

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2246 OF 2006

Chitra

.. Appellant

Versus

State of Kerala & Ors.

.. Respondents

WITH

CIVIL APPEAL NO. 4900 OF 2006

Cochin Wines & Drugs

.. Appellant

Versus

The Assistant Excise Commissioner & Ors.

.. Respondents

JUDGMENT**VIKRAMAJIT SEN, J.****CIVIL APPEAL NO.2246 OF 2006**

1 This Appeal calls into question a brief Judgment passed on 21.7.2005 by the Division Bench of the High Court of Kerala in W.A. No. 910 of 2000 reversing the detailed Judgment of the learned Single Judge. The question that has been raised pertains to the Appellant's entitlement to pay proportionate annual rental for the year 1999-2000, instead of full annual fee of ₹13 lakhs which was applicable for that year in respect of an FL3 licence granted to her.

2. The Division Bench took note of Rule 14 of the Foreign Liquor Rules which reads thus:

“If any of the licences referred to in Rule 13 is granted in the course of a financial year, the full annual fee shall be paid and the licence shall expire at the end of the financial year”.

On the reading of the said Rule, the Division Bench opined that it was not permissible for any licensee to claim only proportionate payment on the predication that it had been disabled from utilizing the licence for the full period because of third party intervention. Accepting the Appeal, the Appellant was permitted to pay the balance of the entire fee after adjusting the sum already paid, within three weeks, in which event the Respondent would not be permitted to claim interest on belated payments. It is the admitted case that in order to avail of this indulgence and advantage the balance amount has been duly paid. However, the legality of the demand to pay the fee for the entire year, despite the truncated period of user by the Appellant for no fault ascribable to her is what has been brought into question before us.

3 We have commented on the brevity of the impugned Judgment for the reason that the learned Single Judge of the Kerala High Court in O.P. No. 18145 of 1994 had, in its detailed Judgment, considered various legal aspects including the topicality of the maxim '*Actus curiae neminem gravabit*', that an act of Court prejudices no one, as well as the pronouncement of this Court in

R.Vijaykumar v. Commissioner of Excise 1993(4) SCALE 386, which indubitably held the field and was facially in favour of the Appellant. It seems to us that the attention of the Division Bench was not drawn to this binding precedent, since otherwise its conclusion would in all likelihood have been diametrically different.

4 The facts are neither disputed nor are they convoluted. The Appellant had submitted an application on 16.3.1990 for the grant of an FL3 licence in respect of her Hotel Chanakya at Trivandrum, which had been granted. However, it transpired that a third party filed a suit in which the Munsif Court, Trivandrum granted an interim injunction restraining the Excise Commissioner from issuing the said licence to the Appellant for user at her said Hotel. This suit, along with another suit similar to it, was eventually dismissed on 29.9.1993. In an ensuing Appeal, the District Judge granted an *ad interim* injunction on 15.4.1994, which came to be vacated on 3.6.1994. On 23.11.1994, the Respondent rejected the Appellant's application for the FL3 licence due to an amendment to the Foreign Liquor Rules which had resulted in private parties being ineligible for FL3 licences. Consequently, the Appellant filed O.P. no. 18145 of 1994, which was allowed by the Single Judge. Acting in accordance with the Single Judge's directions the Excise Commissioner granted the licence and raised a demand of only the proportionate licence fee which was duly deposited; but the matter was brought before the Division Bench in the

subject Appeal. As already mentioned, it seems most likely that the attention of the Division Bench which passed the impugned Judgment was not brought to bear on the already existing binding decisions in **R.Vijaykumar** as well as **Jayadevan v. Board of Revenue (Excise) 1999 (1) KLJ 87** wherein the Division Bench of the High Court of Kerala has held that the licensee is required to pay only the proportionate licence fee if the delay in granting the licence, or utilizing it, as the case may be, are for reasons not attributable to the said licensee.

5 We are in agreement with the learned senior counsel for the Appellant that the legal principle to the effect that no person can be prejudiced because of an act of a Court is apposite and relevant in the present case. We say this keeping in perspective the position that although the Appellant had applied for the FL3 licence which would ordinarily run the course of one financial year, due to interim orders passed by the Courts, the Appellant could only utilize it for a fraction of that period. We hasten to clarify that the Appellant's application was not made in the duration of that year and was thus initially not for a fraction of the financial year. This Court has already held in **R.Vijaykumar**, in the circumstances prevailing in that case, that the Department could not interfere with the utilization of the FL3 licence, provided that the licensee complied with all other conditions as well as "payment of annual rental proportionately". It is therefore clear that Rule 14 would not

impede or inhibit the charging of annual proportionate fee so long as no failure is placed on the licensee or it is blameworthy itself. We must be quick to clarify that in the event that a party applies for a period which is obviously not effective for the entire financial year, such as applying for a licence mid-way that financial year, the full fee for that year may be claimable or chargeable and, therefore, would have to be paid. In other words, had the Appellant applied for the licence even with the knowledge that because of external factors such as a pre-existing injunction order etc., she would not have been able to exploit it for the entire year, she may not have been liable to pay the licence fee for the entire year. This is not the factual matrix which obtains in the case at hand; the licence could only be granted for the period from 21.12.1999 to 31.3.2000, i.e. till the close of that financial year, owing to unforeseeable circumstances beyond the ken and control of the parties before us. We have already made a mention of the Division Bench Judgment delivered in **Jayadevan** which in turn was referred to in another Division Bench Judgment in *Rajagopalan Nair v. Assistant Commissioner of Excise 1989 (1) KLT 800*, wherein the Division Bench directed that the licensee was entitled to remission of payment of kishit because of being disabled to conduct its business on account of the interim orders passed by the Court. We affirm the conclusions arrived at in these decisions. We hold that a party is entitled to seek a remission in the payment of licence fee if it is precluded from transacting business on the strength of that

licence because of factors and reasons extraneous to it and/or if it is granted the licence on the direction of a Court for only a portion of the financial year.

6 The Appeal is accordingly allowed. The Respondent State shall, within six weeks from today, refund to the Appellant the balance amount of ₹ 9,41,257/- together with interest thereon at the rate of six per cent per annum with effect from 11.8.2005. Failure to do so shall render the Respondent State liable to refund the aforementioned sum of ₹9,41,257/- together with interest at the rate of twelve per cent per annum calculated from 11.8.2005 till the date of payment and also additionally liable for payment of costs quantified at ₹15,000/- (Rupees fifteen thousand only).

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7 The facts that arise in this Appeal are somewhat complex in comparison to Chitra's foregoing Appeal. The Appellant had been granted an FL3 licence for its Hotel Hackoba at Ernakulam for the period ending on 31.3.2001. Due to a dispute with its landlord it had to vacate its premises; and on locating to another, it applied for the renewal of the licence on 26.2.2002. This was obviously for the immediately succeeding year 1.4.2001 to 31.3.2002. The Excise Commissioner rejected the application for renewal on 4.9.2002 on the ground that the licence had become defunct; a decision which was upheld by the State Government. In these circumstances, the Appellant successfully

approached the High Court of Kerala which issued a direction to the State Government to issue the licence within two weeks. The Single Judge simultaneously directed the Appellant to pay the licence fee for the years 2001-2002 and 2002-2003 by his Judgment dated 27.1.2003. The Appellant preferred an Appeal, and on the first day of its hearing, the Division Bench passed an *ad interim* Order directing the Appellant to pay ₹15 lakhs. Shortly after making this payment, on 25.3.2003, the licence was renewed. The Division Bench of the High Court of Kerala noted Rule 14 of the Foreign Liquor Rules as well as the fact that it had not been challenged. The Division Bench accepted the argument of the Appellant that for the reason that it could not utilize the licence for the year 2001-2002 as its application had been disallowed it was not liable to pay any fee; viz. during this period it was prevented by extraneous elements and factors from utilizing the licence. However, the Division Bench held that since the licence was renewed in March 2003, even though the Appellant could conduct its business for less than a fortnight in that licence year, nevertheless the Appellant was liable to pay the full fee for the year 2002-2003. It is these circumstances which have constrained the Appellant to file the present Appeal before us.

8 In order to eradicate any possibility of misunderstanding our present Judgment, we hasten to clarify that had the Appellant's application for renewal of the FL-3 licence found approval instead of rejection on 4.9.2002, the

Appellant would have been liable to pay the entire fee for the year 2001-2002. This is so for the simple reason that there was no third party interference or intervention which led to the non-utilization of that licence for the previous portion of that year; it may be reiterated that the Appellant had to locate fresh premises. However, after 4.9.2002, the Appellant cannot be held responsible in any way for the non-utilization of the licence up to the date it was eventually renewed i.e. 25.3.2003.

9 On the predication of the legal analysis and discussion in Civil Appeal No. 2246 of 2006 (supra), we are of the opinion that the Appellant is only liable to pay the proportionate licence fee for the period in which it could avail of the licence, that is 25.3.2003 to 31.3.2003. It would be fair to cogitate upon whether the Appellant should have declined the licence for virtually a week in that year, and since it failed to exercise that option, whether it should be burdened with the fee for the full year. It seems to us that any person placed in the position of the Appellant would not be in a position to decline to accept the renewal of the licence even though it was for less than a fortnight, since that would have led to the licence being rendered defunct; which may have then led to consequence of disentitlement for grant or renewal of the FL3 licence in the future.

10 The Appeal is accordingly allowed. The Respondents are directed to recalculate the proportionate amount of licence fee due and payable by the

Appellant for the period from 25.3.2003 to 31.3.2003. The amount of refund shall carry interest at the rate of six per cent per annum from the date of its payment due till the date of its refund. This exercise should be completed within two months from today. Failure to make this payment within this period will render the Respondents liable to pay the interest at the rate of twelve per cent per annum, instead of six per cent, as directed above, and in addition thereto, the Respondents shall be liable to pay to the Appellant the costs quantified at ₹15,000/- (Rupees fifteen thousand only), which amount shall be deposited with the Supreme Court Advocates Welfare Fund.

.....J.
[VIKRAMAJIT SEN]

.....J.
[SHIVA KIRTI SINGH]

New Delhi,
August 21 , 2015.

JUDGMENT