

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 23814 of 2013 (B)

PETITIONER :

**SREEBALA DEVELOPERS & HOTEL PVT. LTD.,
SOORYA TOWERS, KUNNATHURMEDU, PALAKKAD- 678 013,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR.K.NARAYANANKUTTY.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES (A) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**
- 2. THE COMMISSIONER OF EXCISE,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM -695 001.**
- 3. THE JOINT COMMISSIONER OF EXCISE,
NORTH ZONE, KOZHIKODE.**
- 4. THE DEPUTY COMMISSIONER OF EXCISE,
KOZHIKODE.**

R1 TO R4 BY GOVERNMENT PLEADER SRI. TOM K. THOMAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 COPY OF THE CDERTIFICATE BEARING NO.12-HRACC(14)/12 DATED 19/6/2012.
- EXHIBIT P2 COPY OF THE APPLICATION DATED 20/6/2012 SUBMITTED BY THE PETITIONER
- EXHIBIT P3 COPY OF THE JUDGMENT IN WPC NO.19180/2012 DATED 14/8/2012
- EXHIBIT P4 COPY OF THE REPORT DATED 26/7/2012
- EXHIBIT P5 COPY OF THE REPORT DATED 27/7/2012
- EXHIBIT P6 COPY OF THE LETTER BEARING NO.XCI-20044/2012 DATED 7/8/2012
- EXHIBIT P7 COPY OF THE ORDER DATED 16/10/2012 IN IA.NO.13682/2012 IN WPC NO.19180/2012
- EXHIBIT P8 COPY OF THE ORDER IN CONT.CASE (C) NO. 1528/2012 DATED 31/10/2012
- EXHIBIT P9 COPY OF THE COMMUNICATION BEARING NO.13368/A2/2012 TD DATED 15/10/2012 FROM THE 1ST RESPONDENT TO THE 2ND RESPONDENT
- EXHIBIT P10 COPY OF THE COMMUNICATION BEARING NO.XCI-20044/12 DATED 30/10/2012
- EXHIBIT P11 COPY OF TRHE REPORT BEARING NO.NZ-2363/2012/B DATED 7/11/2012
- EXHIBIT P12 COPY OF THE LETTER FROM THE 2ND RESPONDENT TO THE 3RD RESPONDENT BEARING NO.XCI-20044/12 DATED 19/12/2012
- EXHIBIT P13 COPY OF THE REPORT BEARING NO.NZ 2363/2012/B DATED 26/12/2012
- EXHIBIT P14 COPY OF THE COMMUNICATION NO.XCI 20044/13 DATED 15/1/2013
- EXHIBIT P15 COPY OF THE ORDER BEARING G.O.(RT) NO.214/2013/TD DATED 12/3/2013
- EXHIBIT P16 COPY OF THE ORDER G.O.(P) NO.20/2013/TD DATED 12/2/2013
- EXHIBIT P17 COPY OF THE LETTER/COMMUNICATION DATED 18/6/2013
- EXHIBIT P18 COPY OF THE PROCEEDINGS BEARING ORDER NO.XC6 8756/2012 DATED 31/1/2013

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- EXHIBIT P19 COPY OF THE JUDGMENT DATED 20/2/2013 IN WPC NO.3104/2013
- EXHIBIT P20 COPY OF THE LETTER BEARING NO.XC6 20044/12 DATED 18/09/2012
- EXHIBIT P21 COPY OF THE REPORT/LETTER BEARING NO.D6/4686/2012 DATED
31/10/2012
- EXHIBIT P22 COPY OF THE ORDER NO.XCI 19794 DATED 22/10/2012
- EXHIBIT P23 COPY OF THE LICENSE BEARING NO.XC6-30573/2012 DATED
22/01/2014
- EXHIBIT P24 COPY OF THE JUDGMENT DATED 18/02/2014 IN W.A.NO.1215/2013
- EXHIBIT P25 COPY OF THE JUDGMENT DATED 04/02/2014 IN WP(C).
NO.14220/2012(B)

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.23814 of 2013

Dated this the 2nd day of March, 2015

JUDGMENT

Ext.P15 order passed by the Government rejecting the petitioner's request for grant of FL-3 license to Soorya Galaxy, Kozhikode is under challenge in this writ petition.

2. The petitioner is a private limited company engaged in the business of conducting hotels, motels, restaurants and other hospitality centres.

3. The petitioner company is running a hotel by name 'Soorya Galaxy' at Kozhikode which was granted Ext.P1 Four Star Classification Certificate. On the strength of Ext.P1, the petitioner submitted Ext.P2 application for FL3 license for the hotel. The petitioner alleges that after conducting necessary enquiries, all the excise authorities concerned viz. the Deputy Commissioner of Excise, the Joint Commissioner of

Excise and the Commissioner of Excise positively recommended grant of FL-3 license to the petitioner's hotel as per Exts.P4 to P6 reports as early as in July/August 2012. The petitioner further points out that this Court vide Ext.P3 judgment in August 2012 had directed the first respondent before whom Exts.P4 to P6 reports were placed to pass orders on Ext.P2 application within one month. However, the Secretary to Government who had all the relevant materials/reports recommending grant of FL-3 license to the petitioner's hotel, did not pass any orders on the application for FL-3 license submitted by the petitioner; it is alleged. The petitioner moved this Court with a Contempt Case wherein the first respondent submitted that necessary directions have been issued to pass orders in the matter on 15.10.2010. On the basis of the said submission, the petitioner withdrew the Contempt of Court Case. The petitioner alleges that later, the petitioner came to know that the first respondent raised an unnecessary

query directing the respondents 2 to 4 to ascertain whether the petitioner's hotel is situated within the prohibited distance of an educational institution, an issue which was already addressed in Exts.P2 to P4 reports. The Joint Commissioner of Excise, who conducted a personal inspection submitted Ext.P11 report dated 7.11.2012, stating that the petitioner's hotel is situate beyond the prohibited distance. The petitioner alleges that the first respondent who ought to have passed an order on Ext.P2 application thereafter, instead of doing so, raised another query requiring the 2nd respondent to ascertain whether the implication of the petitioner in a case registered by the CBI has any bearing in the matter of grant of FL-3 license to the petitioner's hotel. The Joint Commissioner of Excise vide Ext.P13 report dated 26.12.2012 reported that the registration of the above case by the CBI is not an objection for the issuance of FL-3 license and that the denial of license to the petitioner is against the provisions of the Foreign

Liquor Rules. The Commissioner of Excise also vide Ext.P14 report intimated the first respondent that the registration of CBI case is not an objection for granting FL-3 license to the petitioner's hotel. Therefore, the petitioner was again constrained to file Contempt of Court Case No.194/2013 in January 2013. Pending consideration of the same, Ext.P15 order rejecting Ext.P2 application was produced before this Court. Ext.P15 was issued stating that the application was rejected in the light of Ext.P2 amendment to the Foreign Liquor Rules dated 12.2.2013 by which it was provided that no new FL-3 license should be issued. The petitioner points out that the petitioner's application ought to have been considered in accordance with the law prevailed at the time when the competent excise authorities had considered the same and not on the basis of the amendment which came into existence later. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the State, they

gave thrust to Ext.P16 amendment on the basis of which Ext.P15 was ordered.

5. I have heard the learned counsel for the petitioner and the learned Special Government Pleader in the matter.

6. It is crucial to note that in the counter affidavit filed by the first respondent, the first respondent has failed to answer the legal contentions urged in the writ petition. The crux of the allegation is that the respondents have deliberately sat on Ext.P2 application without any justifiable reason and thereby delayed its consideration despite specific directions issued by this Court vide Ext.P3 judgment and Ext.P7 order. Evidently, Ext.P2 application was submitted as early as on 20.6.2012. It is not in dispute that the 4th respondent vide Ext.P4 report dated 26.7.2012 recommended to grant FL-3 license to the petitioner. In Ext.P4 report, the 4th respondent had clearly mentioned the distance between the petitioner's hotel and L.P. School as 307 metres along the pathway

commonly used by the public. Similarly, the 4th respondent had also reported about the pendency of a case registered by the CBI under the provisions of Prevention of Corruption Act against a few officials of Indian Tourism, Cochin and 8 hotels including the petitioner's hotel. Later, the third respondent also had reported that the petitioner's hotel is located beyond the prohibited distance of the school in question vide Ext.P5 letter addressed to the second respondent as early as on 27.7.2012. Considering Exts.P4 and P5 reports, the second respondent as per Ext.P6 letter addressed to the first respondent had recommended the grant of FL-3 license to the petitioner's hotel. Thus, it is evident that all the competent excise authorities had considered the credentials of the petitioner for FL-3 license on merits and had recommended grant of FL-3 license to the hotel. The first respondent instead of complying with the directions in Ext.P3 judgment raised unnecessary queries vide letter dated 25.8.2012 requiring the

second respondent to forward an authenticated sketch showing the distance between the petitioner's hotel and the nearest school. The first respondent also raised another objection that the certificates enclosed with Ext.P2 application were in the name of the former Managing Director of the petitioner company. It is evident from the record that the grant of FL-3 license was delayed only on account of the laches on the part of the respondent. The petitioner points out that the first respondent, who had repeatedly raised queries while considering the petitioner's application for FL-3 license, without a demur granted FL-3 license to M/s Malappuram Hotels Ltd. vide order dated 22.10.2012 (Ext.P22) and on the strength of that bar license was issued to the said hotels and the bar commenced functioning on 2.11.2012. This would indicate that the petitioner was subjected to gross discriminatory treatment at the hands of the first respondent. The facts now placed on board would reveal that the objections raised by the first respondent against the

grant of FL-3 license to the petitioner ultimately turned out to be baseless and unnecessary. The first respondent who had all the material inputs by January 2013 itself to grant FL-3 license to the petitioner waited till 20.3.2013 to reject Ext.P2 application falling back on an amendment to Foreign Liquor Rules which came into existence in the meanwhile. This Court, in ***Kallada Hotels & Resorts v State of Kerala*** (2012 (2) KLT 167) and in ***Shiju v State of Kerala*** (2013(4) KLT SN 15 (C.No.13)), has categorically stated that the law that is applicable should be the law as on the date when application is considered by the Excise Commissioner in terms of Rule 13B(2). The judgment rendered by the learned Single Judge of this Court in *Shiju's case* was assailed by the Government in W.A.No.1215/2013. Pending consideration of the said writ appeal, respondents 1 and 2 granted license to the petitioners therein, a true copy of which is produced as Ext.P23. W.A.No.1215/2013 was later dismissed by a Division Bench of this Court upholding

the view taken by the learned Single Judge in *Shiju's case* as evident from Ext.P24. The case of the petitioner is exactly similar to the case of the petitioner in *Shiju's case* and therefore the petitioner is entitled for the same reliefs.

The Apex Court in (***State of Kerala v Surendradas***) 2014(1) KLT 948 SC has ordered that the State Government will not proceed to deny FL-3 license to hotels with classification of four star and above by resorting to their deletion under Rule 13(3) until the report of One Man commission is received and until it takes action against the non-standard restaurants which have been permitted under the 6th and 7th proviso of Rule 13(3). In view of the above, the respondents are bound to take back Ext.P2 application which was rejected pursuant to Ext.P15 order.

In the result, this writ petition is allowed. Ext.P15 is quashed. It is hereby declared that Ext.P2 application submitted by the petitioner is liable to be considered in accordance with law/rules prevailing

prior to Ext.P16 amendment and the petitioner is entitled to get FL-3 license *de hors* Ext.P16. The respondents are directed to take back Ext.P2 application and issue FL3 license to the petitioner's hotel within a period of two weeks from the date of receipt of a copy of this judgment.

However, it is made clear that this judgment as well as the grant of FL-3 license to the petitioner hotel shall be subject to the final outcome of the decision of the Division Bench in W.A.No.1746/2014 and connected cases wherein the policy decision of the Government in the matter is pending consideration.

sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE