

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 18, 2011

Decision on: June 2, 2011

W. P. (C) 5007/2010

MAHIPAL SINGH Petitioner
Through: Mr. Ambar Qamaruddin with
Mr. Ajay Talesara, Advocates.

versus

MINISTRY OF TOURISM Respondent
Through: Mr. B.V. Niren, CGSC with
Mr. Parikshit Singh Shekhawat,
Advocate.

W. P. (C) 5006/2010

MADHU SINGH Petitioner
Through: Mr. Hitesh Malik, Advocate.

versus

MINISTRY OF TOURISM Respondent
Through: Mr. B.V. Niren, CGSC with
Mr. Parikshit Singh Shekhawat,
Advocate.

W. P. (C) 5009/2010

SHAYM LAL KABRA Petitioner
Through: Mr. Ambar Qamaruddin with
Mr. Ajay Talesara, Advocates.

versus

MISNISTRY OF TOURISM Respondent
Through: Mr. B.V. Niren, CGSC with
Mr. Parikshit Singh Shekhawat,
Advocate.

W. P. (C) 5010/2010

RAGHU RAJ SINGH SISODIA Petitioner
Through: Mr. Ambar Qamaruddin with
Mr. Ajay Talesara, Advocates.

versus

MINISTRY OF TOURISM

Through:

..... Respondent
Mr. B.V. Niren, CGSC with
Mr. Parikshit Singh Shekhawat,
Advocate.

AND

W. P. (C) 1218/2011

RAMDEV KUMAR CHITTLANGIA

AND SONS AND ORS

Through:

..... Petitioners
Mr. Ambar Qamaruddin with
Mr. Ajay Talesara, Advocate.

versus

MINISTRY OF TOURISM

Through:

..... Respondent
Mr. Neeraj Chaudhari, CGSC with
Mr. Khalid Arshad, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

JUDGMENT

02.06.2011

1. The common issue in all these petitions concerns the interpretation of certain clauses of the revised scheme of “Incentive to Accommodation Infrastructure” announced by a notification dated 7th December 2007 of the Department of Tourism (‘DOT’), Government of India.

2. The background to the above scheme is that the DOT had been issuing notifications in 2003 and 2004 to encourage growth of Budget Hotel Accommodation for promotion of tourism in the country. In supersession of those notifications, the DOT issued on 30th September 2004 a notification announcing the scheme of “Incentive to Accommodation Infrastructure”. The objective of the scheme was to provide incentives to newly approved hotel projects in 1 to 3 Star and Heritage (Basic) categories in the country except the four metropolitan cities of Delhi, Mumbai, Kolkata and Chennai. The said scheme for grant of capital subsidy was to be effective

for the whole 10th Five Year Plan from 1st April 2002 to 31st March 2007. The scheme would apply to all hotels in 1 to 3 Star and Heritage (Basic) categories “where the hotel projects have been completed and classified during the 10th Plan Period.” The incentive was to be in the form of “capital grant of 10% of the total principal loan taken from designated financial institutions or upto Rs. 25 lakhs to one star, Rs. 50 lakhs to two star and Rs. 75 lakhs to three star and the heritage basic category projects which is less”. It was *inter alia* clarified that “in the case of heritage hotels where the investment is required mainly for refurbishment of existing building, which includes creation of additional facilities and accommodation, the incentive will be available on the main loan only and not towards any additional loan”.

3. The scheme announced by the further notification was later revised by a notification dated 7th December 2007 which made available the scheme for grant of capital subsidies to all new hotels in the 1 to 3 star and heritage basic categories “where the hotel projects have been commissioned and classified by the Ministry of Tourism, Govt. of India with effect from 01.04.2007 to 31.03.2008. The incentive was to be in the form of capital grant of Rs. 2 lakh per room subject to a maximum of Rs. 30 lakhs to a one star hotel, Rs. 3 lakh per room subject to a maximum of Rs. 75 lakhs to a two star hotel, Rs. 3 lakh per room subject to a maximum of Rs. 100 lakhs to three star category hotel projects. In case of heritage hotels, where the investment was required for refurbishment of the existing building, the incentive will be available only for the lowest category, i.e., Heritage (Basic) of Rs. 3 lakh per room subject to the maximum of Rs. 100 lakhs. In para 6, it was stated that “the amount of incentive will be released to the concerned hotel after completion of its classification in the said category”. The hotels availing the capital subsidy under the scheme could apply for upgradation of the classification beyond the three star category and Heritage (Basic) categories only after a period of eight years from the date of initial classification.

4. In Writ Petition (Civil) No. 5007 of 2010, the Petitioner applied for classification of his heritage hotel set up at Sardargarh, District Rajsamand, Rajasthan on 12th February 2007 indicating in the application that the hotel would become operational on 4th April 2007. On 26th February 2007, the Ministry of Tourism (‘MOT’) called upon the Petitioner to furnish certain documents which he did by a letter dated 15th March 2007. Thereafter it was only on 3rd June 2008 that the Petitioner was informed that the hotel

would be inspected on 4th June 2008 at 12.30 p.m. After the inspection took place by a letter dated 18th June 2008, the MOT informed the Petitioner that on the recommendation of the Hotel & Restaurant Approval & Classification Committee ('HRACC'), the Sardargarh Heritage Hotel was classified as a heritage hotel for a period of five years from 18th June 2008 to 17th June 2013. The Petitioner thereafter applied for the capital subsidy under the revised scheme for an amount of Rs. 63 lakhs on 21st July 2008. Despite representations made by the Petitioner on 29th July 2009, 30th November 2009 and 16th December 2009, no response was received. Thereafter the present petition was filed on 17th July 2010. The case of the Petitioner is that in light of the revised scheme, the Petitioner made a huge investment of Rs. 304 lakhs in the project for which a loan of Rs. 195 lakhs was also taken. The Petitioner had applied well in time and for no fault of the Petitioner the classification was delayed by the MOT and, therefore, could not be completed before 31st March 2008. Consequently, the Respondents should be directed to release the capital subsidy in terms of the scheme.

5. In Writ Petition (Civil) No. 5006 of 2010, the Petitioner's heritage hotel named "Hotel Grand Haveli & Resort" at Nawalgarh, District Jhunjhunu, Rajasthan, became fully operational on 31st December 2007. The Petitioner made an application for classification on 24th January 2008. After inspection the HRACC on 23rd October 2008 granted the Petitioner the Heritage (Basic) status for a period of five years with effect from 21st October 2007. Thereafter the Petitioner made an application on 24th March 2008 for release of the capital subsidy in the sum of Rs. 90 lakhs. The MOT later issued a further order dated 18th February 2009 classifying the hotel with effect from 21st October 2007. Here again, on account of non-release of capital subsidy the Petitioner has filed the present petition.

6. In Writ Petition (Civil) No. 5009 of 2010, the Petitioner's hotel "Shreenath Inn" at Nathdwara, District Rajsamand, Rajasthan became fully operational on 28th April 2007. The Petitioner applied for classification under the three star category on 27th March 2008. After inspection, the hotel was granted a two star category hotel on 23rd February 2009 for a period of five years with effect from 10th February 2009. Thereafter the Petitioner made an application for capital subsidy on 20th March 2009.

7. In Writ Petition (Civil) No. 5010 of 2010, the Petitioner's hotel "Tiger Valley Resort" at Fort Road, Kumbhalgarh, District Rajsamand, Rajasthan became fully operational on 15th December 2007. The Petitioner applied for classification under the three star category on 18th March 2008. After inspection, the hotel was granted a two star status by an order dated 23rd February 2009 of the MOT with effect from 10th February 2009. In the meanwhile, the Petitioner on 15th April 2008 made an application for capital subsidy in the sum of Rs. 36 lakhs.

8. In Writ Petition (Civil) No. 1218 of 2011, the Petitioner's hotel "Vikramaditya" at Sri Ganganagar, Rajasthan was made fully operational on 15th March 2008. The Petitioner applied for classification under the two star category on 20th March 2008. After inspection, the hotel was granted a two star category status for a period of five years with effect from 1st December 2008. This was communicated by an order dated 5th December 2008. Thereafter the Petitioner made an application for capital subsidy on 28th January 2009 in the sum of Rs. 54 lakhs.

9. The common defence of MOT in all these cases is that the notification dated 7th December 2007 required both the commissioning and the classification to be completed during the relevant period, i.e., 1st April 2007 to 31st March 2008. It is submitted that in all these cases although the hotels in question may have been commissioned prior to 31st March 2008, the classification took place only thereafter. It is submitted that since one of the essential conditions for grant of capital subsidy was not fulfilled, the MOT was justified in declining the Petitioners' application for release of capital subsidy.

10. On the other hand, the submission by counsel for the Petitioners is that each of them applied for classification before 31st March 2008 and as long as the hotels were commissioned prior to that date the object of the scheme stood satisfied. The delay in granting classification was on account of the MOT and the Petitioners cannot be made to suffer on that score. It is further submitted that each of the Petitioners had spent considerable sums of money in the refurbishment of their heritage hotels in anticipation of the release of the capital subsidy and, therefore, the MOT was estopped from denying them capital subsidy. It is further pointed out that till the classification was not accorded, the Petitioners' case for release of capital subsidy could not be

considered.

11. The above submissions have been considered. The very purpose of the scheme in question was to encourage growth of budget hotel accommodation. The objective was to encourage the setting up of 1 to 3 star hotels and heritage hotels in non-metropolitan cities. While the earlier scheme was operational up to 31st March 2007, the revised scheme was operational for the period 1st April 2007 to 31st March 2008. As long as the hotels in question were ready and commissioned before 31st March 2008, one of the major objectives of the incentive scheme stood satisfied. The scheme itself does not indicate the outer date within which a hotel had to seek classification under the scheme. In each of these cases the application for classification was made before 31st March 2008. It is also not in dispute that in each of these cases the hotels in question were commissioned prior to 31st March 2008. Therefore, from the side of the Petitioners they had complied with the requirement for their respective hotels to be commissioned prior to 31st March 2008 and applied for classification prior to that date. It must be recalled that in terms of para 6 of the notification dated 7th December 2009, the amount of incentive would not be released till the classification was complete. Therefore, it did not matter that none of the Petitioners applied for release of the capital subsidy itself prior to 31st March 2008. In any event, that was not the reason for rejection of the applications for release of capital subsidy.

12. The only reason given by the Respondents for rejecting the Petitioners' applications was that the classification of each of their hotels in terms of the Notification dated 7th December 2007 was not completed prior to 31st March 2008. However, this was not a factor in the control of the Petitioners. In each of these cases, although the applications for classification were made prior to 31st March 2008, the MOT took its own time to send an inspection team and, thereafter, to grant classification. None of the Petitioners was however refused classification. They were only granted it belatedly. In none of the cases has the inspection team found that the hotel in question was not made operational before 31st March 2008. It is also not the case of the Respondents that the classification did not hold good as on the dates of commencement of the hotels in question. Consequently, the two essential requirements of the Notification dated 7th December 2007 stood satisfied. That the inspection of the hotels and the consequential issue of the certification for

classification got delayed beyond 31st March 2008 was not something the Petitioners could have anticipated. Also, in the absence of any clause in the Notification dated 7th December 2007 requiring the Petitioners to apply before a certain date for classification, their subsequent plea for release of capital subsidy could not have been turned down as long as each of their applications were prior to 31st March 2008.

13. In the case of Writ Petition (Civil) No. 5006 of 2010 (*Madhu Singh v. Ministry of Tourism*), a further factor is that after granting classification with effect from 21st October 2007, i.e., during the period 1st April 2007 to 31st March 2008, the MOT unilaterally revised the date to 21st October 2008 without giving any reasons whatsoever. Also the grant of classification in other cases from a date, long after the actual date of inspection is also inexplicable. The inspection team was supposed to examine if as on the date of the making of the application for classification the Petitioner could be classified under 1 to 3 star category or Heritage (Basic) category. In the absence of anything to the contrary in the report of the inspection team, it must be presumed that the classification held good as on the date of making the application for the classification. Consequently, this Court finds no merit in the submission of the Respondents that in each of the cases, the Petitioners did not qualify for release of the capital subsidy amount.

14. For the above reasons, the writ petitions are allowed. The letters dated 31st March 2010 and 2nd July 2010 of the MOT rejecting the applications by Mrs. Madhu Singh [Petitioner in W.P. (C) No. 5006 of 2010] and M/s. Ramdev Kumar Chittlangia & Sons [Petitioner in W.P. (C) No. 1218 of 2011] respectively for release of capital subsidy are hereby set aside. A direction is issued to the MOT to process the applications for release of capital subsidy made by each of the Petitioners in terms of the notification dated 7th December 2007 and pass appropriate orders for release of capital subsidy within a period of twelve weeks from today. The writ petitions are disposed of in the above terms with no order as to costs.

S. MURALIDHAR, J

JUNE 2, 2011

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