(2003) 01 KL CK 0024

In the High Court Of Kerala

Case No : O.P. No. 87 of 2003

Venad Tourist Complex APPELLANT

Vs

Asst. Excise Commissioner and Others RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Citation : (2003) 1 KLJ 459 : (2003) 2 KLT 167

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : C.C. Thomas, M.G. Karthikeyan, Nireesh Mathew, Joseph George and P.J. Francis, for the Appellant; George Mecheril (G.P.), for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The petitioner is holding an FL 3 licence from 1989 onwards and the licence was valid till 31.3.2002. However petitioner did not renew the licence for the financial year 2002-2003 on 1.4.2002 on account of labour strike which was intimated to the respondents. Thereafter on 16.9.2002, fresh application for renewal of licence was submitted by the petitioner. This is declined by the Commissioner and confirmed by the Secretary to Government for the reason that petitioner''s licence had become ''defunct'' on account of non-renewal of licence in the beginning of the financial year 2002-2003. However according to the petitioner, the financial year for which renewal is sought is still not over and the application in the financial year is maintainable is petitioner''s case. Rule 14 of the Foreign Liquor Rules providing for issue of licence is as follows.

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 license shall expire at the end of the financial year.

From the above it is clear that a licence can be obtained during a financial year but the liability on the licence will be to pay licence fee for the whole year. FL-3 licence is one issued under Rule 13 and renewal of licence is provided under Rule 13A of the Foreign Liquor Rules which provides that the Assistant Excise Commissioner of the Division concerned is competent to consider renewal provided there is no change in the nature, content or scope of the licence or premises. There is no specific mention in Rules 13 A as to whether the renewal of a licence should be from the very beginning of the financial year or whether the Licence could be renewed at any time in the course of a financial year, if not renewed from the beginning of the financial year itself. In the absence of any provision in the Rules regarding the date on which licence is to be renewed, I feel the provision for issue of a new licence that is Rule 14 stated above applies to renewal also. The respondents also rightly considered the application for renewal of Licence submitted by the petitioner in the middle of the financial year under Rule 14 only. However the case of the respondents is that the petitioner''s licence had become defunct on account of non-renewal of licence from the beginning of the financial year. The reason for treating the petitioner''s Licence as defunct is the deletion of proviso to Rule 14 which was deleted with effect from 20.2.2002. Proviso to Rule 14 prior to it''s deletion on 20.2.2002 is extracted herein.

Provided that renewal of the 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) for 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.

All that the deleted proviso provided was that if a defunct licence was to be renewed, an additional rental was payable at the rate of Rs. 25,000/- for each year of defunction. The counsel for the petitioner brought to my notice, the decision of this court in Johny v. Excise Inspector reported in (1999(2) KLT 536) whereunder this court has held that the additional rent is payable only when there is a minimum defunction for one year. Consequently the court held that no additional fee is payable for renewal of licence during a financial year. The corollary of this Rule and the interpretation made by this court is that a licence can be renewed at any time during a financial year and in order to call a licence defunct, there should be a minimum break in business for one year. In this particular case, the petitioner applied for renewal of licence for 2002-2003 in the middle of the financial year and the petitioner had valid licence for the immediate proceeding year ie, 2001-2002. Since there was no break of one year, petitioner''s licence cannot be said to be defunct so far. Petitioner''s licence would have become defunct if the petitioner had not applied for renewal of licence upto 31.3.2003. The concept of ''Defunct Licence'' is no longer available in the Foreign Liquor Rules after the deletion of proviso to Rule 14. However, since Rule 13 A which provides for renewal of licence does not make it compulsory that the renewal should be from the beginning of the financial year, it has to be assumed particularly in the light of Rule 14 that the renewal is possible from year to year and a licence can be renewed at any time during a financial year. However, if a licence is not renewed for whole of a financial year, then of course renewal is not possible at all because unless the licence is kept renewed from year to year, it becomes invalid on the expiry of the financial year in which it was renewed last. Therefore renewal is not possible only after the expiry of one whole financial year. The provision for levy of additional rent of Rs. 25,000/- for renewal of licence was for renewal after expiry of one year which is no longer available by virtue of abolition of proviso to Rule 14 with effect from 20.2.2002.

2. Therefore the interpretation given to the deleted proviso by the respondents is not correct particularly in view of the decision of this court referred above. In the circumstances, I hold that the petitioner''s licence is not defunct and petitioner is entitled to renewal of licence on full payment of licence fee under the terms of Rule 14 of the Foreign Liquor Rules, without necessity of payment of additional rent. Exts. P7 and P10 are quashed and the O.P. is allowed directing the respondents to renew the licence of the petitioner for 2002-2003 after complying with the required formalities.