
(2012) 03 BOM CK 0065

In the Bombay High Court

Case No : P.I.L. Writ Petition No. 3 of 2012

Mr. Raasul K. Kazi

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 03 BOM CK 0065

Hon'ble Judges : U.V. Bakre, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : Rohit Bras De Sa, for the Appellant; V. Rodrigues, AGA, for respondent Nos. 1 to 3, Ms. Reshma Satardekar, for the Respondent

Judgement

1. This writ petition under Article 226 of the Constitution of India is by a permanent resident of Goa and residing particularly in the village Navetim, Goa. The petitioner states that he has approached this Court in public interest and wishes to bring to its notice the inaction on the part of the respondent Nos.1 to 3 in not taking steps for cancellation of Shack Licence to the respondent No. 4. The petitioner states that the Department of Tourism, Government of Goa has formulated a policy/guidelines for permitting shacks/decks/beds/umbrellas on the identified beaches of Goa for the tourist season 2011-2012 commencing from October 2011 and ending on 31st May 2012. The guidelines have been framed in pursuance of certain directions issued by this Court to the Goa Coastal Zone Management Authority, particularly that the temporary shacks have to be erected and placed at identified areas and places. A proper plan must be drawn up based on which, areas are identified and thereafter the guidelines are issued for issuance of licence to the applicants. The arrangement is purely temporary and only for the tourist season.

2. It is submitted by Mr.Rohit Bras De Sa, appearing on behalf of the petitioners that he received information under the Right to Information Act, 2005, that respondent No. 4 has been allotted Shack No. 11. Apart from the fact that the

shack has been put up pursuant to such allotment, not at the allotted and identified space, but, at location No. 3, additionally, the grievance is that the applicant-respondent No. 4 made a false statement while seeking licence. He has not disclosed pendency of a criminal case. Inviting our attention to the Guideline No. 26 which is worded as "The applicant should not have any criminal record and a certificate of antecedents from the Police Department shall be obtained by the Department, if required", it is submitted by the learned counsel for the petitioner that this does not mean that the applicant is disentitled to the permission only if there is any conviction in a criminal case. The words "should not have any criminal record" are broad enough to indicate the intent of the policy makers, that is to prevent persons having criminal antecedents or criminal record from putting up a shack at a public place, namely, a beach. If persons with criminal record are allowed to put up such shacks, their activities would cause further nuisance and would endanger the safety and security of the persons visiting the beach and those residing in the vicinity. For all such reasons, the interpretation of guideline No. 26 placed by the Director is erroneous and this Court should therefore issue appropriate directions as prayed.

3. Mr. Rodrigues, appearing on behalf of the respondent Nos.1 to 3 while not disputing the wording of the clause states that the Director has bonafide interpreted it to mean that the applicant must have a conviction by a competent Criminal Court which would alone disentitle him from applying for a licence or a permission to put up temporary shack. Pendency of criminal case by itself would not be enough. In any event, in this case the Director was not aware of any such proceedings being pending or criminal antecedents. For all these reasons, the Director of Tourism may not be personally held responsible for grant of this permission and at the most the interpretation placed by him may not be in consonance with the intent of the policy makers. That by itself and without anything more should not mean that the Director has acted contrary to the guidelines or his order is arbitrary or erroneous in any manner.

4. The learned advocate appearing for the respondent No. 4 states that the guidelines cannot be said to be known to the parties because they are issued by the Department for exercise of powers by their own officers. In this case, what is crucial is the requirement in terms of the advertisement. The clause in the advertisement does not in any manner indicate that the allottee is disentitled from making any application on account of pendency of a criminal case. Reliance is placed by the learned counsel appearing for respondent No. 4 in this behalf on the prescribed format where the applicant is required to state on affidavit if he is convicted of any criminal offence as on the date of the application and that accordingly as per the affidavit format, such a statement has been made. It is not disputed that the case which is stated to be pending has not resulted in conviction of the applicant-respondent No. 4.

5. Therefore, Ms. Satardekar submits that at the instance of a person who is himself stated to be associated with another unsuccessful applicant, this petition

should not be entertained as there is no public interest, but a purely private interest involved.

6. We are not entering into any controversy as between the petitioner or his so called interest as projected by respondent No. 4. All that we are aware of is, that the petitioner himself has not made any application and that is not the case of respondent No. 4. He was not interested in obtaining any permission to put up any shack. It is in such circumstances, that we do not express any opinion on the allegations made by the respondent No. 4 against the petitioner or the response of the petitioner thereto.

7. We proceed on the basis of the undisputed factual position. It is undisputed that Calangute Police Station has registered a case against respondent No. 4- Bernard Silveira, i.e Criminal Case No. 11/S/12/B and it is pending before the Judicial Magistrate, First Class at Mapusa, Goa. The petitioner has pointed out even in his legal notice to the Department prior to the filing of this writ petition that respondent No. 4 to this writ petition has obtained a permission to put up a shack. That permission has been granted by the Department. However, Clause 26 of the Guidelines have been ignored and the permission has been granted.

8. Clause 26 of the Guidelines read thus:

26. The applicant should not have any criminal record. A certificate of antecedents from the Police Department shall be obtained by the Department, if required.

9. A bare perusal of the Guidelines would indicate that what the Department has done, is to comply with the directives issued by this Court. These directives are to frame Guidelines enlisting the terms and conditions for grant of permission to place shacks/decks/beds/umbrellas on the identified beaches of Goa in the tourist season. After identifying the beaches, the nature of the permission and the requirements in that behalf, what the Guidelines proceed to indicate is, that the shacks can be erected by those who comply with the Guidelines. The Director has to bear in mind that the applicant to be eligible must possess such a character as would not make him unfit or ineligible for grant of such permission. The clauses of these Guidelines, if read in their entirety and together, would indicate that the intent is to discourage such persons whose background is questionable and by presence of whom there will be not only a nuisance, but the safety and security of those visiting the beach would be jeopardised. Any person who is considered to be undesirable and having criminal background renders himself unfit, is the plain intent of the policy makers. Therefore, clause No. 26 is worded accordingly. The words "should not have any criminal record" cannot be read in a restrictive manner as suggested by the learned counsel appearing for respondent No. 4.

10. Ultimately, what the applicant discloses by way of an affidavit alongwith application may relate to his conviction in a criminal case and may not disclose the pendency thereof, but the Guidelines which are framed by the Department in

pursuance of the orders and directives of this Court clearly bind them. The Authorities derive their power to grant the permissions and licences for temporary shacks in terms of these Guidelines and they cannot ignore them or brush them aside. If the Guidelines require that the applicant should not have any criminal record, it is not permissible for the Director to construe them in any other manner. The word "record" does not necessarily mean that there must be a conviction. A certificate of antecedents that is contemplated in the same clause would further re-inforce and support our conclusion. A certificate from the Police Department may be obtained, if required by the Department of Tourism and the Police Department is required to certify the antecedents of the applicant. This clearly means that if there is any criminal case pending or complaint registered with the Police Station, then, depending upon the nature of the allegations and the offences alleged to have been committed by the applicant, the certificate would be issued by the Police Department. This only means that a record of the applicant in relation to criminal antecedents and whether he could be termed to have been involved in activities which are of criminal nature, is what is necessary and required by the Department. Once such was a requirement of the Department and the pendency of the criminal case is not even disputed by the respondent No. 4, then, we do not see how the Director could not have taken any cognizance of the complaint made by the petitioner and taken such measures as are necessary, including, corrective ones to redress the grievances of the petitioner.

11. We are not in agreement with the learned advocate appearing for respondent No. 4 that what the applicant is required to satisfy, is the terms and conditions of the advertisement inviting the applications for grant of permission to put up a shack temporarily in the tourist season. That may be a requirement which is to be fulfilled by the applicant. However, when the applications are considered, the Director of Tourism has before him the Guidelines, which Guidelines guide him while scrutinising the application, verifying them and granting ultimately the permissions and approvals. Thus, the Guidelines are intended to be abided by the Director as they are framed in pursuance of the directions of this Court. If the ultimate desire is to control, regulate and prevent such activities at a beach which not only cause public nuisance but create problems for maintenance of law and order and public peace, then, the Director has to abide by these Guidelines and could not have ignored them.

12. Having brought these Guidelines to the notice of the Director and having construed them with the assistance of the parties, we do not see how the Director in this case is prevented from even now redressing the grievance of the petitioner by appropriate corrective action. Needless, therefore, to state that the grievance of the petitioner as raised in the petition on both counts, namely, respondent No. 4 having allegedly violated the terms and conditions of the permission by putting up a shack at a distinct place than permitted one so also his criminal record being not disclosed and suppressed, that the Director of Tourism shall treat this petition of the petitioner as a representation to him and

should decide it and take appropriate action and measures as are required and permissible in law, as expeditiously as possible and by 15th April 2012. The Director would be at liberty to call for the necessary particulars from the parties including seeking assistance from the local Police Station with regard to the pendency of the criminal case that is still stated to be pending. The Director can exercise the requisite powers and merely because the permission was earlier granted, does not mean that he is prevented in any manner from taking cognizance of the grievance of the petitioner. In terms of the aforesaid directives and by clarifying that clause 26 does not mean conviction in a criminal case which alone disentitles the applicant from making application for granting permission, that we dispose off the petition. No costs.