(2014) 04 KL CK 0041

In the High Court Of Kerala

Case No : W.P. (C) No. 10841 of 2014

The Kerala Bar Hotels Association APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 47

Citation : (2014) 2 KLT 518

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : C.C. Thomas, T.A. Shaji, Sr. Advocates, George Poonthottam, Thomas Abraham, N. Reghuraj, Sudhi Vasudevan, Anoop V. Nair and K. Amminikutty, Advocate for the Appellant; Tom. K. Thomas, Government Pleader and Basil Attipetty, Advocate for the Respondent

Judgement

V. Chitambaresh, J.—I heard Mr. C.C. Thomas, Mr. T.A. Shaji, Senior Advocates and Mr. George Poonthottam, Mr. Thomas Abraham, Mr. N. Reghuraj, Mr. Sudhi Vasudevan, Mr. Anoop. V. Nair, Advocates on behalf of the petitioners as well as Mr. Tom. K. Thomas, Government Pleader and Mr. Basil Attipetty, on behalf of the respondents. Paucity of time in the midst of summer recess compels me to consider only the interim relief sought by the petitioners in these Writ Petitions and defer the final hearing. The practice of granting FL-3 license to hotels having three-star classification was dispensed with by amendment made to the Foreign Liquor Rules (''the Rules'' for short). The amendment was made by G.O. (P) No. 192/2011/TD dated 9.12.2011 after the announcement of the Abkari policy for the year 2011-12 by G.O. (MS) No. 107/2011/TD dated 17.8.2011. The amendment deleting three-star hotels from the category eligible for FL-3 license was struck down in 2012 (3) KHC 653 (Ker) . But the same was set aside to the extent it interfered with the amendment made to the Rules in State of Kerala and Others Vs. B. Surendra Das Etc., . The operative part of the judgment of the Supreme Court reversing the judgment of the Division Bench of this Court as regards the amendment to the Rules is as follows:-

(i) The judgment rendered by the Division Bench is set aside to the extent it interferes with the amendment brought in the year 2011. The deletion of three star hotels from the category of hotels eligible for FL-3 licenses under R. 13(3) is held valid.

2. The Supreme Court has in the said decision noticed the continuance of licence for hotels having lesser classification by virtue of the 6th and 7th provisos to Rule 13(3) of the Rules. The very observation of the Supreme Court justifying the criticism made to the provisos to the Rule afore-quoted is extracted hereunder:-

36. As rightly submitted by the counsel for the respondents the consequences of the amendment of 2012 will be that four star and five star hotels would not be permitted to have FL-3 licences only on the ground that they are within the prohibited distance from such hotels which have poor hygiene standards, and which are not following norms laid down by the State Government. We may mention that the FL 3 licences are issued on an annual basis, and it is quite within the powers of the Government not to renew these licenses if such serious violations are reported. But the Government appears to be slow in taking any such action. It will surely be counter-productive to the objective of R. 13(3) which is to promote tourism, as well as to the State''s avowed policy of improving the health and nutrition standards of its citizens. The criticism of the respondents, particularly of the hotels which have been permitted under the 6th and 7th proviso to R. 13(3) is therefore quite justified.

(emphasis supplied)

It is by virtue of the 6th and 7th provisos to Rule 13(3) of the Rules are the low end bars in hotels having lesser classification were hitherto being permitted to continue across the State.

3. The State Government was thus alerted of the need to have a re-look at its Abkari policy and probably to adopt a uniform criterion for the renewal of licence to the hotels. The State Government had earlier granted time up to the year 2007 and later up to the year 2010 to the existing licencees to upgrade the standard of their hotels to two-star and above. The Government thought that it is time for an introspection as regards the renewal of licence in the context of the observations in Surendra Das''s case particularly of slow action. The State Government accordingly issued G.O(Ms) No. 56/2014/TD dated Thiruvananthapuram 2.4.2014 (which is impugned in these Writ Petitions) and para. 6 there of is as follows:-

6. Government examined the request of the Excise Commissioner in the light of the judgment of the Hon''ble Supreme Court, the legal opinion of the Advocate General and all aspects of the issue and are pleased to order the below;

(i) the action of the Excise Commissioner in having cancelled the FL-3 licences of the 8 hotels is ratified.

(ii) The renewal of FL3 licences of hotels, except 418 non standard bar hotels mentioned in the judgment of the Supreme Court, be provisionally done, as an ad-interim arrangement, subject to the following conditions;

(a) The renewal shall be purely provisional or ad interim subject to its cancellation or withdrawal before its date of completion.

(b) The renewal shall be subject to the decision to be taken by the Government as a matter of policy on the recommendation of the One Man Commission.

(c) The renewal will be subject to the decision taken by the Government immediately after the cessation of the model code of conduct for the election.

(d) Full rental as per the current fee will be collected with a rider that the licensees shall be entitled for proportionate reduction in the unexpired period and also entitled to be refunded in the event of cancellation.

(iii) The issue of renewal of the FL3 licences of the non-standard bar hotels mentioned in the Supreme Court order is deferred till the receipt of the recommendations of Secretary (Taxes) on the report of the one Man Commission and its consideration by the Government. The Secretary Taxes will submit the report within one month.

(emphasis supplied)

4. The petitioners seek renewal of licence irrespective of the classification of the hotels on the ground that they have invested heavily in business and have a vested right. The Government Pleader on the other hand points out that Mr. Justice M. Ramachandran (Retired) was appointed as the One Man commission to study about the renewal and grant of FL-3 licences. The report of the One Man commission has been made over to the Secretary (Taxes) who has been directed to file his report in the light of the recommendations of the One Man Commission. The Abkari policy could not be finalised due to the model code of conduct for election and that would be done after the cessation of the period and on receipt of the report of the Secretary (Taxes). The Government Pleader contends that the renewal of FL-3 licences in question have been merely deferred awaiting the finalisation of the Abkari policy for the year 2014-2015.

5. The Supreme Court in State of Kerala and Others Vs. Kandath Distilleries, had occasion to observe as follows as regards the liquor policy of a State:-

Liquor policy of the State is synonymous or always closely associated with the policy of the Statute dealing with liquor or such abnoxious subjects. Monopoly in the trade of liquor is with the State and it is only a privilege that a licence has in the matter of manufacturing and vending in liquor so held by this Court in State of Maharashtra v. Nagpur Distilleries. The Court are also not expected to express their opinion as to whether at a particular point of time or in a particular situation, any such policy should have been adopted or not..........It is trite law that a court of law is not expected to propel into ''the unchartered ocean'' of the

State''s policies. The State has the power to frame and re-frame, change and re-change, adjust and re-adjust policy which cannot be declared as illegal or arbitrary on the ground that the earlier policy was better and suited to the prevail in a situations.

(emphasis supplied)

Thus the State is well within its powers to evolve a policy and cannot be faulted with if it decides that a uniform criterion should be adopted for all applicants in the matter of renewal of Abkari licence. The fact that some of the licences had been granted pursuant to verdicts of Courts is of no avail as they are relevant only as per the Abkari policy then in vogue. The verdicts do not operate as an estoppel by judgment disabling the State Government from re-framing the Abkari policy from time to time.

6. The Government has thought it fit to prune the renewal of FL-3 licences bearing in mind its duty to raise the level of nutrition and standard of living and to improve public health. Article 47 of the Constitution of India which lays emphasis on this aspect cannot be lost sight of and can be profitably extracted hereunder:-

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

The move of the Government in issuing the Government order dated 2.4.2014 preparatory to the formulation of the Abkari policy after the cessation of the model code of conduct of election is laudable. We often see students trooping in school uniforms to such low end bars wherein it is reported that liquor is supplied without proof of establishing their age. The daily wage laborers also empty their pockets in such low end bars saving little to meet the need of their family members waiting at home. The access to liquor for the public should be narrowed down to the extent legitimately possible in the best interest of the welfare State. There is no discrimination between the rich and the poor as both of them can buy liquor from the outlets of the Beverages Corporation across the counter.

7. The State Government is free to decide as to whether the existing licences can be renewed only if the hotels have four-star classification or such other criteria, it is all a matter in the realm of the Abkari policy which cannot be trenched upon by this Court in writ jurisdiction under Article 226 of the Constitution of India. The Government Pleader states that Rules will be amended after the finalisation of the Abkari policy soon after the cessation of the period of model code of conduct for election. I have no reason to disbelieve the said statement and it will be wholly inappropriate for this court to direct the renewal of the licences in this scenario by the State Government. The applications for renewal of licence have

been merely deferred for consideration to be dealt with as per the Rules prevailing as on the date of consideration. The Supreme Court has in State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc., has reiterated this aspect and held as follows:-

22. Where the rules require grant of a licence subject to the fulfillment of certain eligibility criteria either to safeguard public interest or to maintain efficiency in administration, it follows that the application for licence would require consideration and examination as to whether the eligibility conditions have been fulfilled or whether grant of further licences is in public interest. Where the applicant for licence does not have a vested interest for grant of licence and where grant of licence depends on various factors or eligibility criteria and public interest, the consideration should be with reference to the law applicable on the date when the authority considers applications for grant of licences and not with reference to the date of application.

(emphasis supplied)

I should note that the date of grant of licences to the petitioners originally has little relevance for renewal when they do not have any ''vested interest'' as authoritatively held by the Supreme Court.

The petitioners after all have no fundamental right to trade in liquor and only a privilege to vend had been farmed out by the State subject to reasonable restrictions. The Supreme Court has as early as in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, observed as follows:-

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is therefore, an article which is res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(emphasis supplied)

The Supreme Court again in State of Kerala and Others Vs. B. Surendra Das Etc., has observed as follows:-

The avowed object of this Abkari Policy is to curb the rampant alcoholism in the State of Kerala, which claims to have the highest consumption of alcohol as against the other States in India, and whereby the younger generation is getting addicted. Thus, the objective is in pursuance of Art. 47 of the Constitution of India which declares it to be a Directive Policy for the State to endeavor to bring about prohibition of consumption of intoxicating drinks.

(emphasis supplied)

The State Government is yet to finalise the Abkari Policy for the year 2014-15 and bring about amendment to the Rules fixing the criteria for eligibility for renewal of FL-3 licences. It will be pre-mature at this juncture for the petitioners to compel as of right the State Government to renew the licences even before finalising the Abkari policy or fixing the criteria for eligibility. I am sure that the State Government will finalise the Abkari policy for the year 2014-15 without further delay and deal with the individual applications on merit as regards the satisfaction of eligibility. I do not however find any ground either to stay the impugned Government Order or to issue a direction to renew the licences forthwith.

I decline the interim relief sought in the Writ Petitions. Post the Writ Petitions for final hearing after summer recess.

