

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 6808 of 2013 (A)

PETITIONER : -

M/S.YESAR REGENCY, KARIMUGAL,
ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER,
C.K.SHAJI, AGED 44 YEARS, S/O.KURUVILLA.

BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS : -

1. STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES(A) DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM-695001.
3. THE DEPUTY COMMISSIONER OF EXCISE,
ERNAKULAM, OPP.SARITHA THEATER, COCHIN-18.
4. THE CIRCLE INSPECTOR OF EXCISE,
KUNNATHUNADU, PERUMBABOOR,
ERNAKULAM DISTRICT, PIN 683542.

BY GOVERNMENT PLEADER SRI.P.P. PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-11-2015, ALONG WITH WPC. 13340/2012, WPC. 192/2013, WPC. 7431/2013,
WPC. 7432/2013, WPC. 7626/2013, WPC. 7749/2013, WPC. 8186/2013, WPC.
8215/2013, WPC. 9321/2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

WP(C).No. 6808 of 2013 (A)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT-P1 : PHOTOCOPY OF THE STAR CLASSIFICATION ORDER DATED
10.11.2011 ISSUED BY THE INDIA TOURISM, CHENNAI..

EXHIBIT-P2 : PHOTOCOPY OF THE APPLICATION DATED 17.10.2011 SUBMITTED
TO THE 2ND RESONDENT.

EXHIBIT-P3: PHOTOCOPY OF THE ORDER NO.XC6-27810/11 DATED 19.1.2012
PASSED BY THE 2ND RESPONDENT.

EXHIBIT-P4 : PHOTOCOPY OF THE ORDER DATED 19.9.2012 IN SLP(C)NO.26241-
26243/2012 PASSED BY THE HON'BLE SUPREME COURT.

EXHIBIT-P5 : PHOTOCOPY OF THE ORDER NO.XC6-27810/11 DATED 2.2.2013
PASSED BY THE 2ND RESPONDENT.

EXHIBIT-P6 : PHOTOCOPY OF THE FL-3 LICENSE NO.E-181/2012-13 ISSUED BY
THE EXCISE COMMISSINER DATED 14.2.2013.

EXHIBIT-P7 : PHOTOCOPY OF THE CHALAN DATED 11.2.2013 EVIDENCING THE
REMITTANCE OF RS.22 LAKHS.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

**W.P.(c) Nos. 6808 of 2013,
13340/12, 7626/13, 7432/13,
8186/13, 7431/13, 9321/13,
8215/13, 7749/13 & 192/13**

Dated this the 04th day of November, 2015

JUDGMENT

The petitioners, ten in number, being the classified three-star Hotels, applied for FL-3 licence in or around 2011. After a litigious course involving adjudication up to the level of the Apex Court, the Government granted to all the petitioners licences on the following dates.

1	WP (C) No. 6808/2013	14/02/13
2	WP (C) No. 13340/2012	31/03/12
3	WP (C) No. 7626/2013	02/02/13
4	WP (C) No. 7432/2013	02/02/13
5	WP (C) No. 8186/2013	02/04/13
6	WP (C) No. 8215/2013	14/02/13
7	WP (C) No. 192/2013	12/06/12
8	WP (C) No. 7749/2013	02/01/13
9	WP (C) No. 7431/2013	03/05/13
10	WP (C) No. 9321/2013	20/02/13

2. Though the licences were granted, as is evident from the above table, on different dates, more particularly in the later portion of the abkari year 2012-13, the authorities have, nevertheless, collected licence fee, Rs.22,00,000/- in each case, for the entire abkari year. In that context, certain

persons who are similarly situated had earlier filed writ petitions seeking proportionate remission of the licence fee and took the matters, eventually, to the Honourable Supreme Court in **Chitra v. State of Kerala**.¹

3. Placing a heavy reliance on the judicial dictum laid down by the Apex Court in **Chitra** (*supra*), Sri.M.G. Karthikeyan, the learned counsel for the petitioners, submits that all the petitioners had been granted licences on different dates, almost in the last quarter of the year, and that all of them are entitled to remission in the licence fee. According to him, since the Government has already collected the entire licence fee, it shall return to the petitioners the proportionate amount, excluding the period during which the petitioners' actually had the licences.

4. The learned Government Pleader, on his part, has submitted that in the light of the definitive pronouncement of the Hon'ble Supreme Court, this Court may render an appropriate judgment.

5. Heard the learned counsel for the petitioners and the learned Government Pleader, apart from perusing the record.

6. In **Chitra** (supra), the Honourable Supreme Court has held that the licensee is entitled to seek a remission in the payment of licence fee, if it is precluded from transacting business on the strength of that licence because of factors and reasons not within the licensee's control. In that context, their Lordships have observed as follows:

"5. [W]e have already made a mention of the Division Bench Judgment delivered in *Jayadevan* which in turn was referred to another Division Bench Judgment in *Rajagopalan Nair v. Assistant Commissioner of Excise* (1989 (1) KLT 800), wherein the Division Bench directed that the licensee was entitled to remission of payment of kisht because of being disabled to conduct its business on account of the interim orders passed by the Court. We affirm the conclusions arrived at in these decisions. We hold that a party is entitled to seek a remission in the payment of licence fee if it is precluded from transacting business on the strength of that licence because of factors and reasons extraneous to it and/or if it is granted the licence on the direction of a Court for only a portion of the financial year."

7. In the facts and circumstances, especially going by the judicial dictum of **Chitra** (supra), this Court disposes of the entire batch of the writ petitions with a direction to the respondents 1 and 2 to provide the benefit of remission to the petitioners and return the excess fee that has been collected

from them taking into account the period for which the licences had been actually given.

8. It is pertinent to observe that the Honourable Supreme Court, in **Chitra** (supra), has fixed a specific time frame and enabled the petitioners therein to have the advantage of interest on the delayed payment.

9. Accordingly, this Court further directs the first and second respondents to refund the amounts to the petitioners in the manner indicated above with interest thereon at the rate of 6% per annum from the date of actual deposit of the licence fee till the date of payment.

10. Given the delay that has already occurred, the entire process, it is made clear, shall be completed as expeditiously as possible, at any rate, within a period of eight weeks from the date of receipt of a copy of this judgment.

To the extent and the manner indicated above, this Court allows the writ petitions. No order as costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-