

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 32510 of 2015 (K)

PETITIONER:

MEENACHIL HOTELS & RESORTS PVT. LTD.,
PALA, KOTTAYAM DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR, JOSE CYRIAC,
S/O P.A. KURIAKOSE (LATE).

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

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES (A) DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM-695 033.
3. THE DEPUTY COMMISSIONER OF EXCISE,
KOTTAYAM-686 001.
4. THE PALA MUNICIPALITY,
PALA-686 575, KOTTAYAM DISTRICT.

R BY G. GOPAKUMAR, GOVERNMENT PLEADER
R BY SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1: PHOTOCOPY OF THE STAR CLASSIFICATION ORDER DATED 26.4.2013 ISSUED BY THE INDIA TOURISM, CHENNAI.

EXHIBIT P2: PHOTOCOPY OF THE LETTER DATED 16.4.2014 SUBMITTED TO THE 4TH RESPONDENT.

EXHIBIT P2(A): ENGLISH TRANSLATION OF EXT.P2.

EXHIBIT P3: PHOTOCOPY OF THE LETTER DATED 3.3.2015 SUBMITTED TO THE 3RD RESPONDENT.

EXHIBIT P3(a): ENGLISH TRANSLATION OF EXT.P3.

EXHIBIT P4: PHOTOCOPY OF THE NOTICE DATED 25.4.2014 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P4(a): ENGLISH TRANSLATION OF EXT.P4.

EXHIBIT P5: PHOTOCOPY OF THE SANITARY CERTIFICATE DATED 10.12.2014 ISSUED BY THE HEALTH SUPERVISOR, MUNICIPAL OFFICE, PALA.

EXHIBIT P6: PHOTOCOPY OF THE APPLICATION DATED 13.9.2014 SENT TO THE 2ND RESPONDENT.

EXHIBIT P7: PHOTOCOPY OF THE JUDGMENT DATED 19.8.2015 IN WPC NO.18118/2015 PASSED BY THIS HON'BLE COURT.

EXHIBIT P8: PHOTOCOPY OF THE JUDGMENT DATED 13.10.2015 IN WPC NO.28527/2015 PASSED BY THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 32510 of 2015 (K)

Dated this the 12th day of November, 2015.

JUDGMENT

The petitioner, a Private Limited Company, which runs a classified three-star hotel, initially filed an application on 20.03.2013 before the 4th respondent Municipality seeking a 'No Objection Certificate' (NOC) to be placed before the Excise officials to obtain an FL-11 licence, it being a statutory mandate. When nothing had been heard from the authorities, the petitioner is also said to have submitted Ext.P2 application dated 16.04.2014. At any rate, on 25.04.2014, the 4th respondent issued Ext.P4 reply to the effect that the application had been placed before the Municipal Council, which would take a decision in the due course. Nevertheless, nothing happened thereafter.

2. Once again, the petitioner submitted another application, Ext.P3 dated 03.03.2015, reiterating its demand. Eventually, having been tired of waiting, the petitioner has approached this Court.

3. In response to the submissions made by the learned counsel for the petitioner that the petitioner is eminently entitled to take advantage of the deeming provision of Section 447(6) of the

Kerala Municipalities Act ('the Act'), The learned Standing Counsel for the 4th respondent has strenuously contended that the writ petition suffers from latches. In elaboration of his submissions, he has submitted that the petitioner filed Ext.P2 application way back on 16.04.2014 and later abandoned the proceedings.

4. The learned Standing Counsel has further submitted that since the authorities passed Ext.P4 order within thirty days in response to the petitioner's Ext.P2 application, it amounts to a statutory compliance. According to him, the petitioner is not entitled to take advantage of the deeming provision.

5. The learned counsel for the petitioner, on the other hand, has contended that Ext.P4 is only a communication that the matter would be placed before some other authority. He has further submitted that the petitioner is entitled to take advantage of the deeming provision.

6. Heard the learned counsel for the petitioner, the learned Government Pleader, and the learned Standing Counsel for the respondent Municipality, apart from perusing the record.

7. Indeed, in response to Ext.P2 application submitted by the petitioner, the 4th respondent Municipality did communicate through

Ext.P4. Ext.P4 can hardly be called an order in terms of Section 447 of the Act so as to disentitle the petitioner from taking advantage of the deeming provision.

8. In my considered view, what the law has contemplated is that the application is required to be disposed of finally one way or another, thereby to leave it open for the applicant, if dissatisfied, to take further recourse. Mere communication that the application could be considered in the course of time cannot be said to be, to my mind, a statutory compliance. It is further pertinent to observe that though it is more than 1 ½ years since Ext.P4, the 4th respondent has not deemed it appropriate to pass any orders.

9. It is commonplace to observe that a suitor taking recourse to equity jurisprudence should have his conduct regulated in accordance with the equity principles. At the same time, the respondent who opposes the claim of the suitor should also be guided by the same principles and is required to be judged by the same yardstick. Equity is not a one-way process; it is a thoroughfare reaching both the parties to the lis.

10. The learned Standing Counsel has submitted that having submitted the application more than 1 ½ years ago, the petitioner has

not pursued it further: 'the petitioner threw it on the face of the officials and did not turn up later'. In this regard, refuting the said contention, the learned counsel for the petitioner has drawn my attention to the fact that the petitioner initially submitted an application on 20.03.2013 and later followed it up with Ext.P2 and also Ext.P3 dated 16.04.2014 and 03.03.2015 respectively.

11. At this juncture, it is difficult to accept the contention of the learned Standing Counsel that the petitioner has not pursued his application. On the contrary, it is the statutory obligation on the part of the 4th respondent Municipality to see that the petitioner's application is considered one way or another. I may remind myself that the whole constitutional mechanism, the whole hierarchy of administration from the highest to the lowest, every institution, every mechanism are put in place in this Republic only for one purpose and one purpose alone: to serve the citizen. The Democratic mantra is 'we the people' not 'we the authorities' of whatever hue, drawn from whichever of the three branches.

12. The citizen has not the compulsion of making endless sorties to the unfamiliar—and at times daunting—official portals. Constitution commands, statute provides and the citizen 'demands':

He demands reform from Parliament; demands remedy from the Executive; demands redress from the Judiciary. It is, then, the turn of these three organs of the State to attend and to fulfil the requirement. In this matter, incidentally, the petitioner desires to deal in liquor; however, the mere epithet that it is *res extra commercium* does not dilute the right of a person to demand a remedy so long as the right subsists.

13. Romilla Thapar, a noted historian, in her introductory remarks in the book 'The Public Intellectual in India'¹ observes that it is crucial to constantly reassert the rights of citizens in the life of a nation. She further observes²:

"[W]e have to envision a future in which the colonial interpretation of Indian society is not the blueprint, but that from which we may borrow experience that we consider apposite. For example, if colonial governance was intended to subordinate the population, governance today has to re-orient itself completely and to function as the protector of the citizen. It is still a long way from that change."

14. It is not in dispute that Section 447 (3) of the Act prescribes a time limit of thirty days for the authorities to consider any application filed to obtain any licence to use a place for conducting a dangerous or offensive trade. Indeed, the authority has the power to

¹ Aleph Book Company (Rupa), P.xiii, Ed.2015

² Ibid, P.xviii

refuse the licence or permission in the interest of the public, within the stipulated time, however.

15. Once it is accepted that a time frame has been fixed for considering an application under Section 447 (3) of the Act, it is further incumbent for me to examine the scope of sub-section 6 of Section 447, which reads as follows:

“(6). If the order on an application for any licence or permission is not communicated to the applicant within thirty days after the receipt of the application by the Secretary or within such longer period, as may be prescribed in any class of cases the application shall be deemed to have been allowed for the period required in the application, subject to the Act, rules and bye-laws and all conditions which would have been ordinary imposed.”

16. Indisputably, the above extracted provision stood omitted through Act 14 of 1999 with effect from 24.03.1999. Later, the legislature has, however, reincorporated it with effect from through Kerala Municipalities (second amendment) Act, 2014. As such, I am to hold that sub-section (6) of Section 447 has been in force and its impact and the consequences flowing therefrom are to be applied to the petitioner's application. It is indeed not in dispute that the petitioner's application was not considered within thirty days.

17. In paragraph 22 of Ext.P7 judgment, this Court, on the issue of deeming provision has held as follows:

“22. At any rate, it is to be further observed that though in terms

of the deeming provision, the NOC and Sanitation Certificate are declared to have been given, for all practical purposes, in the petitioner's favour, the authorities, nevertheless, are not powerless to re-examine the issue in the course of time whether the petitioner has violated any statutory provision while the deemed NOC or licence has been in force. In such an event, after putting the petitioner on notice, the Municipal authorities can further determine the issue."

18. In the light of the submissions made by the learned counsel for the petitioner and the learned Standing Counsel for the 4th respondent, especially going by the statutory mandate under Section 69(6) of the Act, as has been delineated in Exts.P7 and P8 judgments, this Court disposes of the writ petition declaring that the petitioner is entitled to the advantage of the deeming provision. Consequently, it is further declared that the petitioner has the necessary NOC.

In the light of the declaration made presently that the petitioner is deemed to have had NOC from the 4th respondent Municipality, respondents 1 to 3 shall process the petitioner's application, keeping in view the declaration, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

sd/- DAMA SESHADRI NAIDU, JUDGE.

