
(2017) 03 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 240 of 2017

Shri Alex J. Fernandes

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Tourism Shack Policy 2016-19 — Clause 2

Citation : (2017) 3 BCR 216

Hon'ble Judges : Anoop V. Mohta and C.V. Bhadang, JJ.

Bench : Division Bench

Advocate : Mr. Prasheen Lotlikar with Mr. Balkrishna P. Sardessai and Mr. Vilas Parab, Advocates, for the Petitioners in both the Petitions; Mr. D. Lawande, Additional Advocate General with Ms. Purna Bhandari, Additional Government Advocate, for the Respondent Nos. 1 and 2 in both the Petitions; Mr. Pranay A. Kamat, Advocate, for the Respondent No. 3 in both the Petitions

Final Decision : Disposed Off

Judgement

Anoop V. Mohta, J. (Oral)—Heard. Rule made returnable forthwith. Learned Counsel appearing for respondents, waive service. Heard finally by consent of parties. As both the petitions involve common issue, both these petitions are being disposed of by this common judgment.

2. The petitioners are aggrieved by order dated 27.02.2017, passed by the Director of Tourism, Panaji, Goa, an Authority, who grants shack permission based upon the tourism policy, for erection of temporary seasonal structures, beach shacks, huts and other temporary seasonal structures for the years from 2016-19 (Tourism Shack Policy).

3. The impugned order therefore resulted into cancellation of beach shacks/huts permission, which was granted to the petitioners. Relevant Clause 2 of the Tourism Shack Policy has been invoked to cancel the shack permission by observing as under:

"24. In the present case the Respondent No. 1 & 2 on the date of making application for allotment of temporary beach shack are engaged in the business of rent a bike & rent a taxi and the sale letters dated 26/09/2016 produced by them on record clearly shows their intention that said Sale Letters are made in order to take part in the shack allotment. The Respondent No. 1 & 2 after making the said Sale Letters have not taken any steps to transfer the said vehicles in the name of purchaser. The application for transfer permit made by Respondent No. 1 & 2 before the Registering Authority are entered in the office of Assistant Director of Transport (North), Mapusa, Goa on 09/01/2017 which is only after notice is being issued by Department on 04/01/2017 and served on both Respondents on 06/01/2017 which clearly shows the intention of the Respondent No. 1 & 2 that same is filed only to make out a case that they are not engaged in the business of rent a bike & rent a taxi.

25. The citation produced by Advocate for Respondent No. 1 & 2 are not applicable in the present case because the facts of those cases and present case are different.

26. As per the Clause No. 2 of Shack Policy 2016- 19, a person applying for allotment of temporary beach shack should be unemployed and should not be engaged directly or indirectly in any business, vocation or profession and as per the documents produced on record the Respondent No. 1 & 2 on the date of applying of allotment of temporary beach shack are engaged in the business of rent a bike & rent a taxi scheme of Department of Transport and therefore are in violation of Clause 2 of Shack Policy and the allotment done in their favour are liable to be cancelled. If there was any intention of transfer of said vehicles by Respondent No. 1 & 2, than they should have applied before the Registration Authority for transfer of permit before applying for allotment of shack.

27. As far as Respondent No. 2 is concerned till date three Tourist Taxi Nos. GA-03-K-3815, GA- 07-F-2157 & GA-03-T-7323 are registered with Tourism Department as Tourist Taxis under the Goa Registration of Tourist Trade Act, 1982 and valid upto 31/03/2017 which is clear evidence that Respondent No. 2 is engaged in the business of Tourist Taxis and therefore is in violation of Clause No. 2 of Tourism Shack Policy 2016-19."

4. Learned Additional Advocate General appearing for respondent nos. 1 and 2 has supported the order by relying on the provisions of the Motor Vehicles Act, 1988 (the Act, for short) and specifically, Section 48 of the Act. The petitioners have relied upon Section 50 of the Act.

5. The necessary following events for deciding the issue are not being disputed :

The petitioners were successful candidates in terms of the Tourism Shack Policy conceived by respondent no. 2, for setting up of shacks along the coastal belts in the State of Goa. The said tourism policy has been adopted for a period of three years i.e. for the years 2016 to 2019. It is further the case of the petitioners that after verifying all facts and documents produced by the petitioners, respondent

no. 2 granted the permission to the petitioners to erect the shacks in terms of the Tourism Shack Policy. Respondent no. 3 filed a complaint against the petitioners with the office of respondent no. 2 alleging violation of Clause 2 of the Tourism Shack Policy. The office of respondent no.2 issued a show cause notice to the petitioners. Respondent no.3, during the pendency of proceedings before respondent no.2, filed an additional complaint against the petitioners herein. The petitioners filed their reply to the show cause notice and to the complaint and the additional complaint filed by respondent no.3. The respondent no.3 filed her rejoinder to the reply filed by the petitioners. The petitioners filed their sur-rejoinder to the rejoinder of respondent no.3. After hearing both the parties, respondent no.2 allowed the complaint filed by respondent no. 3 and revoked the allotment made in favour of the petitioners under the Tourism Shack Policy.

6. The complainant-respondent no.3 has filed another complaint on a different ground i.e. on the ground of violation of shack permission granted to the petitioners, and the same is still pending. Learned Counsel appearing for respondent no. 3 has submitted that though respondent no. 3 has raised various other grounds, the Authority has restricted itself to the ground as referred to in paragraphs reproduced above. The other issues raised by respondent no.3 are required to be considered in the petition to retain the impugned orders.

7. The events reflect that the vehicles were transferred prior to the date of the application filed by the petitioners. A submission is also made that such transactions are sham and bogus as the contents of those documents themselves reflect various legal lacunas and therefore, such transactions were therefore rightly not taken note of. The Authority, considering the factual background that the applications for transfer of vehicles were filed by the petitioners after the receipt of the show cause notice and the fact that the tourist taxis (vehicles in question) are still registered with the Tourism Department as tourist taxis upto 31.03.2017, it is held that the petitioners (on the date of grant of shack permission) were engaged in the business of tourist taxis and the petitioners violate Clause 2 of the Tourism Shack Policy.

8. Considering the scope and power of the Authority based on the Tourism Shack Policy, without expressing anything on the merits of the matter, as it is necessary for the Authority to take note of factual aspects while considering such applications to that extent, the person, who applies for such permission, on the date should not be engaging in any other business. The whole purpose is to provide/grant permission to an unemployed person to enable to do business.

9. Whether the person, who applies for permission, is doing some other business, is to be factually verified and/or detailed enquiry in the given case is to be made within the scope and power of the Authority. The veracity and legality of the documents and the nature of the transactions and its effect to justify and/or to grant or reject such permission, is ultimately needed to be tested in accordance with law.

10. In the present case, whether the transaction is sham or bogus and what is its effect, needs to be considered from the point of view of the basic concept of transfer of ownership of vehicles and its procedure, which is required to be followed under the Act and the Rules framed thereunder. Once, the vehicles are physically transferred, its legality and/or validity and the effect of such transfer, is also required to be taken note of. Once the vehicles are actually transferred by the petitioners-erstwhile owners, its registration and/or completion of the registration formality and the effect of such transfer to that extent, needs to be tested as a foundation to grant the permission for allotment of shack, hut or other temporary structures to such petitioners-erstwhile owners of the vehicles. The basic requirement is whether such a person still can be held to be engaged in business, after the agreement of transfer of vehicle is entered into and the possession of such vehicles is already delivered to the third person. The Authority may require verification of the factual aspect in a given case in spite of such transactions. Such factual verification is well within the scope and power of the Authority, while granting such permission within the scope of Tourism Shack Policy. The existence of tourism permission, in spite of transfer of vehicles should not be the reason to reject the claim/permission. The transfer of vehicles and its ownership on the date of application goes to the root of the claim of the petitioners.

11. In the present case, both the cases, including the complaint are not satisfactorily disposed of as while passing the impugned order, reasons are based only on the point of existence of tourist taxi permission/license in the name of the petitioners and further that the petitioners applied for transfer in the departmental form after show cause notice dated 04.01.2017. The agreement of sale of the vehicle was shown as 09.01.2017, whereas documents reflect earlier dates. All these issues are required to be taken into consideration in detail along with the other grounds so made in subsequent complaint. Therefore, as the second complaint is also against the petitioners, we are directing respondent nos. 1 and 2 to reconsider the complaint so filed by respondent no. 3, in accordance with law.

12. As we are directing both the complaints to be adjudicated together, so as to avoid further delay in the matter, we observe that the issue of additional show cause notice with additional ground, need not be the issue before the Authority to adjudicate and decide both the complaints in accordance with law as the parties have already filed their reply and counter reply to both the complaints.

13. All contentions are kept open. The above observations are only for considering the submissions of the parties and it is for the Authority to re-decide the same in accordance with law and pass a fresh order based upon the facts and circumstances of the case.

14. Therefore taking overall view of the matter, the following order:

ORDER

- (a) The impugned order dated 27.02.2017 is quashed and set aside.
 - (b) The complaint no. 7/7(403)/16-17/DT/1176 is restored.
 - (c) The Authority to consider both the complaints of respondent no.3, as early as possible and preferably within four weeks.
 - (d) Parties have agreed to appear before the Authority on 16.03.2017 at 11:00 a.m. The Authority to deal with the same and to proceed with the matter afresh, in accordance with law.
15. Both the petitions are disposed of accordingly. No costs.