
(2000) 10 KL CK 0053
In the High Court Of Kerala
Case No : O.P. No. 5630 of 1997

Suresh Babu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Citation : (2000) 2 KLJ 672

Hon'ble Judges : R. Bhaskaran, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; C.C.Thomas, M.G. Karthikeyan, Nireesh Mathew, Joseph George, P.J. Francis and N.Santha, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This original petition is filed to quash Exts. P4 and P13 proceedings of the Board of Revenue (Excise) and the order contained in Ext.P9 letter dated 30-10-1996 of the first respondent and also for directing respondents 1 to 3 for restoring the FL-3 licence of the Modern Hotel, Kundara, in the name of the petitioner and for other reliefs. Modern Enterprises is a partnership firm which consisted of 5 partners including the petitioner and respondents 4 and 5. The firm was running a hotel by name "Modern Hotel" at Kundara and was having FL-3 Bar Licence from the year 1984-85. The petitioner being the Managing Director of the firm, the licence was in the name of the petitioner. The fifth respondent filed an application dated 3-8-1995 requesting for transfer of FL-3 licence in her name. By Ext.P4 dated 26-9-1995, the 2nd respondent transferred the licence in the name of the 5th respondent. Aggrieved by Ext.P4, the petitioner submitted a petition to the Minister for Excise. Thereafter, the Board of Revenue issued a notice to the petitioner for a hearing on 30-11-1996. It is the case of the petitioner that no hearing was conducted on 30-11-1996 and it was adjourned to a future date. The Government by letter dated 30-10-1996 had already informed the petitioner that his request to transfer FL-3 licence in his

name cannot be agreed to in view of the new partnership and the fact that the present licensee is the 5th respondent. The Board of Revenue by Ext.P13 dated 17-2-1997 held that the Excise Commissioner has no jurisdiction to review that decision of the Government and dismissed the petition filed by the petitioner. Aggrieved by Ext.P13, the petitioner filed Ext.P14 representation dated 11-3-1997 to call for the file and to direct the Board to cancel "the transfer of licence effected in the name of the 5th respondent. Since no order was passed on Ext.P14; petitioner has approached this Court with the present OP.

2. It is stated that Ext.P13 order is in violation of Ext.P10 judgment of this Court. It is also stated in the O.P. that the 2nd respondent had acted illegally by holding that there was a valid authorisation issued by the 4th respondent authorising the 5th respondent to submit application for transfer of FL-3 of FL-3 licence in her name. According to the petitioner, Ext.P5 extract of the agreement executed by the petitioner and other partners would show that full authority for the conduct of the hotel vested with the petitioner and two other members of the firm. It was only the management of the Mayoora Hotel that was vested in the 4th respondent. It is stated that Ext.P4 proceedings of the Board of Revenue is not in accordance with the relevant provisions of the Rules relating to the grant of FL-3 licence.

3. Respondents 4 and 5 have filed a counter-affidavit. It is stated that by Ext. P4 proceedings sanction was accorded to transfer the FL-3 licence from the name of the petitioner to the 5th respondent. It was passed after considering all the documents by the Excise Authorities and after taking statements from the concerned parties.

4. The contention of the contesting respondents is that it was the partnership which was conducting the business. Originally, the licence was in the name of the husband of the 5th respondent since he was the managing partner. Subsequently, another partnership was constituted incorporating the 5th respondent in the place of her husband and petitioner was nominated as the managing partners. The licence was transferred in the name of the petitioner in his capacity as managing partner. Another FL-3 licence for conducting the bar in Mayoora Hotel was obtained in the name of another partner Sumuhehdra Babu. Thereafter, few more partners were inducted into the firm and the licences were renewed in the name of the two persons,

5. Subsequently, the FL-3 licence of Mayoora Hotel was transferred to the name of the 4th respondent. It is the case of respondents 4 and 5 that there was an agreement executed on 29-1-1994 as per which three partners including the petitioner and the 5th respondent were given the Modern Hotel and the remaining two others were given Mayoora Hotel. The petitioner executed a power of attorney in favour of his brother Sasikumar, who is the husband of the 5th respondent for conducting the Modern Hotel. Even prior to the agreement, the petitioner had signed all the papers for renewal of the licence. It is the case of respondents 4 and 5 that the petitioner did not take much interest in lifting the

liquor from the Beverages Corporation and it was decided by the remaining partners in the interest of the partnership by a resolution dated 6-6-1995 to transfer the licence in the name of the 5th respondent. It was taking into account that Ext.P4 sanction was accorded by the Board of Revenue. The 5th respondent had filed O.P. No. 6319 of 1996 for a direction to the Excise Authorities to renew the licence for the year 1996-97. This Court had directed renewal of the licence in the interim application and the O.P. is said to be still pending. It is further submitted that the petition filed by the petitioner before the Minister for Excise on 23-7-1996 challenging Ext.P4 order dated 26-9-1995 was highly belated and was the result of an after thought. It is further stated that if Ext.P14 is directed to be disposed of, the petitioner expects to use his political influence on the Government and the O.P. is filed only to use it as a clearance for the Government to help the petitioner. Respondents 4 and 5 admit that the petitioner is still a partner of the firm. The new partnership is also signed by the petitioner and is attested by a Notary Public. The conduct of the petitioner in challenging Ext.P4 after 8 months is without bona fides. Respondents therefore prayed for the dismissal of the O.P.

6. The petitioner has filed a reply affidavit. It is stated that Ext.P4 order is passed without affording an opportunity of being heard to the petitioner. The petitioner has admitted the execution of the power-of-attorney in favour of his brother Sasikumar on 8-10-1992. But his case is that it was not for conducting the Modern Hotel and the power of attorney was later revoked on 11-7-1995. The petitioner submits that the conduct of the remaining partners in passing the resolution for transfer of FL-3 licence in the name of the 5th respondent was wrong and unjustifiable.

7. I have heard learned counsel for the petitioner and counsel for respondents 4 and 5. This O.P. was once disposed of by this Court on 26-3-1997 by directing the Government to take a final decision in the matter (Ext.P14) within a period of two months. That order was passed at the admission stage. Later the 5th respondent filed an application for review and the review was allowed and it was directed that the O.P. can be heard and disposed of on merits and it is on that basis that notice was ordered to the respondents and the O.P. is heard finally.

8. It can be seen from the facts stated above, that the hotel business of which the foreign liquor bar licence is only a part belongs to the partnership. It was only because the petitioner was the managing partner that FL-3 licence was given in his name. Since the remaining partners are not willing to continue the licence in the name of the petitioner they have taken a decision to transfer the licence in the name of the 5th respondent. In such circumstances, it cannot be said that the transfer of the licence was unauthorised or illegal. The learned counsel for the petitioner submitted that though it is stated in Ext.P4 that the petitioner was not present either personally or through Advocate, as a matter of fact he was present. It is his case that on that day no decision was taken by the 2nd respondent. It is also submitted that by Ext.PIO judgment this Court found

that it is upto the Board of Revenue to consider the question of transfer. On a reading of Ext.P10 judgment will show that this Court did not decide any point in controversy. This Court only said that in the absence of necessary particulars about the subject-matter as to whether it is a review or revision it will not be safe to conclude that the Board of Revenue has no jurisdiction on the matter. That O.P. was filed by the 5th respondent herein challenging Ext.P7 notice and it is stated that it is open to the petitioner to raise the question of jurisdiction before the Board of Revenue at the time of hearing. The Board of Revenue has taken the view that in the light of the order passed by the Government declining the request of the petitioner it is not for the Board of Revenue to interfere in the matter. It is not possible to say that the reasoning of the Board of Revenue is in any way incorrect or as against the reasoning in Ext.P10 judgment. It is stated in Ext.P13 that if the petitioner has any grievance in the matter, he may request the Government to review the decision or obtain specific orders enabling the Excise Commissioner to reopen the matter. The learned counsel for the petitioner pressed the point that the FL-3 licence standing in the name of the petitioner has been transferred in favour of the 5th respondent without his knowledge and consent and therefore he is entitled to get back the licence in his name and it is for that purpose that he has approached the Government by Ext.PH representation. The fact that the business was run by partnership is not disputed. It was only because the petitioner happened to be a managing partner that the licence was obtained in his name. The petitioner has no case that the hotel business is run by the petitioner as a proprietary concern. Therefore, it is for the majority of the partners to decide as to who should be the managing partner or in whose favour the licence should be obtained. It is on the basis of the request of the majority of the partners that FL-3 licence is transferred in the name of the 5th respondent. Therefore, I do not think that it is a fit case for this Court to interfere and direct the Government to consider the matter afresh. If any partner is aggrieved by the conduct of the other partners, it is open to him to approach the civil court for appropriate relief.

The original petition is therefore dismissed.