

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2016

Delivered on : 20.04.2016

Dated : 20.04.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.1434 of 2015

and

M.P.No.1 of 2015

Hotel Golden Palace,
rep by its Proprietor P.Subramaniam,
Trichy Road,
Namakkal - 637 001.

... Petitioner

Vs.

1. The Commissioner of Prohibition and Excise,
Chepauk, Chennai - 600 005.

2. The District Collector,
Namakkal District, Namakkal.

3. The Assistant Commissioner (Excise),
Office of the District Collectorate,
Namakkal.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records comprised in RC.No.P & E(2)/14069/2010 dated 22.12.2014 on the file of the 1st respondent, quash the same and consequently, directing the 3rd respondent to refund the excess privilege amount collected from the petitioner from the 2005-2006 to till date and collect the privilege fee applicable non-star status hotels in respect of the license in FL3 No.1/2004-2005.

For Petitioner : Mr.R.Bharanidharan

For Respondents : Mr.M.S.Ramesh,
Additional Government Pleader

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent dated 22.12.201 and to quash the

same and consequently, to direct the 3rd respondent to refund the excess privilege amount collected from the petitioner from the 2005-2006 to till date and collect the privilege fee applicable non-star status hotels in respect of the license in FL3 No.1/2004-2005.

2.The petitioner had started a hotel business in the name and style of Hotel Golden Palace at Trichy Road, Namakkal and originally had obtained Three Star status for the said Hotel from the Regional Director of India Tourism, Chennai and therefore, had to mandatorily have a bar room in the Hotel. Hence, the petitioner applied for FL-3 license to the 1st respondent, which was granted to them. In view of the same, the petitioner had to pay a higher privilege fee than that was paid by the other regular bars in the other Hotels. After the expiry of the FL-3 license issued in the year 2000, the petitioner did not renew the license. Therefore, the license had expired and thereafter, the petitioner had once again applied for FL-3 license, which was issued by the 1st respondent on 30.06.2004. The privilege amount that was to be paid by the petitioner was Rs.2,00,000/-, apart from the other license and renewal fees.

3.Since the hotel business was running at a loss, the petitioner sought to withdraw the Three Star status to the petitioner and accordingly, applied to the Regional Director, India Tourism stating that they do not wish to seek for re-classification of their Hotel as Three Star hotel. The Regional Director had issued a letter dated 11.05.2005 for cancelling the Three Star classification issued to the petitioner and also issued a certificate on 10.10.2006 clarifying that the petitioner is not a Three Star Hotel classified by the Department of Tourism with effect from 07.03.2005. After the withdrawal of the status, the petitioner was required to pay a sum of Rs.1,00,000/- as privilege fee as applicable to that year and when the petitioner had approached the 3rd respondent for reducing the privilege fee amount, the 3rd respondent had directed the petitioner to pay the entire privilege amount that was paid for Three Star Hotels under a threat of cancellation of license.

4.The petitioner had produced the certificate issued by the Regional Director, India Tourism and even then, the 3rd respondent had failed to refund the excess privilege amount paid by the petitioner. The privilege fee was enhanced from the year 2009 to Rs.4,00,000/- for FL-3 license and the petitioner was directed to pay Rs.4,00,000/- from the year 2009 for renewal of license. On 01.03.2010, the petitioner addressed a letter to the 1st respondent seeking for refund of the excess amount collected till 2011. Based on the petitioner's letter, the 1st respondent called for a report from the 2nd respondent wherein the 2nd respondent had conducted

spot inspection on 24.11.2010 and submitted a report to the 1st respondent stating that the Assistant Director of India Tourism, by their letter dated 11.05.2005, had cancelled the Three Star status to the petitioner's Hotel, therefore, the petitioner could be refunded with the excess privilege amount paid to the tune of Rs.8,31,138/-.

5.The petitioner again made a representation on 03.04.2012 to the 1st respondent to refund the excess privilege amount collected since 2005-2006, totalling a sum of Rs.13,00,000/-. Since no order was passed by the 1st respondent, the petitioner filed a Writ Petition in W.P.No.16347 of 2012 for mandamus directing the respondent to refund the excess privilege amount. This Court, by order dated 14.11.2014, disposed of the Writ Petition by directing the respondent to dispose of the representation of the petitioner dated 03.04.2012 by taking into consideration the recommendation of the 2nd respondent dated 03.01.2011. When the petitioner was called for personal hearing on 01.12.2014, the petitioner appeared before the 1st respondent through their counsel and also furnished all the relevant documents to show that the Hotel run by the petitioner was not a Three Star Hotel. However, by the impugned order dated 22.12.2014, the 1st respondent rejected the request of the petitioner relying upon an order of this Court made in W.P.(MD).No.1080 and 1487 of 2008 dated 29.04.2008.

6.Mr.M.S.Ramesh, learned Additional Government Pleader appearing for the respondents submitted that by the certificate issued by the Regional Director, India Tourism, it is clear that the management has not applied for renewal of Three Star category and because of this reason only the Three Star category was cancelled and not because of the request made by the petitioner as averred by them in the affidavit. Further, the learned Additional Government Pleader submitted that the petitioner has not produced any valid documents in support of their averments and also had not furnished the non-star classification and willfully paid the privilege fee and enjoyed the FL-3 license, which was given to the Three Star Hotels.

7.Mr.R.Bharanidharan, learned counsel appearing for the petitioner submitted that the petitioner had paid the privilege fee of Rs.2,00,000/- upto 23.02.2005 and that by order dated 11.05.2005, the Regional Director, India Tourism has stated that the Hotel is no longer a Three Star Hotel, since the license had already expired on 07.03.2005 and the question of cancellation of classification does not arise.

8.The petitioner had paid the privilege fee of Rs.2,00,000/- for the year 2004-05 on 23.02.2005, therefore, when the petitioner had established that they paid the

privilege fee till the date of expiry of the three star license, on 07.03.2005, they are not liable to pay the privilege fee meant for Three Star Hotels from 2005-06. The petitioner's Hotel is liable to pay the fee applicable for regular Hotels. In spite of the expiry of the license on 07.03.2005, the respondent collected privilege fee, which is applicable for the Three Star Hotels even after 07.03.2005. The 1st respondent, without taking into consideration the expiry of the Three Star license on 07.03.2005 and the letter dated 11.05.2005 by the Regional Director, India Tourism, has erroneously rejected the petitioner's representation for refund of the privilege fee collected after 07.03.2005. The petitioner is entitled to get refund of the excess amount paid by them from the year 2005-06 (i.e.) from 01.04.2005.

9. In these circumstances, the impugned order passed by the 1st respondent dated 22.12.2014 is set aside. The 3rd respondent is directed to refund the excess privilege amount collected from the petitioner from 01.04.2005 to till this date within a period of eight weeks from the date of receipt of a copy of this order. The 3rd respondent is also directed to collect the privilege fee applicable for Non-Star Status Hotels in respect of the petitioner's Hotel viz., Hotel Golden Palace from 01.04.2005.

10. With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

va
To

1. The Commissioner of Prohibition and Excise,
Chepauk, Chennai - 600 005.
2. The District Collector,
Namakkal District, Namakkal.
3. The Assistant Commissioner (Excise),
Office of the District Collectorate,
Namakkal.

+1cc to Mr.R.Bharanidharan, Advocate, S.R.No.24251

W.P.No.1434 of 2015
and M.P.No.1 of 2015

SKS (CO)

CA(27/04/2016)