

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 29058 of 2015 ()

PETITIONER:

JOYS ENTERPRISES PRIVATE LIMITED,
TC 11/949, JOYS PALACE T.B.ROAD,
THRISSUR - 680 021 REP. BY ITS
MANAGER V.J.VINCENT.

BY ADVS.SRI.P.RAMAKRISHNAN
SMT.PREETHI KESAVAN
SRI.S.K.HARISH
SRI.T.C.KRISHNA
SRI.C.ANIL KUMAR
SMT.ASHA K.SHENOY
SRI.PRATAP ABRAHAM VARGHESE

RESPONDENTS:

1. THE COMMISSIONER OF EXCISE,
OFFICE OF THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM - 695 001.
2. STATE OF KERALA REP. BY ITS CHIEF SECRETARY,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.
3. CORPORATION OF THRISSUR REP. BY ITS SECRETARY,
CORPORATION OF THRISSUR, THRISSUR - 680 001.

R3 BY ADVS. SRI.K.P.VIJAYAN
SRI.V.N.HARIDAS
R1 & R2 BY SR.GOV'T. PLEADER SRI.K.C.VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 29058/2015

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF FL-3 LICENCE DATED 18.12.2007 ISSUED BY THE FIRST RESPONDENT

EXT. P2 TRUE COPY OF GOVERNMENT ORDER DATED 22.8.2014 WITH ENGLISH TRANSLATION

EXT. P3 TRUE COPY OF NOTICE DATED 27.8.2014 ISSUED BY THE FIRST RESPONDENT

EXT. P4 TRUE COPY OF GOVERNMENT ORDER DATED 30.12.2014

EXT. P5 TRUE COPY OF LICENCE ISSUED IN FORM FL-11 DATED 11.5.2015

EXT. P6 TRUE COPY OF COMMUNICATION DATED 10.6.2015 ISSUED BY THE ASSISTANT DIRECTOR GENERAL & MEMBER SECRETARY (HRACC)

EXT. P7 TRUE COPY OF APPLICATION DATED 31.7.2015 FROM THE PETITIONER TO THE FIRST RESPONDENT

EXT. P8 TRUE COPY OF LETTER DATED 17.8.2015 FROM THE PETITIONER TO THE THIRD RESPONDENT WITH ENGLISH TRANSLATION

EXT. P9 TRUE COPY OF ORDER DATED 15.9.2015 ISSUED BY THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.29058 of 2015 F

Dated this the 5th day of October, 2015

JUDGMENT

The petitioner, a three-star hotel by classification, initially had an FL-3 licence for the sale of liquor on its premises. Later, owing to Exhibit P2 abkari policy, the petitioner's FL-3 licence was cancelled and in its place FL-11 licence was granted.

2. As can be seen from the record, in the course of time, the petitioner upgraded the hotel and obtained a five-star classification, which is the pre-requisite to have an FL-3 licence. In the wake of its obtaining five-star classification, the petitioner has once again staked a claim for an FL-3 licence.

3. Based on the direction given by the first respondent, the petitioner applied to the third respondent

Corporation for a No-Objection Certificate to be produced before the first respondent for obtaining an FL-3 licence. Though the statute requires that the third respondent should consider the petitioner's application within thirty days in terms of Section 447(6) of the Kerala Municipality Act, the Corporation has not disposed of the same even after thirty days. Aggrieved, the petitioner has approached this Court seeking a declaration that the no-objection certificate is deemed to have been granted and that the first respondent shall further process the petitioner's application.

4. The learned counsel for the petitioner has initially made his submissions in the alternative: the first respondent's directive in Exhibit P9 that the petitioner should obtain a No-Objection Certificate from the third respondent is unsustainable; and, even otherwise, since the third respondent has not considered the petitioner's application within the statutorily stipulated time, it is

deemed that No-Objection Certificate has already been granted.

5. The learned counsel has, nevertheless, contended that it is well established that in terms of Section 447 (6) of the Kerala Municipality Act, it shall be deemed that the petitioner has the No-Objection Certificate from the third respondent Corporation. According to him, in the face of such deemed declaration, the first respondent ought to consider the petitioner's application for an FL-3 licence. In support of his submissions, the learned counsel has placed reliance on the judgement of this Court dated 19.08.2015 in W.P.(C)No.18118/2015.

6. The learned Government Pleader, on the other hand, has submitted that, through Exhibit P9, the petitioner's application has already been rejected. According to him, the petitioner's application could be re-considered once it is re-presented along with a No-

Objection Certificate. When the judicial directive of this Court in W.P.(C)No.18118/2015 has been brought to the notice of the learned Government Pleader, he has submitted that the first respondent will consider the petitioner's application once it is re-presented in the light of the ratio laid down by this Court in W.P.(C)No.18118/2015.

7. The learned Standing Counsel for the third respondent Corporation has submitted that the term of the present Council is soon coming to an end and that, since the issuance of a No-Objection Certificate is a matter of policy, it has to be considered by the next Council to be elected.

8. Heard the learned counsel for the petitioner and the learned Standing Counsel for the third respondent Corporation, as well as the learned Government Pleader, apart from perusing the record.

9. The statutory mandate under Section 447(6) of the Act is very clear. Taking into account the said aspect, this

Court rendered a judgment in W.P.(C)No.18118/2015 to the effect that once the statutorily stipulated time has come to an end, it is but inevitable that the applicant be given the benefit of the deeming provision.

10. The defence on the part of the learned counsel for the third respondent Corporation cannot be countenanced. Though it may be a policy decision, as has been sought to be canvassed by the learned counsel; the Council, which is still at the helm of the affairs, has all the powers to take a decision in that regard. Just because its tenure may come to an end shortly, the Council has not had its power diminished. It ought to have taken a decision within the statutorily stipulated time.

11. In the light of the fact that the writ petition can be disposed on the principle of deeming provision, any discussion on the alternative issue whether Exhibit P9 is sustainable has been obviated.

12. In the facts and circumstances, essentially going by the ratio laid down by this Court in W.P.(C)No. 18118/2015, I declare that the petitioner, for all practical purposes, is deemed to have had a 'No-objection Certificate' from the third respondent. Once this legal fiction is treated as a fact, all the consequences that flow in its wake shall enure to the benefit of the applicant. It is, therefore, essential for the first respondent to consider the petitioner's application as soon as it is represented for the purpose of granting an FL-3 licence. It is, thus, declared that the petitioner has the 'No-Objection Certificate', as the third respondent has failed to consider the petitioner's application within thirty days.

13. Needless to observe that the first respondent shall consider the petitioner's application as expeditiously as possible, at any rate, within one month from the date of its re-presentation and pass appropriate orders thereon as

regards granting FL-3 licence, subject, of course, to the petitioner's fulfilling all other statutory formalities.

With the above observations, the writ petition stands disposed of . No order as to costs.

Dama Seshadri Naidu, Judge

tkv