

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 4835 of 2015 (D)

PETITIONER:

YESAR REGENCY,
KARIMUGAL, ERNAKULAM,
RPERESNTED BY ITS EXECUTIVE PARTNER,
MR. ROY K VARGHESE.

BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SMT.M.R.SREELATHA
SRI.K.P.SUDHEER

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TAXES(A) DEPARTMENT,
GOVERNMENT SECRETARIAT, THRIUVANANTHAPURAM 695 001
2. THE EXECUTIVE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM 695 001
3. DEPUTY COMMISSIONER OF EXCISE,ERNAKULAM,
KOCHI 682 018

R BY SMT. C.K. SHERIN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 TRUE COPY OF THE APPLICATION DATED 17-10-2011 FOR FL 3
LICENSE SUBMITTED BY THE PETITIONER.

EXHIBIT P1(A) TRUE COPY OF RECOMMENDATION LETTER ISSUED BY THE 2ND
RESPONDENT TO THE 1ST RESPONDENT DATED 6-12-2011.

EXHIBIT P2 TRUE COPY OF FL3 LICENSE NO XC6-27810/11 DATED 2-2-2013
ISSUED TO HOTEL KABANI REGENCY BY THE 2ND RESPONDENT.

EXHIBIT P3 TRUE COPY OF ORDER NO XC6-27810/2011 DATED 11-3-2014
ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P4 TRUE COPY OF THE AFFIDAVIT DATED 28-1-2013 SWORN BY THE
2ND RESPONDENT BEFORE THE HON'BLE SUPREME COURT IN SPECIAL LEAVE
PETITION(C) NO 26241-43 OF 2012.

EXHIBIT P5 TRUE COPY OF JUDGMENT DATED 7-11-2014 IN WPC NOS
10280,10292 AND 10024 OF 2014 PASSED BY THIS HON'BLE COURT.

EXHIBIT P6 TRUE COPY OF JUDGMENT OF THE HON'BLE SUPREME COURT IN SLP
NO 1200 OF 2015 DATED 22-01-2015.

EXHIBIT P7 TRUE COPY OF REPRESENTATION DATED 2-2-2015 SUBMITTED BY
THE PETITIONER BEFORE THE RESPONDENTS.

EXHIBIT P8 TRUE COPY OF JUDGMENT DATED 29-08-2014 IN WPC NO 9155 OF
2013 PASSED BY THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 4835 of 2015 (D)

Dated this the 19th day of February, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the very admission stage.

2. Briefly stated, the petitioner hotel, having three-star classification, applied through Ext.P1 on 17.10.2011 for grant of FL-3 licence. The 2nd respondent, after processing the application, forwarded the same to the Government through Ext.P1(a) recommendation dated 06.12.2011, since by then all Three-Star Hotels were entitled to FL-3 licence. Before the petitioner's application, based on the recommendation of the second respondent, could be considered by the Government, the relevant rules, however, came to be amended on 09.12.2011, taking away Three-Star Hotels from the purview

of licence.

3. Assailing the statutory amendment various writ petitions seem to have been filed, culminating in Surendra Das v. State of Kerala, 2013(1) KLT SN 34(C.No.34), through which this Court judicially invalidated the amendment.

4. If we observe the subsequent developments, eventually the issue of invalidation of amendment reached the Supreme Court. Before the issue could be finally decided, the Hon'ble Supreme Court issued an interim direction permitting the respondent authorities to consider the grant and renewal of licences without reference to the amendment, pending the disposal of the Civil Appeal. It appears that the petitioner was granted licence through Ext.P2, valid up to 31.03.2014, based on the said interim direction of the Hon'ble Supreme Court, which eventually allowed the appeal — State of Kerala v. B. Surendra Das, AIR 2014 SC 2762 — upholding the amendment effected by the respondent Government. Under those circumstances, the respondent authorities issued Ext.P3

proceedings cancelling Ext.P2 licence granted earlier to the petitioner. Aggrieved thereby, the petitioner has filed the present writ petition impugning Ext.P3 proceedings.

5. Shri. P.K. Suresh Kumar, the learned Senior Counsel for the petitioner, has strenuously contended that, in statutory terms, it is the 2nd respondent that is competent to issue the licence. In fact, the said authority, having taken a positive decision through Ext.P1(a), instead of issuing the licence himself, as a matter of established practice, referred the issue to the Government. According to him, by the time the 2nd respondent took the decision, the statutory position was that the petitioner, being a Three-Star hotel, was entitled to FL-3 licence. In this regard, the learned Senior Counsel has placed reliance on *Kallada Hotels & Resorts v. State of Kerala*, 2012 (2) KLT 167, to contend that what was to be reckoned in statutory terms was the position as obtained on the date when the application was filed, rather than when licence was actually granted.

6. The learned Senior Counsel has further brought to my notice Ext.P5 judgment of this Court to contend that under identical circumstances, this Court has held that denying the licence or renewal thereof to a select few offends the principle of equality and fairness under Article 14 of the Constitution.

7. In expatiation of his submissions, the learned Senior Counsel has further contended that when the Government brought in G.O.(MS) No. 56/2014 dated 02.04.2014 barring 418 non-standard hotels from obtaining FL-3 licence, this Court rendered Ext.P5 judgment. In other words, it is the contention of the learned Senior Counsel that since the petitioner's hotel is not included in 418 non-standard hotels, neither the statutory amendment, nor GO (MS) No. 56 of 2014 dated 02.04.2014, could come in the way of its being entitled to FL-3 licence or the renewal thereof.

8. The learned Senior Counsel has eventually submitted that, setting out all the grounds how the petitioner is entitled to the renewal of licence, the petitioner has submitted Ext.P7

representation to the 2nd respondent. Accordingly, he has urged this Court to direct the 2nd respondent to consider the petitioner's Ext.P7 representation in accordance with law.

9. The learned Government Pleader, on the other hand, has strenuously opposed the claims and contentions of the petitioner. She has submitted that the initial grant of licence through Ext.P2 to the petitioner was subject to the outcome of B. Surendra Das (supra). According to her, since the decision of this Court was reversed and the amendment was upheld by the Hon'ble Supreme Court, the licence given as an interim measure was rightly withdrawn by the authorities through Ext.P3.

10. The learned Government Pleader has also brought to my notice that before Ext.P5 could be rendered by this Court, another coequal Bench rendered *Xavier's Residency v. State of Kerala*, 2014 (4) KLT 419, an elaborate judgment on the validity of the amendment effected by the Government; apart from the Five-Star hotels permitted by the Government, the said Bench also permitted the Four-Star hotels to be entitled to FL-3

licence. It is the contention of the learned Government Pleader that while the latter Bench rendered Ext.P5 judgment, the ratio of Xavier's Residency was not brought to its notice.

11. Eventually, placing reliance on another unreported judgment dated 07.11.2014 in W.P.(C) No. 24126 of 2014 and batch, the learned Government Pleader has contended that under identical circumstances, this Court rejected the claims of other hotels than the Four-Star and Five-Star ones. Thus, the learned Government Pleader has urged this Court to dismiss the writ petition, inasmuch as directing the respondents to consider the matter, according to her, in the light of the settled legal position, would not yield any positive result.

12. Be that as it may, the petitioner has submitted Ext.P7 application setting out the grounds why it is entitled to FL-3 licence. The Government, keeping in view the statutory position as well as the judicial dictum on the issue, is required to consider the same and pass appropriate orders thereon.

In the facts and circumstances, having regard to the

respective submissions of the learned Senior Counsel for the petitioner and the learned Government Pleader, this Court without expressing any opinion on the merits of the matter, disposes of the writ petition with a direction to the 2nd respondent to consider the petitioner's Ext.P7 representation in accordance with law and pass appropriate orders thereon, as expeditiously as possible, at any rate, within six weeks from the date of receipt of a copy of this judgment.

Sd/- DAMA SESHADRI NAIDU, JUDGE.

