

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION W.P. NO. 24/2014

Mr. Trajano D'Mello,
of major age, Indian National,
Social Activist, presently the
Vice President of Goa Unit of
Congress Nationalist Party,
resident of House No.186/B-4, Peddem,
Mapusa, Bardez, Goa.
Having Pan Card No.A42PD5227C. Petitioner.

V/s.

1. State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Alto Porvorim, Bardez, Goa.
2. Administrator of Comunidades,
North Zone, Opposite Mapusa Civil Court,
Mapusa, Bardez, Goa.
3. Comunidade of Anjuna,
through its Attorney,
having Office at Comunidade Ghor,
Anjuna, Bardez, Goa.
4. The Director of Tourism,
Government of Goa,
having Office at Patto, Panaji, Goa.
5. Village Panchayat of Anjuna-Caisua,
through its Sarpanch,
having office at
Anjuna, Bardez, Goa.
6. Village Panchayat of Candolim
through its Sarpanch,

having Office at
Candolim, Bardez, Goa.

7. Percept Limited,
a Company incorporated under
the Companies Act, 1956,
having its Legal Office at P-22,
Raghuvanshi Estate, 11/12,
Senapati Bapat Road, Mumbai-400013
and having its Current Office at P2,
Land 2A, Raghuvanshi Estate,
11/12, Senapati Bapat Marg,
Mumbai-400013.

8. VIACOM 18,
M/s. Starlight Events and
Entertainment Pvt. Ltd.,
S1, Yesoda Building,
St. Inez, Panaji, Goa.

..... Respondents.

Mr. Rohit Bras de Sa, Advocate for the petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande,
Government Advocate for the respondents No.1, 2 and 4.

Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar and Mr. K.
Simoes, Advocates for the respondent No.3.

Mr. A. D. Bhobe, and Ms. V. Shetye, Advocates for the respondent
No.5.

Mr. Vibhav Amonkar, Advocate for the respondent No.6.

Mr. Pankaj Vernekar, Advocate for the respondent No.7.

Mr. Amey Kakodkar, Advocate for the respondent No.8.

**CORAM :- F.M. REIS &
C.V. BHADANG, JJ.**

Date :- 17 DECEMBER 2015.

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

Heard Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioner, Mr. A. N. S. Nadkarni, learned Advocate General and Mr. D. Lawande, learned Government Advocate appearing for the respondents No.1, 2 and 4, Mr. S. S. Kantak, learned Senior Counsel appearing for the respondent No.3, Mr. A. D. Bhobe, learned Counsel appearing for the respondent No.5, Mr. Vibhav Amonkar, learned Counsel appearing for the respondent No.6, Mr. Pankaj Vernekar, learned Counsel appearing for the respondent No.7 and Mr. Amey Kakodkar, learned Counsel appearing for the respondent No.8.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive service.

3. We have extensively heard Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioner, Mr. A. N. S. Nadkarni, learned Advocate General along with Mr. D. Lawande, learned

Government Advocate appearing for the respondents No.1, 2 and 4, Mr. S. S. Kantak, learned Senior Counsel appearing for the respondent No.3, Mr. A. D. Bhobe, learned Counsel appearing for the respondent No.5, Mr. Vibhav Amonkar, learned Counsel appearing for the respondent No.6, Mr. Pankaj Vernekar, learned Counsel appearing for the respondent No.7 and Mr. Amey Kakodkar, learned Counsel appearing for the respondent No.8.

4. Though there were rival contentions and allegations on the motive in filing the present PIL Writ Petition, as the petitioner contends that the respondents are not taking adequate measures to ensure that the two music festivals which may be permitted to be held by year-end, may not be conducted in accordance with law, we have restricted the contentions of the petitioner only in the context of the public interest involved in conducting such musical festivals.

5. Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioner has raised four objections to the manner in which such musical events are permitted to be conducted in two villages in North Goa, of Bardez Taluka. Mr. De Sa has first pointed out that whilst holding such events in the year 2014 there were two unfortunate

incidents wherein two young persons had lost their lives and, according to the petitioner, there was no proper investigation conducted by the Authorities to ascertain the exact cause of such deaths. The learned Counsel has further pointed out that according to the petitioner, such deaths had occurred on account of excessive consumption of drugs, which are not at all permissible. The learned Counsel further submits that use of narcotic drugs is rampantly allowed at such events. The learned Counsel further points out that though an FIR has been registered in connection with such incidents, nonetheless no proper investigation is being carried out to find out the root cause of such incidents. The learned Counsel has also disputed the correctness of the Post Mortem Report and other forensic reports produced by the Investigating Agency during the course of the hearing of the above petition. The learned Counsel, as such, points out that the respondents be, accordingly, directed to ensure that proper investigations of such incidents are conducted and taken to its logical conclusion.

6. On the other hand, Mr. A.N.S. Nadkarni, learned Advocate General appearing for the respondents No. 1, 2 and 4 has submitted that the investigations are still in progress and, according to him, the Post Mortem Report, as well as the reports from the Forensic

Departments have been recently received and the concerned Investigating Officer is still pursuing the investigations, based on the FIR. Mr. D. Lawande, the learned Government Advocate, today also points out that once the investigations are concluded, the concerned papers would have to be submitted to the SDM who will take a final decision with that regard.

7. We do not appreciate the delay in proceeding with the investigation of an unfortunate incident that occurred in December, 2014 during such music festivals as it would assist in taking adequate precautionary measures for the subsequent events. Considering the rival contentions and taking note of the fact the investigation on the cause of the deaths of two persons at the prime of these youths and adolescence at the last festival in the year 2014, conducted by the respondent No.8 has not been yet concluded, we find that the investigations have to proceed to ascertain the root cause of the incident which resulted in the death of the unfortunate persons. As such, we find it appropriate to direct the concerned Investigating Officer to proceed with the investigations with that regard, as expeditiously as possible and file a compliance report within six months from today.

8. The next grievance raised by Mr. De Sa, learned Counsel appearing for the petitioner is that according to the petitioner in the year 2013, there was a terrorist threat and as such, according to him there are no adequate measures or precautions put in place to meet any such calamity. The learned Counsel has taken us through a letter on record dated 29th October, 2013 wherein there are some references to the effect that there was likelihood of terrorist attack on the music festival which was to be held in the year 2013. The learned Counsel, based on such report, has submitted that there is terrorist threat to such events and, as such, according to him, unless all preventive measures and precautions are taken to meet any such calamity, the music festivals should not be allowed during the current year. The learned Counsel further points out that State machinery is not prepared to meet any such eventuality and, as such, necessary directions be issued to ensure that precautions are taken to see that any such calamity is duly prevented and taken care of.

9. Mr. A.N.S. Nadkarni, learned Advocate General has pointed out that there can be no quarrel that in case of any threat of terrorist attack the State machinery should be prepared to meet and

prevent the situation. The learned Advocate General further submits that for security reasons, it is not possible to disclose the measures which shall be taken by the concerned Authorities with that regard. The learned Advocate General further points out that the State Government will take all precautions and ensure that they are prepared to meet any kind of such eventuality in case the festivals are permitted in the current year.

10. Upon hearing the learned Counsel appearing for the respective parties in connection with the above grievance raised by Mr. De Sa, learned Counsel appearing for the petitioner, we find that there can be no two opinions that the State Government is expected to take all precautions and measures to ensure that such threat, if any, is duly taken care of and dealt severely. We accept the statement of the learned Advocate General that all precautionary measures would be taken and that necessary steps in that directions are already in place and not disclosed for security reasons. We accordingly dispose of the grievance of Mr. Rohit Bras de Sa with that regard, accepting the statement of the learned Advocate General.

11. The next contention of Mr. Rohit Bras de Sa, learned

Counsel appearing for the petitioner is that as per the information received by the petitioner under the Right to Information Act, from the concerned Superintendent of Police, a substantial amount of over one crore is payable by the respondent No.7 and Rs.95,00,000/- and odd by the respondent No.8 towards charges of local police and charges for traffic police arrangements. The learned Counsel has taken us through the information received from the Superintendent of Police (North), Porvorim, Goa dated 20/02/2015, *inter alia*, disclosing that as far as the respondent No.7 is concerned, a total sum of Rs.1,28,01,293/- is payable; whereas as far as respondent No.8 is concerned, the total sum of Rs.98,35,994/- is payable to the State Government towards such charges. The learned Counsel further points out that the delay in recovery of such amounts is causing loss to the public exchequer and, as such, the State Government should ensure and take steps to recover such amounts forthwith. The learned Counsel further points out that when such huge amounts are payable by the respondents No.7 and 8, the question of allowing the respondents to conduct such festivals, even for subsequent years, is objectionable. The learned Counsel further points out that it is now well known that a person who is a defaulter in Government due should not be allowed to get any benefits from the State Government. The learned Counsel further points out

that besides the said charges, the said respondents are also liable to pay towards commercial taxes which, according to him, would exceed a sum of over Rs.2.00 crores. The learned Counsel further points out that the lethargy on the part of the State Government in recovering such amounts is causing grave loss to the public exchequer.

12. On the other hand, Shri D. Lawande, learned Government Advocate appearing for the respondents No.1, 2 and 4 has submitted that the respondents have a security deposit to the tune of Rs.2.30 crores from the respondent No.7 and a sum of Rs.1.00 crore from the respondent No.8. The learned Government Advocate has further pointed out that from the security deposit of the respondent No.7, a sum of Rs.1.00 crore has already been appropriated and at present, a sum of Rs.1.30 crores is still in deposit with the State Government. The learned Government Advocate further submits that as far as the payments to be effected by the respondents No.7 and 8 in connection with the charges for local police arrangements and charges for traffic police arrangements is concerned, a Sub-Committee appointed by the State Government is considering the amounts to be recovered from the respondents No.7 and 8 on that count. The learned Government Advocate submits that unless such exercise is completed, there can be

no recovery from the respondents No.7 and 8 by the Office of the Superintendent of Police. Learned Government Advocate further points out that in any event, as far as statutory dues payable are concerned, there will be no loss to the public exchequer as any deficient amount payable by the respondents would be recovered with interest at the rate of 15% per annum as provided in the statute. The learned Government Advocate further points out that the decision of the Committee on the amount reflected in the said information dated 20/2/2015 is expected to be completed within one month from today.

13. We have considered the submissions of the learned Counsel on that count and we have also with their assistance gone through the records to examine the said grievance raised by the petitioner. On the last date of hearing, we had called upon the Respondents to point out the amount due towards taxes from the respondents No.7 and 8. The learned Government Advocate has pointed out today that though the respondent No.7 has preferred an appeal challenging the assessment for the year 2011-12, nonetheless, according to him, the total amount payable by the respondent No.7 towards commercial taxes is to the tune of Rs. 1.61 crores and odd; whereas as per the assessment of the State Government, the respondent

No.7 has to pay a further sum of Rs.65.00 lakhs and odd as far as Assessment for the year 2012-13, and as such, the total amount payable by the respondent No.7 works out to Rs.1.31 crores and odd. The learned Government Advocate further states that the State Government has also raised a claim for a further sum of Rs.1.08 crores and odd amount. The learned Government Advocate further points out that the respondent No.7 has also filed an appeal challenging the assessment by the State Government which is also under consideration before the Additional Commissioner of Commercial Taxes.

14. We have considered the submissions of the learned Counsel appearing for the respective parties in connection with the aforesaid grievance raised by the petitioner. We are not at all impressed by the delay in recovering the taxes by the State Government which were otherwise payable for the year 2011-12. It is also not disputed that despite of default in paying the amounts, the respondent No.7 was permitted to hold such music festivals for the subsequent years. Apart from that, on examining the amount kept as security deposit, we find that the amounts assessed and payable by the respondent No.7 far exceed *prima facie* the amounts standing in security deposit with the State Government. We cannot accept the

delay in the assessments for years together. There is nothing placed on record to show that such amounts are recovered promptly. In such circumstances, we find that the respondent No.1 should ensure that the amounts payable by the respondent No.7 are recovered as expeditiously as possible. Even whilst examining subsequent permissions, the State Government could have ensured or called upon the said respondent to give additional security considering the huge amounts payable by the respondent No.7, based on the assessment carried out by the concerned Authorities.

15. Mr. Vernekar, learned Counsel appearing for the respondent No.7 has pointed out that unless the appeals are decided, the respondent No.7 cannot be called to make the payments. We, accordingly, direct the respondent No.1 to take necessary steps to dispose of the appeal preferred by the respondent No.7, as expeditiously as possible, and further take a decision on the amount payable towards the charges for local police and traffic police arrangements, as expeditiously as possible within one month from today and take immediate steps to recover any amounts so determined.

16. The last grievance of Mr. De Sa, learned Counsel

appearing for the petitioner is in connection with the use of narcotic drugs during such musical events. The learned Counsel submits that there is blatant use of such drugs during such events which has resulted in unfortunate incidents during such musical events. The learned Counsel further submits that such music festivals are, in fact, primarily conducted for the purpose of consumption of drugs which is totally banned and not permissible in terms of the provisions of the Narcotic Drugs and Psychotropic Substances Act ("NDPS Act" for short). The learned Counsel further points out that there is blatant drug abuse by the participants of such events, which give a very bad impressions, not only to the State of Goa, but also to the Country, at large. The learned Counsel further points out that taking note of the unfortunate incidents which occurred in December, 2014, the apprehension of the petitioner is well founded and, as such, according to him, all measures would have to be taken to ensure that there is total ban on the use of such drugs and ensure that no such narcotic drugs are allowed inside the venue where such events are held. The learned Counsel further points out that though it is contended by the respondents No.7 and 8 that no narcotic drugs are permitted during such events, the incident which occurred in December, 2014 itself proves otherwise as such drugs are used clandestinely. The learned

Counsel further points out that even assuming the allegations of the respondents No.7 and 8 are accepted that persons who attend such events do not enter with drugs, it is incumbent upon the respondent No.1 to ensure that no such incidents occur. The learned Counsel further points out that as such directions are to be issued to ensure that there is total ban on the use of such drugs and the participants of such festivals do not have any access to illegal procurement of drugs in the vicinity of such events. The learned Counsel has also taken a strong objection to conduct two music festivals simultaneously as, according to him, this would result in law and order problems, besides causing traffic congestion and total inconvenience to the inhabitants of the locality of such events. The learned Counsel, in support of his contention has brought to our notice some notings of the Committee not to hold such events simultaneously. The learned Counsel, as such, submits that necessary directions be issued with that regard.

17. On the other hand, Shri A.N.S. Nadkarni, learned Advocate General has pointed out that the conditions imposed in granting permissions to hold such musical festivals are very stringent so as to ensure that no narcotic drugs are made available or can be procured during such events. The learned Advocate General further

points out that the ANC of the State Government has trained sniffer dogs who are kept on guard at the venues to ensure prevention and misuse of drugs during such events. The learned Advocate General further points out that there are proper security arrangements put in place to ensure that no participant to such events can possess any such narcotic drug which is illegal and severely dealt with and punished in law. The learned Advocate General further points out that the alleged incident of December, 2014 referred to by the petitioner by itself has not established that drugs are supplied at the venues of the festivals. The learned Advocate General further points out that personnel from the ANC, Goa are deployed at the venue to ensure that no such illegal activities or drugs abuse is allowed to flourish. The learned Advocate General further points out that the State Government shall ensure and take proper and adequate precautionary measures to see that no drugs are made available either at the venues of the events or in the vicinity of such events. The learned Advocate General also points out that CCTVs. would be installed to ensure that no person can be in possession of such drugs and necessary directions would be issued to see that necessary action is immediately taken against any person indulging in such activities.

18. We have considered the submissions of the learned Counsel appearing for the respective parties. The NDPS Act has been enacted to combat trafficking of narcotic drugs and prevent drug abuses. An offence in relation to narcotic drugs and psychotropic substances is more heinous than culpable homicide as the latter involves individual, whilst the former affects the society at large and as such stern measures are to be taken to prevent any unscrupulous persons indulging in such heinous offences which are obnoxious and abnormal crimes. In this connection, it is incumbent that all the stakeholders of such musical events, as well as the State Government take all suitable preventive measures to ensure that no narcotic drug or psychotropic substances are clandestinely consumed at the venues and maintain strict vigil within the vicinity thereof. Though it is pointed out by the learned Advocate General that 10 police personnel from the ANC are temporarily stationed at the venues of such events, we find that looking to the magnitude and the number of persons who apparently take part in such events, the concerned Authorities may examine to deploy more personnel to ensure that no narcotic drugs are illegally found at the venues, or in the vicinity thereof and trained sniffer dogs are kept on guard to prevent any such illegal activities. The venues where such musical festivals are conducted, as well as

within the radius of at least 500 metres thereof a strict vigil has to be maintained to ensure that no person is in possession of such narcotic drugs and dealt with very severely. In case the concerned Authorities detect any drug abuse at the site or around the vicinity, necessary measures and stringent action would have to be taken not only against the offenders, but also against the officers concerned for dereliction of duties, as such activities are highly deplorable and heart rendering. Hence, when the concerned authorities choose to permit such musical events, it has to ensure that the apprehension of the public of any drug abuse at such musical festival are completely erased and would be severely dealt with by diligently complying with by all the preventive measures stated by the learned Advocate General and mentioned herein above. It has also been pointed out by the learned Counsel appearing for the respondents that venues are also sensitized for narcotic drugs before such festivals, by the concerned authorities and the organizers as well.

19. With regard to the contention of Mr. De Sa, to the effect that such events would cause traffic congestion, and inconvenience to the local inhabitants, we find that the State Police should ensure that organizers of such events should be called upon to provide adequate

parking spaces for the vehicles of the participants of such events. No vehicles should be allowed to be parked on the main road in such a manner that it would hamper or cause inconvenience to the public at large, and the locals in particular. The concerned Authorities should also provide helpline numbers so that any complaint by any citizen, is immediately attended to. Such helpline numbers will have to be advertised and given wide publicity in the locality of such festivals. The Authorities should also have to ensure that all the Statutory Regulations are strictly complied with.

20. With regard to the other contentions of the learned Counsel for the petitioner, whether, both such events be allowed to be held simultaneously or not, is a decision which the State Government would have to take on its own merits after considering all the precautionary measures referred to herein above are duly complied with.

21. There was also an allegation made by Mr. De Sa, learned Counsel for the petitioner to the effect that the Police Department is under-staffed and unprepared to provide assistance to such major festival events. This aspect will also have to be examined by the State

Government who can, if necessary, recruit additional police force.

22. With the aforesaid directions, Rule stands disposed of, with no order as to costs.

C.V. BHADANG. J.

F.M. REIS, J.

ssm.