

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE THOTTATHIL B. RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE P. B. SURESH KUMAR

Thursday, the 14th day of August 2014/23rd Sravana, 1936

WA.No.1131/2014 in WPC.10368/2014

Against Judgment dated 02-06-2014 in WPC.10368/2014 and the Order dtd.21/07/14 in IA.No.9160/14 in WP(C).10368/14 of this Court.

APPELLANT/PETITIONER IN THE WP(C)

HOTEL HILTON INDIA, REP. BY ITS MANAGING PARTNER,
D. RAJKUMAR, KOCHUVILAYIL, THEVALLY, KOLLAM.

BY ADV. SRI. A. SUDHI, VASUDEVAN

RESPONDENTS/RESPONDENTS IN THE WP(C)

1. STATE OF KERALA, REP. BY SECRETARY TO THE GOVERNMENT TAXES (G) DEPARTMENT, THIRUVANANTHAPURAM-695001.
2. EXCISE COMMISSIONER, THIRUVANANTHAPURAM-695001.
3. DEPUTY COMMISSIONER OF EXCISE, KOLLAM-699001.

BY ADVOCATE GENERAL AND GOVERNMENT PLEADER

Prayer for interim relief in the Writ Appeal stating that in the circumstances stated in the appeal memorandum the High Court be pleased to stay the operation of the direction containing para 6(ii) of Ext.P5 resulting in denial of renewal of FL 3 licenses referred to therein and to direct the 3rd respondent or competent among the respondents to renew for the year 2014-15 provisionally forthwith, the FL 3 license issued to the appellant pending disposal of the W.A.

This Writ Appeal coming on for admission along with connected cases on 14/08/14 upon perusing the appeal memorandum, the court on the same day passed the following:-

p. t. o.

THOTTATHIL B.RADHAKRISHNAN
&
P.B.SURESH KUMAR, JJ.

W.A. Nos. 1121, 1122, 1123, 1129
and 1131 of 2014

Dated this the 14th day of August, 2014

ORDER

Thottathil B. Radhakrishnan, J.

1. These writ appeals are filed by persons who complained before the learned single Judge that their applications for renewal of FL-3 licence were not being considered in terms of the existing rules. Noticing different aspects, the learned single Judge ordered the writ petitions putting a time frame for the Government to come out with necessary policy for the current abkari year. This was done because, the abkari policy had not come into place thereby leaving the scenario quite flexible and operative under the previously existing rules.

2. As a consequence of the amendment of the Foreign Liquor Rules in 2012, certain litigations arose and that

ultimately reached the Hon'ble Supreme Court in Civil Appeal Nos.3196 - 3198/2014. That matter was decided by Their Lordships by judgment dated 05.03.2014. Thereafter, the Government took up the matter again for consideration. It was noticed that in the light of the aforementioned decision of the Apex Court and other facts evident from the different communications referred to in G.O.(Ms) No. 56/2014/TD dated 2.4.2014, it was necessary to consider the Excise Commissioner's Report and request for necessary orders for renewal of hotels including non-standard hotels, as the licence period of those hotels were to expire on 31.3.2014.

3. By that time, the one man commission had submitted report on 06.03.2014. Even in that Government Order dated 02.04.2014, it is stated that action is being taken to formulate policy decision in the matter. Normally, abkari policy is conceived and brought into force year to year to modulate dealing in abkari matters on the basis of abkari years. The legal opinion of the learned Advocate General

was also obtained, and the Government examined all relevant matters and had issued two decisions. The first was that it ratified the Excise Commissioner's action of having cancelled FL-3 licences of 8 hotels. The second decision was on the question of renewal of FL-3 licences of hotels. There, the Government decided that renewal of FL-3 licences of hotels, except 418 non-standard bar hotels mentioned in the judgment of the Supreme Court, be provisionally done as an *ad interrim* arrangement, subject to the conditions stipulated in that Government Order.

4. Therefore, while FL-3 licensees other than the 418 referred to above were entitled to have their applications processed for renewal, the 418 had to wait. The issue of renewal of FL-3 licences of those 418 non-standard bar hotels mentioned in the Supreme Court order was deferred till receipt of recommendations of Secretary, Taxes on the report of the one man commission and its consideration by the Government.

5. The appellants before us are those who are denied renewal for the time being on the premise that they are among the 418 such non-standard bar hotels. Issue relating to each such establishment will be as to whether such establishment is to be treated as a non-standard hotel or whether it satisfies the prescribed standards in terms of the relevant laws. The consideration of this cannot be kept aside for too long. As rightly pointed out by the learned Advocate General, different litigations crop-up regarding those renewal applications as well.

For the aforesaid reasons, an interim order is issued as hereunder:

Noticing the time limit extended by the learned single Judge, we are sure that the learned Advocate General will place before us, the policy of the Government for perusal by the Court on 26th August, 2014.

By the aforesaid day, the Secretary, Taxes and the Excise Commissioner will ensure that appropriate inspection is conducted in all the 418 so-called non-standard bar hotels and definite report about each establishment is made available along with a consolidated tabular statement as to the views of the Excise Department and the Government regarding their eligibility for renewal notwithstanding whether renewal applications were accepted from them or not.

Issue three sets of the copy of this order to the Advocate General and to the parties.

Hand over.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE

Sd/-
P. B. SURESH KUMAR,
JUDGE

smv

/true copy/

[Handwritten Signature]
ASSISTANT REGISTRAR