

(2017) 09 BOM CK 0163
In the Bombay High Court
Case No : 599 of 2017

Longuinhas Bar & Restaurant, & Anr.

APPELLANT

Vs

State of Goa, through its Chief Secretary, & Ors.

RESPONDENT

Date of Decision : 11-09-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 09 BOM CK 0163

Hon'ble Judges : G.S.Patel, Nutan D. Sardessai

Bench : DIVISON BENCH

Advocate : SD Lotlikar, DJ Pangam, P Dangui

Judgement

1. This petition under Article 226 of the Constitution of India can be disposed of in light of subsequent events. Having heard both sides, and considered the material on record as also the later events, we propose to pass an order in terms of prayer clauses "c" and "d" quashing an impugned notice dated 3rd April 2017 and directing the renewal of the Petitioners' liquor licenses.

2. The 1st Petitioner is a partnership firm. Its partners are citizens of India. They have been running a bar, restaurant and confectionery shop for a very long time in the city of Margao. The bar and restaurant is located in the heart of Margao city on Rue Abade Faria Road. The 1st Petitioner has a license from the 2nd Respondent, the Commissioner of Excise. This is numbered RS/FCL/327. The 2nd Petitioner is an unregistered association of about 16 liquor vendors in Margao city. A list of members is annexed.

3. The petition challenges the decision by the 3rd Respondent, the Inspector of Excise, not to renew the Petitioners' licenses, i.e. the 1st Petitioner's license mentioned above and the licenses of the members of the 2nd Respondent. The 3rd Respondent also directed the Petitioners not to carry on any business of liquor sales. Identical notices were issued to the 1st Petitioner and all members of the 2nd Petitioner.

4. These notices, all dated 3rd April 2017, are impugned in the petition. The notices were issued on the basis of a Supreme Court order dated 15th December 2016 of the Civil Appeals Nos 12164- 12166 of 2016 (State of Tamil Nadu v K Balu). The order in Balu prohibited the sale of liquor within 500 metres of national highways. It is Petitioners' case that there is no national highway within this distance. NH-17, the highway cited by the 3rd Respondent, is not actually operational within 500 metres, since the traffic had been diverted at the relevant portion.

5. As it happens, we are not called upon to examine the effect of the diversion of the traffic of the bye-pass road for the simple reason that in the matter before the Supreme Court itself there have been subsequent developments. By its order dated 11th July 2017 in Special Leave Petition (Civil) No 10243 of 2017 (Arrive Safe Society of Chandigarh v The Union Territory of Chandigarh & Anr), the Supreme Court clarified in paragraph 7 that its directions of 15th December 2016 in Balu were to deal with the sale of liquor along and in proximity to highways. These were to be properly understood as relating to those highways that provided connectivity between cities, towns and villages. The Supreme Court itself clarified that its previous order did not prohibit licensed establishments "within municipal areas". It went on to say that this clarification would govern other municipal areas as well.

6. Following this clarification, the Government of Goa in its Excise Department has issued an Office Memorandum No CE/1-2- 2015-2016/EST/Exc/6461 dated 31/03/2017 referencing the Government Order No 1/9/2016-Fin(R&C)(c) dated 11th September 2017. The relevant portion reads thus:

"AND WHEREAS, now Finance Department, Government of Goa has conveyed approval of the Government vide Order No.1/9/2016-Fin(R&C)(c) dated 11/09/2017 that,

"In view of the specific direction of the Hon"ble Supreme Court of India dated 11/07/2017 in SLP (Civil) No 10243 of 2017, clarifying its directions dated 15/12/2016 civil Appeal Nos 12164-12166 of 2016, in respect of prohibiting licensed establishments within municipal areas; the Government of Goa hereby directs modification of the coverage of the Plan of Action dated 07/02/2017 (as amended from time to time), as prepared by the Committee headed by the Chief Secretary and approved by the Government , as follows, namely:-

(i)The Commissioner (Excise) shall proceed to renew the licenses of the retail sale of liquor to the licensees located within municipal area comprising of the Municipal Councils of Valpoi, Sanquelim, Bicholim, Mapusa, Ponda, Curcorem-Cacora, Sanguem, Maragao, Mormugao, Cuncolim and Canacona and the City Corporation of Panaji; which were earlier not renewed on or after 31st March 2017, on account of the directions of the Hon"ble Supreme Court in the Judgment dated 15/12/2016 and Orders dated 31/12/2017; provided other conditions of grant/ renewal of licence, are fully met."

NOW THEREFORE, in the event of the above decision of the Government in view of Order of Hon"ble Supreme Court, this Department, in partial relaxation of the Memorandum read above, hereby authorises all the incharges of Excise Stations to proceed to renew the licenses of the retain sale of liquor to the licensee located within their respective jurisdiction for the area covered under municipal areas, provided all other requirements for grant/renewal of licences are fully met as provided under Goa Excise Act and Rules, 1964.

Sd/- Amit Satija

IAS Commissioner of Excise

7. The Petitioner's establishment being in Margao are covered by this Office Memorandum. The result of this will necessarily be that their liquor licenses will, in the normal course, now be taken up for renewal.

8. Rule is accordingly made absolute in terms of prayer clauses "C" and "D" which reads as follows:

(C) This Hon"ble Court be pleased to issue an appropriate writ, order or direction, to quash and set aside the impugned Notice dated 3/4/2017 (ANNEXURE "B" to the Petition)

(D) This Hon"ble Court be pleased to direct the Respondent No 3 to renew the Petitioners Liquor Licences in accordance with law

9. We request Respondents to expedite the process of renewal and to process the existing applications within 10 days.

10. All concerned to act on an authenticated copy of the order. Authenticated copy to be issued expeditiously.

11. The Petition is disposed of in these terms. No costs.