



W.A.No.1097 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:10.07.2023

Delivered on: 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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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

.. Appellants

Vs.

1.Hotel Golden Palace
Rep by its Proprietor
R.Subramaniam (Died)

2.Thamilselvi Subramaniam

3.Karthik

4.Karan
(R1 died R2 to R4 are
brought on record as

.. Respondents



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Lr's of deceased
1st respondent viz.,
P.Subramaniam, vide
order of Court dated
17.11.2022
made in C.M.P.No.19381/2022)

Prayer:- Appeal filed under Clause 15 of Letters Patent praying to set aside the order passed by this Court in W.P.No.1434 of 2015 dated 20.04.2016.

For Appellants : Mrs.Geetha Thamaraiselvan,
Spl.Govt.Pleader

For Respondents : Mr.R.Bharanidharan

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The statutory respondents being aggrieved by the order dated 20.04.2016 in W.P.No.1434 of 2015, have preferred the present Writ Appeal.

2. The parties are arrayed as per their rank in the Writ Petition. Since the petitioner died their legal heirs are brought as respondents in the present Writ Appeal.

3. In order to appreciate the case before us, it would be appropriate to



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briefly narrate the facts of the case before the Writ Court.

4. The respondent herein as petitioner filed W.P.No.1434 of 2015 seeking to quash the proceedings dated 22.12.2014 on the file of the 1st appellant herein and to consequently direct the 3rd appellant herein to refund the excess privilege amount collected from the respondent herein and to collect only the privilege fee applicable for non-star status hotels in respect of license in FL3-No.1/2004-2005.

5. The case of the petitioner in the Writ Petition was that he commenced a hotel in the name and style of Hotel Golden Palace situated at Trichy Road, Namakkal. The petitioner had obtained three star status for the said hotel from the Regional Director of India Tourism, Chennai and therefore in compliance with the said star status, the petitioner had to mandatorily have a bar room in the hotel. The petitioner therefore applied for FL-3 license to the 1st respondent which necessitated payment of a higher privilege fee than that was payable for other regular bars in other hotels. Subsequently, the petitioner did not renew the license, until he again made an application in 2004. The 1st respondent issued FL-3 license



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on 30.06.2004. Since the hotel business was running at a loss, the petitioner sought withdrawal of the three star status and accordingly made an application to the Regional Director, India Tourism. Consequently, the Regional Director, in and by letter dated 11.05.2005, cancelled the three star classification and issued a certificate dated 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. However, despite the withdrawal of the three star status, the petitioner was required to pay the privilege fee of Rs.1,00,000/- and when the petitioner approached the 3rd respondent for reducing the privilege fee amount, the 3rd respondent had directed the petitioner to pay the entire amount, failing which the 3rd respondent issued a threat that the license of the petitioner would be cancelled. It is the further case of the petitioner that the privilege fee was enhanced to Rs.4,00,000/- from the year 2009 in respect of FL-3 license. On 01.03.2010, the petitioner addressed a communication to the 1st respondent seeking refund of the excess amount collected till 2011. Acting on the petitioner's request, the 1st respondent called for a report from the 2nd respondent, who conducted a spot inspection on 24.11.2010 and submitted a report to the 1st respondent, stating that the Regional Director of India



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Tourism has cancelled the three star status and therefore the petitioner could be refunded the excess privilege amount to the tune of Rs.8,31,138/-.

The petitioner made a further representation on 03.04.2012 to the 1st respondent seeking refund of excess privilege amount collected ever since 2005-2006, totalling in all a sum of Rs.13,00,000/-. As no orders were passed by the 1st respondent, the petitioner filed a Writ Petition in W.P.No.16347 of 2012 for issuance of a Writ of Mandamus. The said Writ Petition was allowed by this Court on 14.11.2014, directing the respondents to dispose of the representation of the petitioner, taking into consideration the report of the 2nd respondent dated 03.01.2011. The petitioner was called for a personal hearing on 01.12.2014 and he submitted all relevant documents. However, in and by the impugned proceedings, the 1st respondent rejected the request of the petitioner, placing reliance on an order of this Court in W.P.(MD)Nos. 1080 and 1487 of 2008 dated 29.04.2008.

6. Challenging the said order, the petitioner filed the Writ Petition which is under challenge by way of Writ Appeal, before us, on the grounds that the decision of this Court in W.P.(MD).Nos.1080 and 1487 of 2008



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was not applicable to the facts of the case on hand. Despite the report of the 2nd respondent, excess privilege fee collected from the petitioner was not refunded and that the order of the 1st appellant was arbitrary and illegal.

7. The respondents filed a counter stating that the averments in the pleadings were misleading and that the petitioner never ever applied for renewal of three star status and only on that ground the star status was withdrawn and not based on any request made by the petitioner as claimed by the petitioner in the affidavit in support of the Writ Petition. It is also contended that the petitioner did not produce any valid documents with regard to the non star classification and having voluntarily paid the privilege fee and enjoyed the FL-3 license which was given to three star hotels, rightly the impugned order came to be passed. The learned single Judge allowed the Writ Petition on the ground that on and from 07.03.2005, the three star status stood withdrawn as per the communication of the Regional Director, India Tourism and therefore the petitioner's hotel was liable to pay only the fee applicable to the regular hotels. Despite the same, the 1st respondent has passed the impugned order refusing refund of the privilege fee collected after 07.03.2005 and in such



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circumstances, the 3rd respondent was directed to refund the excess privilege fee collected from the petitioner and to collect privilege fee applicable for non star status hotels on and from 01.04.2005 in so far as the petitioner's hotel was concerned.

8. The statutory respondents have challenged the said order of the learned single Judge on the ground that the petitioner was issued with necessary license valid upto 31.03.2005 and the voluntarily remitted the privilege fee for renewal of FL-3 license at the rates applicable for three star status liquor license for the years 2005-2006 upto 2010-2011. Therefore, the refund of the same cannot be ordered. It is also contended that the Regional Director, India Tourism has declared the petitioner hotel as a non star status hotel and issued a certificate to such effect only because the petitioner did not choose to renew the three star category in time.

9. Heard Mrs. Geetha Thamaraiselvan, learned Special Government Pleader for the appellants and Mr.R.Bharanidharan, learned counsel for the respondents. We also perused the records and the order of the learned



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single Judge.

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10. The main contention of the learned counsel for the appellants is that when the Writ Petitioner had voluntarily paid the amounts by way of privilege fee right from 2005-06 upto 2010-11, without any protest or demur, there is no question of any refund. The learned counsel for the appellants therefore prayed for the Writ Appeal being allowed.

11. Per contra, learned counsel for the respondents/Writ Petitioner would submit that when the three star status had been admittedly withdrawn with effect from 07.03.2005, which was also confirmed by the certificate issued by the Regional Director, India Tourism dated 10.10.2006, it was not open to the appellants to collect the privilege fee payable to three star hotels. It is also contended by the learned counsel that the amounts were paid only under duress since the authorities threatened the petitioner with cancellation of license and therefore the payment of privilege fee upto 2010-11 cannot be put against the petitioner and refund denied, especially when the liability itself ceased to exist on and from 07.03.2005.



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12. We have carefully considered the rival submissions made by the counsel on either side. It is not in dispute that the respondent/Writ Petitioner did not enjoy three star status after 07.03.2005. The petitioner even subsequent to the same has paid the privilege fee applicable to the three star category hotels and enjoyed FL-3 license. Though the petitioner has stated that they have sought for withdrawal of three star status, the affidavit in support of the Writ Petition is totally silent about any written request in that regard, no document is also filed to establish the same.

13. It is the specific case of the appellants that the petitioner did not apply for renewal of three star status and only under such circumstances the Regional Director, India Tourism issued a certificate stating that the petitioner is not a star status hotel category classified by the Department of Tourism on and from 07.03.2005. In so far as the payment of privilege fee from 2005-2006 to 2010-2011 is concerned, the fact remains that the Writ Petitioner has paid the privilege fee applicable to three star category hotels and consequently has enjoyed all the privileges of FL-3 license applicable to three star hotels all along. Merely citing withdrawal of three star status to the Writ Petitioner hotel, the Writ Petitioner has sought for refund of the



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privilege fee. It is specifically averred in the counter affidavit filed by the first appellant before the Writ Court that the Writ Petitioner has enjoyed the benefits of FL-3 license given to three star hotels and whenever he has applied for FL-3 renewal, he has to necessarily pay the privilege fee as per the prevailing rules and the certificate issued by the Regional Director, India Tourism would have no bearing or relevance whatsoever. We find force in the said contention. It is one thing to say that the petitioner is not a three star hotel any more after 07.03.2005, but however, when it comes to the enjoying the benefits of FL-3 license, it is not denied by the petitioner. The question of seeking refund of privilege fee does not arise. Nothing prevented the petitioner from stopping payment of the privilege fee demanded by the appellants on the ground that they were not a three star hotel anymore after 07.03.2005. However, on the contrary, they have applied for FL-3 license every year and paid the applicable fee which goes to only show that the petitioner wanted FL-3 license since they wanted the benefits of the said license in respect of the petitioner's hotel. The report of the 2nd appellant recommending refund is not final or binding on the competitive authority who is the 1st appellant. On the other hand, without making a proper written request or application putting the appellants on



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notice about the petitioner having lost its three star status and seeking appropriate direction with regard to payment of fees for enjoying the bar facility, the Writ Petitioner is estopped from seeking refund of the privilege fee alleging that it has been paid in excess or that it was not payable since the petitioner was not a three star hotel on and from 07.03.2005. The principle of estoppel will squarely apply to the petitioner's case and having voluntarily paid the money and enjoyed all the benefits and privileges, it was not open to the petitioner to turn around and seek refund.

14. It is also relevant to note that the FL-3 license is issued only for a period of one year and after 07.03.2005, when the license fell for renewal on 31.03.2005 and every subsequent year thereafter, the Writ Petitioner has never objected and has been paying the privilege fee, since the petitioner wanted FL-3 license for enjoying the benefits of bar facility and therefore, we are of the view of that the learned single Judge has not considered these aspects and has merely proceeded on the basis of the certificate issued by the Regional Director, India Tourism to come to a conclusion that the privilege fee was paid in excess and gave a consequential direction to the



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3rd appellant to refund the excess privilege fee collected from 2005-2006 and to collect the fee applicable to non star hotels from 01.04.2005.

15. We are unable to accept the reasoning of the learned single Judge. For all the foregoing reasons, we are inclined to set aside the order passed in Writ Petition No.1434 of 2015 dated 20.04.2016 and consequently, Writ Appeal is allowed. No costs.

(D.K.K.J) & (P.B.B.J)
26.07.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J

(kpr)

Pre-delivery judgment in
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