

Radhamani Vs. State of Kerala

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Court : Kerala

Decided On : Apr-05-2005

Reported in : 2005(3)KLT86

Judge : K.A. Abdul Gafoor and; S. Siri Jagan, JJ.

Acts : Abkari Rules - Rule 13(3); ;[Constitution of India](#) - Article 14

Appeal No. : W.A. No. 562 of 2005

Appellant : Radhamani

Respondent : State of Kerala

Advocate for Def. : Aloysious Thomas, Government Pleader

Advocate for Pet/Ap. : C.C. Thomas, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. Petitioner in W.P.(C) No. 18913/2004 is the appellant. Admittedly she applied for an FL3 licence as per application dated 4.3.1992. That licence was meant for the year 1992-93. So eligibility has to be assessed with reference to that point of time. According to the appellant/petitioner, there was no such consideration. This

resulted in an earlier Writ Petition. It was disposed of as per Ext.P1 judgment directing consideration of application. It seems that the appellant did not pursue the matter further. While so, there was some change in the Abkari Policy introduced w.e.f. 11.9.1992. This disabled the Government from granting further licence. Thereafter new Abkari Policies were drawn up every year, obviously because the licences granted were confined to a particular year. Necessarily, the renewal shall also be subject to the conditions contained in the new Abkari Policy and consequent amendment to the Abkari Rules. While so, in the year 2002, this Court pronounced a judgment in B.Six Holidays Resorts (P) Ltd. v. State of Kerala, 2002 (2) KLJ 941, on 16.7.2002 taking the view that an application, which ought to have been considered, should have been considered with reference to the Rules, restrictions and limitations then existing. Relying on this judgment, the appellant agitated further for grant of a licence. She made an application on 24.10.2002 pointing out her earlier application dated 4.3.1992 contending that, had she been given a licence in time or her application been considered with reference to the Rules available on 4.3.1992, she would have been granted a licence and that such licence would have been renewed from year to year based on the subsequent policy and therefore now she would have been eligible for a licence, notwithstanding the policy subsequently announced including the added proviso to Rule 13(3) of the Abkari Rules dealt with in B.Six Holidays Resorts's case. So she again approached this Court. Ext.P3 judgment was passed by this Court, directing consideration of her application dated 24.10.2002. It was rejected as per Ext.P14. Ext.P14 was under challenge in W.P.(C) No. 18913/2004.

2. The prime contention raised was that following the dictum in B.Six Holidays Resorts's case Government had granted licence to several applicants who made applications even earlier than the appellant, as is revealed by Exts.P12, and P15 to P17, including to respondents 4 and 5. When they were thus granted licence on the same ground urged by the appellant, denial of the licence to the appellant is discriminatory and is in violation of Article 14 of the [Constitution of India](#).

3. Learned Single Judge considered the contentions and found that there was no reason to grant licence based on the dictum contained in B.Six Holidays Resorts's case not only in the case of the appellant/petitioner but also in the case of

respondents 4 and 5 even. Learned Single Judge also found that there was some difference in the facts leading to the case of respondents 4 and 5.

4. Learned Single Judge found that, as the appellant/petitioner had filed an application for licence on 4.3.1992, there arises no question of consideration of that application after ten years applying the dictum contained in B.Six Holidays Resorts's case. This is challenged in this appeal.

5. We may, at the outset, make it clear that the decision in B.Six Holidays Resorts's case is not for consideration of all the applications. The direction contained in paragraph 18 of the said judgment was 'to consider the grant of FL3 licence to the petitioner on 19.12.2001 without application of the newly added proviso to Rule 13(3) of the Abkari Rules'. This has to be viewed in the fact situation of that case. As is discernible from the law report, the application for FL3 licence was originally made by the petitioner in that case on 11.12.2000. But that application was rejected. Thereafter, there was change of the Managing Director. Therefore, a fresh application was filed, that was also rejected. It was in that situation, the rejection was challenged and the matter pursued before this Court for years together. If the licence had been granted in time, that petitioner would have got renewal of the licence, notwithstanding the change in the Abkari Policy including the introduction of the new proviso to Rule 13(3). So it is in the particular fact-frame of a person who faced continued rejection of his application made before the introduction of the proviso to Rule 13(3) of the Abkari Rules, the Division Bench issued a direction for consideration of his application with reference to the Rules obtainable on the date of application. That cannot be applied to each and every case including in Exts.P12 and P15 to P17 and in the case of respondents 4 and 5 or in the case of the appellant.

6. It is keeping this in mind that the learned Single Judge, in Ext.P9 judgment, had directed the Government to consider their entitlement and to revoke the licence illegally granted based on the applications made years or decade ago without collecting the arrears of licence fee during the period between the date of application and the date of grant of licence.

7. It is submitted by the appellant/petitioner that she alone is the person left out. But, we are afraid that, such situation may, because of the change in the Abkari Policy arise in future also. Then there will be wrong application of the dictum in B.Six Holidays Resorts's case. Therefore, we clarify that the dictum contained in paragraph 18 of the judgment in B.Six Holidays Resorts's case is applicable only to the fact situation revealed in O.P.No. 7112/2002. The final direction in paragraph 22(b) is also confined to what was directed in paragraph 18 as regards O.P.No. 7112/2002. We, thus, make it clear that the consideration of an application with reference to the date of the application is confined to the facts of the case dealt with in B.Six Holidays Resorts's case. It is not one of universal application. Every application pending shall be considered in the light of the policy of the Government in respect of the grant of licence as on the date of consideration or disposal of the application.

8. When we view the matter in that angle, we are satisfied that no illegality has been committed against the appellant/petitioner while passing Ext.P14 and it has been rightly upheld by the learned Single Judge as per the impugned judgment, which requires no interference in the light of the dictum contained in the judgment in B.Six Holidays Resorts's case.

Writ Appeal is, therefore, dismissed.