

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.12.2019
Pronounced On	27.01.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.29680 of 2012
and
M.P.Nos.1 & 2 of 2012

Hotel Soorya International,
represented by its Partner,
S.Arumugam,
No.345-A, Ooty Main Road,
Mettupalayam - 641 301,
Coimbatore District.

...Petitioner

vs

1.The Secretary to Government,
Home, Prohibition & Excise,
Chennai - 600 009.

2.The Commissioner,
Prohibition & Excise,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner,
Prohibition & Excise,
District Collectorate,
Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, calling for the records of the 2nd respondent in its proceedings bearing Proc. No. P&E 2(1)/6887/2007 dated 16.08.2012 quash the same and to forbear the respondents from collecting the privilege fee from the petitioner at the rate as applicable to a two star category hotel as prescribed under the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

For Petitioner : M/s.S.Akila for
M/s.Sarvabhuaman Associates

For Respondents: Mr.R.P.Prathap Singh
Government Advocate

O R D E R

The petitioner is aggrieved by the impugned order dated 16.08.2012 passed by the 2nd respondent Commissioner of Prohibition and Excise. By the impugned order, the petitioner has been asked to pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) for the Assessment Years 2000-01 to 2007-08 as the alleged differential privilege fee to be paid by the petitioner.

2.The petitioner was recognised as a Two Star Hotel by the Hotel and Restaurant Approval and Classification Committee (HRACC), on 08.07.1996. The said recognition was valid for three years. The petitioner obtained F.L.3 licence on 16.04.1996 for the period of one year for supplying liquors to foreign tourists, foreigners, residents in India holding personal permits and also to citizens of India holding personal permits for the consumption of liquor within the hotel or within the private rooms of its hotel. At the time of grant of the said license, the Privilege Fee that was payable by the petitioner as a Two Star Hotel was only Rs.50,000/-.

3.At the time of grant of the said license, the 2nd respondent confirmed that the Director of Tourism, Madras had recommended for grant of F.L.3 license to the petitioner and that the petitioner satisfied the criteria laid down for Star Hotel as was required under Rule 2(XVI) of the Tamil Nadu Liquor (License and Permit) Rules, 1981 (Rules for brevity).

4.At the time of issuance of the license, the Collector of Coimbatore had the Hotel of the petitioner inspected by an Asst. Commissioner (Excise) who reported that the petitioner satisfied the criteria and condition stipulated for grant of license under the aforesaid Rules. The license was valid up to 31.03.1997 with the possessional limit of one thousand units at a time. Subsequently, the petitioner continued to renew the aforesaid license at the expiry of each period of one year.

5.The petitioner filed an application for renewal of the license in the year 1999. The petitioner was issued with a license in Form F.L.3. At the time of grant of the renewal, it was made clear that the renewal was subject to payment of the difference in the Privilege Fee if any demanded in future due to change in the star classification.

6.It appears that from the year 2000, the Privilege Fee was increased to Rs.1,50,000/- per annum for Two Star Hotels. The petitioner, however, paid only a sum of Rs.1,00,000 as privilege fee that was applicable to One Star / non Star Hotel. The petitioner failed had to renew its Two Star status after 1999 as per the Rules and thus became a non Star Hotel.

7.The petitioner's F.L.3 license was renewed for the years 2000, 2001, 2002, 2003, 2004, 2005, 2006 respectively on payment of Privilege Fee of Rs.1,00,000/-.

8.The petitioner made a fresh application on 02.03.2007 by enclosing F.L.3 License along with challan for payment of Rs.1,00,000/-. The respondent by a communication dated 23.08.2007 called upon the petitioner to pay the differential Privilege Fee for the Assessment Years 2000-2001 to 2007-2008 totaling to an amount of Rs.4,00,000/- at Rs.50,000 per year as the privilege fee.

9.The petitioner sent a representation on 25.09.2007 and stated that its ceased to be a Two Star Hotel with effect from 30.04.1999 as it had not renewed its status. The petitioner also obtained a certificate from India Tourism-Chennai on 15.10.2007 to the effect that the classification of the petitioner as a Two Star Hotel had expired as early as 30.04.1999.

10.It is the contention of the petitioner that since the petitioner's status as a Two Star was not renewed after 1999, the petitioner was not required to pay the Privilege Fee at Rs.1,50,000/-

11.The respondents in their Internal Memo of 7th December 2007 however to state that non-renewal of Star Gradation Certificate did not affect the payment of renewal fee and therefore the petitioner should be directed to pay the differential Privilege Fees of the petitioner desire to renewal.

12.The petitioner was called upon to remit a sum of Rs.4,00,000/- as arrears of the Privilege Fee by a communication dated 18.01.2008. Under these circumstances, the petitioner filed W.P.No.2363 of 2008 before this Court and challenged the aforesaid demand.

13.By an order dated 22.12.2011, this Court referred to the aforesaid Rules and finally concluded that the order passed on 18.01.2008 by the 2nd respondent Commissioner, Prohibition and Excise proposing to cancel the petitioner's F.L.3 license was without following the procedure contemplated under Rule 22.

14.The said order was thus quashed and the case was remitted back to the 2nd respondent to pass a fresh order after giving an opportunity of hearing to the petitioner.

15.The 2nd respondent has passed the impugned order after hearing the petitioner. It has been concluded that the petitioner was liable to pay the differential Privilege Fee for the Assessment Years 2000-2001 to 2007-2008.

16.In this writ petition, it is the contention of the petitioner that the petitioner cannot be made liable to pay Privilege Fee of Rs.1,50,000/- during the period in dispute as the petitioner's star category status was not renewed after 30.04.1999.

17.It is the contention of the respondent that the petitioner has only renewed the existing license that was granted on 16.04.1996 at the end of each year and suppressed the fact that the petitioner had not renewed their status as a Two Star Hotel. If the petitioner had been downgraded, it should have filed a fresh application instead of filing an application for renewal of the existing license under Rule 21.

18.According to the respondents, the procedure for grant of fresh license and renewal of license are different. Since the renewal was on the strength of the classification of the petitioner as the Two Star Hotel as early as 08.07.1996, it was not open for the petitioner to pay a lesser Privilege Fee as applicable to One Star and non Star Hotels even if the petitioner had not renewed its status.

19.Heard the learned counsel for the petitioner and the respondents and perused the provisions of the Tamil Nadu Liquor (License and Permit) Rules, 1981. Rule 17 (a) contemplates license for liquor used for consumption. It contemplates that the different kinds of license to be obtained and different Privilege Fees paid by a licensee.

20.A licensee desiring to renew the license has to make an application under Rule 21 in the prescribed form(which is similar to grant of the original license) at least one month before the date of expiry of the license. The provisions of Rules 18 to 20 are to apply as far as may be for an application for renewal of license as if it, were an application for the grant of original license, if an application for renewal of the license has not been made within a period of one month before the expiry as specified therein. Rules 21 and 22 of the aforesaid Rules reads as under

21.A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) atleast one month before

the date of expiry of the licence. The application may be sent to the licensing authority direct. The provisions of rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence as if it were an application for the original grant of a licence, where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the licence, the licensing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five per cent of the prescribed licence fee.

22.Cancellation or suspension of licences.- (1) The licensing authority may, after giving in writing to the licence holder an opportunity to show cause within a reasonable time not exceeding 14 days against the action proposed to be taken or order proposed to be issued, stating the reasons there for, by an order in writing specifying the reasons, cancel the licence under these rules or suspend it for such period as it thinks fit, if in its opinion, the licence holder has failed to comply with any of the conditions of the licence or of any of the provisions of the Act or the rules made thereunder.

(2) Notwithstanding anything contained in sub-rule (1), the licensing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed. In such a case, the reason for suspension shall be communicated to the licence holder within 5 days from the date of suspension.

(3) When a licence is cancelled or suspended or temporarily suspended or is not renewed after its expiry the licence holder shall not sell, use or otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension, temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock, The licence holder shall not also be entitled to

claim any compensation on account of cancellation, suspension, temporary suspension or non-renewal of the licence.] (23) SECURITY - 1 [In the case of application for licences in Form F.L.1, F.L.2,

21.The petitioner was earlier recognised as Two Star Hotel pursuant to a recommendation of Hotel and Restaurant Approval and Classification Committee by the office of India Tourism, Tourist Office, Madras on 08.07.1996. The said classification was with effect from 08.07.1996 for a period of three years on the terms and conditions laid down in Circular No.22 HRA CC (1)/87 dated July 20, 1987.

22.The petitioner, however, did not renew its status as a Two Star Hotel at the expiry of the 3rd year which has been confirmed by a certificate dated 15.10.2007, by the office of India Tourism, Chennai. The said certificate reads as under:-

"M/s.Hotel Soorya International, located at 339 - 345, Ooty Main Road, Mettupalayam 641 301 was classified under two star category for three years w.e.f. 30.04.1996. Their classification order expired on 30.04.1999 and thereafter the above said hotel is not classified by this office and therefore M/s.Hotel Soorya International, Mettupalayam is not a star hotel."

23.There are no major difference in the procedure for obtaining a F.L.3 License. For Renewal of an existing license under the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, an application has to be made one month in advance. Only the Privilege Fees payable by a Five Star, Four Star, Three Star and Two Star category hotel and one Star and other hotels vary. Therefore, the question is whether the petitioner was required to obtain a fresh license after it ceased to be a Two Star Hotel or whether it could renew the F.L.3 license as an other hotels.

24.The procedure for obtaining a fresh F.L.3 license for all the categories of licences are one and the same. If F.L.3 licence was to be renewed under Two Star Category, the respondents should have called upon the petitioner to produce its renewal certificate as a Two Star from India Tourism.

25.The fact that the petitioner may have failed to inform the respondent that it ceased to be a Two Star Hotel with effect from 30.04.1999, in my view is of no consequence though it would have been ideal on the part of the petitioner to expressly

inform the respondents that it was no longer was a Two Star Hotel after 30.04.1999.

26.The fact that the authorities also accepted of Rs.1,00,000/- as the Privilege Fee at the time of successive renewal, indicates that they had also accepted the status of the petitioner as a non Star hotel and thus renewed the successive F.L.3 license from 2000-01 to 2007-08 on payment of Privilege Fee of Rs.1,00,000/- per annum. In the successive renewals, as also in 1999 renewals, it was merely mentioned that the renewal was subject to the condition that the licensee should be the difference in privilege fee if any demanded in future.

27.In Hotel Golden Palace vs. The Commissioner of Prohibition and Excise, 2016 SCC onLine Mad 2301, this Court had ordered to refund of Privilege fee where there was no renewal of three Star status.

28.Since the petitioner ceased to be a Two Star Hotel with effect from 30.04.1999, the respondents are not justified in demanding Privilege Fee at Rs.1,50,000/- from the petitioner as there was a tacit understanding while renewing successive F.L.3 license that the petitioner was no longer as a Two Star Hotel after 1999. Therefore, the impugned order cannot be sustained.

29.In the light of the above discussion, the impugned order is quashed with consequential relief to the petitioner. Writ petition thus stands allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

kkd / jen

To

1.The Secretary to Government,
Home, Prohibition & Excise,
Chennai - 600 009.

2.The Commissioner,
Prohibition & Excise,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner,
Prohibition & Excise,
District Collectorate,
Coimbatore.

+1 CC to The Govt. Pleader sr 6187.
+1 CC to M/s. Sarvabhman Associates sr 6484.

W.P.No.29680 of 2012
and
M.P.Nos.1 & 2 of 2012

SSD(CO)
SP(28/02/2020)



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