence as per the condition No. 13 of FL-3 Hotel (Restaurant) Licence. In view of the judgments dated 30-4-1998 (Crl.M.C. Nos. 1012 and 1556 of 1998) and 18-6-1998 (O.P. No. 11249 of 1998), the request for transfer of FL-3 licence was examined and sanction was accorded. Permission was also accorded for the renewal of the licence for 1998-99.

14. The above proceedings of the Commissionerate dated 10-7-1998 is a case of transfer of licence from V.K. Asokan to T.K. Sajeevan and also renewal of the same in favour of T.K. Sajeevan, who made an application pursuant to the orders of this Court. Government accorded sanction both for transfer and renewal in this case.

15. Another proceedings of the Commissionerate of Excise, Trivandrum dated 10-7-1998 wherein V.K. Asokan, Managing Partner of FL-3 licence No. TSR 48/97/98, Hotel Hill Top, Kunnathangadi, Trichur and T.K. Sajeevan, the new managing partner have put in a joint applications through the Deputy Commissioner requesting sanction to transfer the FL-3 licence of Hotel Hill Top from the name of the former to the name of the latter. In view of the criminal proceedings against the former, the Hotel was closed and subsequently as per orders of this Court dated 19-2-1988 the transfer of FL-3 licence was ordered. Thereafter, a new partnership was constituted and then submitted an application for transfer of licence. Advocate General also has opined, as in the earlier case, that there is no scope for any appeal or review against the judgment dated 18-6-1998 of this court in OP 11249 of 1998. In view of the judgment, the

request for transfer of FL-3 licence was granted to the newly constituted partnership. Permission was also accorded for renewal of licence for the year 1998-99.

16. Learned Advocate General submitted that under Rule 14, a defunct licence given to a two star hotel cannot be renewed since as per Rule 13, the said concession can be extended under orders of Government in the interest of promotion of tourism in the State to hotels and restaurants conforming to the standard of two star and higher classification owned or run by the Kerala Tourism Development Corporation and India Tourism Development Corporation and also to hotels and restaurants having rating of three star and higher classifications in the private sector. Therefore, the respondent is not entitled to get his licence renewed as per Rule 14. We have already extracted the relevant Rules in para. 10 above.

17. In our opinion, the interpretation made by learned Advocate general of the relevant Rules is not correct. The rule of literal interpretation requires that the words of a statute are first understood in their natural meaning or popular sense and phrases and sentences are considered according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. The golden rule, according to various judgments of this court and also of the Supreme Court, is that the words of a statute must be given their ordinary meaning. Acceptance of the argument of the learned Advocate General would amount to re-write the proviso itself. It may not be proper for the government now to take the view that the renewal can be had only for three star hotels. It is difficult to accept the view that under the proviso, no renewal can be had to a two star hotel and that the defunct licensees are not entitled for renewal at all.

18. We shall now consider the real scope of the relevant rules. It is settled law that a licence issued earlier or renewed earlier can be cancelled only in accordance with law. It is also not correct to state that on the expiry of the period of licence, it automatically gets extinguished and it cannot be renewed later. In our view, even a time expired licence can be renewed as per the provisions contained in the proviso to Rule 14 and such a power to renew time expired licence is specifically conferred on the authorities as per the proviso to R.14 subject only to conditions contained therein. A plain reading of the provisions contained in the proviso to R. 13(3) and Rule 14 would, in our view, clearly indicate that even after the expiry of the period of licence, it can be renewed by the appropriate authorities if that authority is satisfied that the conditions mentioned in the said clause as such have been complied with by the applicant. In the instant case, the respondent is ready and willing to pay the additional rental of Rs. 25,000/- for each year of defunction. As in the other cases, it is not a case of transfer. It is only a case of renewal of a defunct licence. As pointed out by us earlier, similar licences have been not only transferred but also renewed even for the current year (1998-99). As such, none of the grounds

alleged in Ext.P3 order refusing to renew the licence are sustainable in law. Since the licence was granted to the respondent after complying with all the legal formalities and requirements, he is entitled to get renewal of the same after complying with the conditions mentioned in the proviso to Rule 14. We are unable to accept the argument of learned Advocate General that renewal under the proviso can be granted only within a reasonable period and not after the expiry of unduly long periods. We are also unable to countenance his argument that the government has only acted in accordance with the provisions of the Act and the Rules and the Abkari Policy formulated by it while examining the respective cases relating to the renewal of licences which were found to be contrary or in violation of the Rules governing the field.

19. As observed by the Supreme Court in State of Kerala Vs. Mathai Verghese and Others, a court can merely interpret a Section. It cannot rewrite, re-cast or re-design the Section. In interpreting the provision, the exercise undertaken by the court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to re-frame the legislation for the very good reason that the powers to ''legislate'' have not been conferred on the court.

20. Learned counsel for the respondent relied on the decision of the Supreme Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, in support of his contention that the State had discriminated him while passing Ext.P3 order. This judgment was relied on by the Advocate General also to say that a citizen has no fundamental right to do trade or business in liquor which is extra commercium and hence the trade or business in liquor can be completely prohibited and that the government can impose limitations and restrictions on the trade or business in potable liquor as a beverage. According to learned counsel for the respondent, State cannot discriminate between citizens carrying on business in liquor within the region. The said principle was also laid down by the Supreme Court in Khoday Distilleries'' case (supra). Since the appellants have renewed similar type of licences and even permitted for shifting and transfer in different cases, the rejection of renewal as per Ext.P3 is absolutely illegal. We have already extracted paragraphs 26 and 27 of the common judgment in OP 18951 of 1997 and batch of the Division Bench. The Division Bench has categorically held that they do not find any justification for the view now taken by the State that renewal can be permitted only in respect of F1-3 licences expired within a maximum period of three years prior to date of application for renewal and not in cases where the date of expiry is beyond three years from the date of application for renewal. They did not also find any justification to hold that the number of years of defunction for which payment of additional rental at the rate of Rs. 25,000/- can be paid as a condition for renewal is three years and not more than that. In para. 27 also, the Bench has said that it is difficult to accept the view of the government that under the proviso no renewal can be had if the years of defunction exceed three years. In the present case, as could be seen from the impugned order, that the defunction is only for a period of two years.

21. Learned Advocate General cited the decision in the Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, to counter the argument of learned counsel for the respondent on the question of discrimination. The above case was cited to point out that Art. 14 of the Constitution has no application or justification to legitimise an illegal and illegitimate action and that one illegality cannot be compounded by permitting similar illegality or illegitimate or ultra vires act. The Supreme Court also said that judicial process cannot be abused to perpetuate the illegalities. In our opinion, the above Supreme Court judgment has no application to the facts and circumstances of the case. In the instant case, the respondent has applied for renewal as per R.14. That action on the part of the respondent cannot, by any stretch of imagination, be considered as an illegal or an illegitimate action. Rule 14 provides filing of application for renewal of defunct licences on payment of certain sums. When such a request was not properly considered by the authorities, it is always open to the aggrieved party to invoke the judicial process which cannot be termed as an abuse of process of court or an abuse to perpetuate the illegalities. The learned single Judge was not in error in directing renewal of the licence to the respondent on the basis of Rule 14. It is not the case of the State that the earlier licence was granted or renewed illegally and that their action was an illegitimate an illegal action and, therefore, the present application for renewal was not competent. Their only case is that the renewal can be made only to three star rating hotels and restaurants and not to the respondent''s hotel which is only a two star hotel.

22. Harpal Kaur Chahal v. Director, Punjab Instructions (1995 Supp. (r) SCC 706) was cited for the same proposition that an illegality once committed cannot be pleaded to legalise other illegal acts. As already stated, it is not the case of the Government or the Excise authorities that the orders passed by them granting or renewing licences or ordering shifting of the liquor shops from one place to the other are illegal. In the absence of such a contention on the part of the State, they cannot now raise such a plea at this stage.

23. Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, was cited by learned Advocate General for the proposition that where the State commits any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. This judgment is also on the same lines as in the other cases cited above. The Supreme Court has said that only a claim which is just and legal can constitute a ground for discrimination on the basis that it had been extended to some and denied to others. As already noticed, in this case, the FL-3 licences were renewed by the very same State Government to hundreds of others and, at the same time, the same benefit is denied to the respondent which, as held by the Supreme Court, can certainly constitute a ground for discrimination on the basis that it had been extended to some others and denied to the respondent. We have already noticed that the respondent has applied only under R.14 which enables persons like the respondent to apply for renewal of

their defunct licences. We are, therefore, of the view that the claim now made by the respondent under R. 14 is a just and legal claim and when the said benefit is extended to others and not to the respondent, certainly the same can constitute a ground for discrimination. In the light of the above conclusions reached by us regarding the right of renewal of licences, we find it difficult to accept the argument of learned Advocate General that the respondent has no right to apply for renewal. There is no flagrant violation of the relevant provisions of the Act and the Rules so as to characterise the respondent as a person who is not entitled for renewal. The order of the learned single Judge impugned in this appeal is not liable to be interfered with. As rightly pointed out by the learned Judge that there is no justification in denying the benefit of renewal to the respondent. The order of the learned Judge quashing Ext.P3 is confirmed and the further direction to the Board of Revenue or the Excise Commissioner or the Assistant Excise Commissioner, as the case may be, to renew the respondent''s licence on his paying the required amount towards licence fee is also ratified. Respondent shall pay the licence fee as also the additional rental as per the rules within ten days from today and on receipt of the same, the appellants shall renew the FL-3 licence of the respondent forthwith.

The Writ Appeal, therefore, fails and it is accordingly dismissed. However, there will be no order as to costs.