IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.439 OF 2008.

Mrs. I. P. Rodrigues, 63 years of age, resident of Vihar Building, 13/195, Opposite St. Inez Church, Panaji- Goa. .... Petitioner.

Versus

1 State of Goa, Through its Chief Secretary, Having his office at Secretariat, Porvorim, Goa.

2 Secretary Finance, Finance (Rev. & Cont.) Department, Secretariat, Porvorim, Goa.

3 The Commissioner of Excise, Office of the Commissioner of Excise, Panaji-Goa.

4 Director of Tourism, Department of Tourism, Patto, Panaji-Goa.

5 Commissioner, Corporation of the City of Panaji, Panaji-Goa.

6 Officer in Charge, Panaji Police Station, Panaji-Goa.

7 Rosario D'Costa, r/o. H. No. 13/177/7, Eden Rock Bar & Restaurant, St. Inez, Panaji-Goa.

8 Inspector General of Societies, District Registrar, North, Panjim-Goa.

9 Shri Chandrahas V. Bhonsle, r/o. H. No. 13/177/7, Eden Rock Bar and restaurant, St. Inez, Panaji- .... Respondents.

Goa.

Mr. R. Menezes, Advocate for the petitioner.

Mr.D. Lawande, Government Advocate for the respondent nos.1 to 4, 6 and 8.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

DATE: 13TH JANUARY, 2015.

ORAL JUDGMENT (PER F. M. REIS, J)

Heard Mr. R. Menezes, learned Counsel appearing for the petitioner and Mr. D. Lawande, learned Government Advocate appearing for the respondents no. 1, 2, 3, 4, 6 and 8.

2. The above petition inter alia seeks to quash and set aside a letter dated 5.12.2003 addressed by the respondent no.1 to the respondent no. 3 inter alia alleging in derogation to provision 90(4a) in the Goa Excise Duty Act, 1964 and Rules.

3. Shri R. Menezes, learned Counsel appearing for the petitioner has vehemently argued that in terms of the provision of Rule 90(4a) of the Excise Rules there is specific bar in the Excise Rules to a issue licence for sale of country liqour, foreign liqour

or Indian made foreign liquor within a radius of 100 metres from the place of worship. The learned Counsel further points that the licence in dispute is to a bar and restaurant to the premises of the respondent no.7. The learned counsel further points out that though the proviso to the said Rule contemplates that in derogation to the restrictions can be permitted by the respondent no.3 after approval of the State Government, nevertheless the impugned communication dated 5.12.2003 purported to be in terms of said provision does not spell out any reason to suggest that such relaxation has been given for the purpose of promoting tourists. The learned Counsel for the petitioner further points out that though the licence was issued in the year 2003, the petitioner has been filing complaints before the concerned authorities and in fact according to him, the respondent no. 3 had revoked the licence of the original respondent no.7. The learned counsel further points out the very fact that there is no application of mind by the respondent no.1 in granting approval in derogation of the proviso to Rule 90(4a) of the Excise Rules would itself suggest arbitrariness in the impugned approval granted by the respondent no.1 in terms of the letter dated 5.12.2003. The learned Counsel further points out that in the affidavit also no reasons are spelt out by the respondent no.3 to justify the grant of licence to the original respondent no.7. The learned counsel for the petitioner as such points out that the approval granted by the respondent no.1 in terms of the letter dated 5.12.2003 deserves to be quashed and set aside as well as the consequent licence issued to the original respondent no.7.

4. On the other hand Mr. D. Lawande, learned Government Advocate appearing for the respondent nos. 1, 2, 3, 4, 6 and 8 has submitted that the proviso to Rule 90(4a) of the Excise Rules clearly contemplates that the State Government can relax such restrictions in cases in which such activities would promote tourism. The learned counsel further points out that besides the licence issued to the original respondent no.7 there are other similarly situated establishments which are running bars and restaurants even in the building occupied by the respondent no.7. The learned Government Advocate further points out that the petitioner has not challenged the licences to such establishments which itself suggest that the grievances raised by the petitioner are not bonafide. Learned Government Advocate further points out that the distance from the place of worship to the establishment belonging to the original respondent no. 7 is about 87 metres and a relaxation of merely 13 metres would not

defeat the object or purpose of such rules. The learned counsel further points out that the impugned letter dated 5.12.2003 itself suggest that the State Government has considered the totality of the circumstances and complete application of mind while granting approval for such relaxation. The learned Government Advocate further points out that tourists visit most of the places of worship within the city of Panaji and, as such, the contention of Mr. Menezes, learned counsel appearing for the petitioner that such relaxation would not attract tourist cannot be accepted. The learned Government Advocate has thereafter taken us through Rule 90(4) as well as other provisions of law to point out that there is no case of any arbitrariness by the concerned authority while granting the impugned approval. The learned Government Advocate has taken us through the affidavit of the respondent no.7 to point out that the City of Panaji has another three churches and that there are bars and restaurants within 100 metres radius and as such the said contention of the petitioner does not deserve any consideration. Learned counsel has thereafter taken us through the impugned order passed by the Chief Secretary dated 15.3.2008 whereby the complaint lodged by the petitioner in connection with the activities carried out by the original respondent no. 7 have been finally disposed of by inter alia imposing a fine of Rs. 7000/- (Rupees seven thousand only) besides directing remedial measures to be taken to minimize the nuisance. The learned counsel as such submitted that the petition be rejected.

5. The learned government Advocate also points out that in case there is any breach of the terms of the licence granted to the original respondent no. 7 or any acts of nuisances as alleged by the petitioner are committed at the site, the concerned authority would take action in accordance with law.

6. We have thoughtfully given our consideration to the rival contentions advanced by the learned counsel appearing for the petitioner and the respondents.

Rule 90(4) reads thus:-

"(4) (a) No licence shall be granted to an applicant if the premises in which he proposes to open liquor shop are within a radius of 100 meters from [an Educational Institution or a place of worship]

(b) Omitted

(c) No licence shall be granted to an applicant if the premises in which he proposes to open liquor shop is within a radius of 100 meters from a Harijan Basti or a Labour Colony:

Provided that a licence may be granted by the Commissioner with prior approval of the Government in the derogation of the above restrictions contained in sub-rule (4), to a hotel or restaurant [or such premises for retail sale/wholesale of foreign liquor or Indian made foreign liquor or country Liquor in sealed bottles] [or for consumption on the premises] which the Government consider proper with a view to promote Tourism in the State.

(d) No licence shall be granted to an applicant if the premises in which he proposes to oepn liquor shop is -

(I) situated in a residential building except a building owned by the applicant hwere no residences other than that of the applicant exist or situated in a market/commercial complex belonging to local authority/local body/Government/institution or situated in a licenced hotel/restaurant/resort, located in a Settlement Zone of the village Panchayat areas, specified under a relevant Plan notified under the Goa

Town and Country Planning Act, 1974(Act No.21 of 1975), as in force;

(ii) situated in an industrial zone specified under the relevant Plan notified under the Goa Town and Country Planning Act, 1974(Act No.21 of 1975)

(iii) situated in an industrial areas declared as notified area under the Goa Industrial Development Act, 1965 (Act No.22 of 1965);

(iv) situated in a building located in a zone other than commercial zone falling within the limits of a Municipal Council/Corporation."

(iii) in the existing proviso, for the figure" " the figure" "shall be substituted;

(iv) after the existing proviso, the following proviso shall be inserted, namely:-

"Provided further that from the date of commencement of the Goa Excise Duty(Amendment) Rules, 2013, the restrictions contained in clause(d) above shall not be applicable for granting renewal of the existing licences, and in respect of applications where the processing fee is already received, before such commencement, and for occasional licences"

> (e)(i) No licence shall be granted to an applicant for retail sale of liquor in sealed bottles, if the premises in which he proposes to open his liqour shop is located within the limits of the prohibited area.
>
> Explanation:- For the purpose of clause (e) `prohibited area' means the area other than the area belonging to the Defence Establishment, where direct entry to any person is prohibited or restricted due to security reasons or otherwise"

7. On bare perusal of the said rules it cannot be disputed that the State Government has got a power to grant approval in derogate to the restrictions imposed in terms of provisions of Rule 90(4) of the said Excise Rules. In the present case, the State Government, as such, in terms of said Rules has granted approval to the respondent no. 3 to grant such licence. The contention of Mr. Menezes, learned counsel appearing for the petitioner that there are no reasons disclosed in the approval granted by the State Government would have to be examined in the context in which such approval has been given. As rightly pointed out by Shri Lawande, learned Government Advocate appearing for the respondent nos. 1, 2, 3, 4, 6 and 8 on bare

perusal of the impugned letter dated 5.12.2003, there is enough satisfaction which would suggest that the concerned authority have applied their mind before granting such approval. Apart from that it is not in dispute that the relaxation granted is at a distance of 13 metres from the place of worship. Besides that the records reveal that in the building where the original respondent no. 7 is running the bar and restaurant, there is another bar and restaurant run by other private party against whom the petitioner chose for reasons best known to the her, not to challenge such licence. Though Mr. Menezes, learned counsel for the petitioner contend that such business activities was in existence much prior to the coming into force of Rule 90(4) of the Excise Rules, nevertheless, there is no material to establish the said contention. The fact remains that in the affidavit in reply filed by the respondent no.7 there is a specific averment that there are other private bars and restaurants business run by the private parties in the same building occupied by the respondent no. 7.

8. In such circumstances, considering that there are other establishment carrying out such similar activities, we find that there is no reason for any interference in the impugned letter

dated 5.12.2003 in exercise of jurisdiction under Article 226 of the Constitution of India.

9. Be that as it may, records also reveal that though the licence was issued way back in the year 2003, a complaint was lodged by the petitioner in the year 2007 on the ground of alleged nuisance activities carried out by the original respondent no. 7. The grievances raised therein were finally disposed of by the Chief Secretary by an order dated 15.3.2008 whereby a fine of Rs. 7000/- was imposed on the original respondent no. 7 besides directing some remedial measures to minimize such nuisance. The contention of Mr. Menezes, learned counsel appearing for the petitioner that the impugned letter dated 5.12.2003 does not disclosed that relaxation has been granted to attract tourist is a matter for subjective satisfaction of the respondent no.1. The impugned letter itself suggest that in totality of the circumstances of the case, the respondent no.1 has applied its mind to come to the conclusion that such relaxation has been granted. In any event there are no instances pleaded in the petition to show that such relaxation in any way has affected the people at the time of approaching the place of worship.

10. In such circumstances, the other grievances being raised by Shri Menezes, learned counsel for the petitioner with regard to the nature of activities been carried out by original respondent no. 7 in the premises in dispute have been redressed.

11. But however, as pointed out by the learned Government Advocate appearing for the respondents no. 1 to 4, 6 and 8 in case there is any breach of any of the terms imposed in the impugned letter or any illegal activities carried out by the private respondents, the concerned authority shall take action against such respondent in accordance with law. Accepting the said statement of learned Government Advocate, as far as the remaining grievances raised by the petitioner stands prima facie redressed.

12. Subject to the above, there is no case made out for any interference in the impugned letter. Dated 5.12.2003. Petition stands accordingly rejected. Rule stands discharged.

K. L. WADANE, J. F. M. REIS, J.

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