

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 4 OF 2017

Puskal Fernandes. Petitioner.
Versus
State of Goa, through Chief Secretary
& others. Respondents.

Mr. S. S. Kantak Senior Advocate with Mr. Amay Kakodkar &
Preetam Talaulikar, Advocates for the Petitioner.

Mr. Dattaprasad Lawande, Advocate General with Mr. Deep
Shirodkar, Additional Govt. Advocate for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 18 December 2017.

ORAL ORDER : (Per N.M. Jamdar, J.)

This Petition, *inter alia*, seeks a declaration that the moratorium imposed by the Respondent-State on the Rent-a-Cab Scheme is unconstitutional and without any statutory power.

2. Series of orders have been passed in this Petition, from time to time. On 5 January 2017, notice was issued to the Respondents putting the parties to notice that the Petition will be disposed of at the admission stage. On 9 February 2017, a statement was made by the learned Advocate General that upon payment of

additional fees by the petitioner, the application shall be examined and the decision would be taken by the competent Authority within one month. On 27 April 2017, the learned Advocate General informed the Court that the decision is under consideration by the State Government in connection with the grievances raised in the petition.

3. On 1 November 2017, following order came to be passed:

“ Heard learned Counsel for the parties.

2. The learned Counsel for the Petitioner submitted that the petitioner had applied for licence under a Rent-a-Cab Scheme of 1989 formed under Section 75(1) of the Motor Vehicles Act, 1988. He submitted that the license was granted in respect of certain vehicles, however, when an application was made for adding/replacing certain vehicles from license, it was rejected on the ground of some procedural grounds. The learned Counsel for the petitioner submitted that the petitioner has always been ready to apply if there are real procedural lacunae. The learned Additional Government Advocate submitted that such a request cannot be considered at present since the State Government has taken a decision not to implement Rent-a-Cab Scheme, the Scheme is in abeyance at present, and a decision whether to lift the embargo or to continue with the same is likely to be taken.

- 3. However, we find that the same statement is made since April 2017. This position cannot continue indefinitely. One of the grounds urged by the petitioner is lack of competence by the State Government to keep the scheme of the Central Government in abeyance. The learned Additional Government Advocate has not been able to point out a source of power. We would request the learned Advocate General to address the issue as to the competence of the State to suspend the Scheme framed by the Central Government which is one of the main arguments of the petitioner.*
- 4. At the request of the learned Counsel for the parties, stand over to 7 November 2017.”*

Further, on 8 November 2017, the following order was passed:

- “1. The learned Advocate General seeks further time to address the Court on the question of law that was referred in the Order dated 1st November 2017 in Writ Petition No.4 of 2017. He states that if required, the Petitioner will file the affidavit in reply as there are certain steps in contemplation which may resolve the controversy at hand.*
- 2. Stand over to 22nd November 2017.”*

4. By Order dated 22 November 2017, last chance was granted to the State as under :

“At the request of the learned Government Advocate on the ground that the learned Advocate General is not available, stand over to 5 December 2017. Since we have already crystallized the legal issue and granted

time to the State on two occasions, this adjournment will be by way of last chance.”

On 6 December 2017, since the learned Advocate General was indisposed, the Petition was adjourned to 12 December 2017.

5. Today, the learned Advocate General hands over a copy of the affidavit sworn in by Shri Nikhil Desai, Director of Transport and Member Secretary of the State Transport Authority. The Director has stated in the Affidavit that the State Government has decided to lift the moratorium keeping the Rent-a-Cab Scheme in abeyance. The learned Advocate General states that the Government has, therefore, taken a decision of lifting the embargo on the Rent-a-Cab Scheme and the application of the Petitioner will be processed accordingly. The learned Senior Counsel for the Petitioner agrees to this.

6. In view of this position, it is not necessary for us to consider the larger questions in this Petition. We accept the statement made on oath by the Director of Transport. As a consequence of this decision and as pointed by the learned Senior Advocate for the Petitioner, the impugned Order passed by the Director of Transport dated 26 December 2016 stands quashed and set aside.

7. The Application made by the Petitioner dated 18 March 2016 and the supplementary application will have to be considered by the State Transport Authority, of which the Director of Transport is the Member Secretary. Liberty to the Petitioner to file an additional representation within a period of one week from today.

8. The learned Advocate General states that the applications made by the Petitioner as above will be taken up for consideration in the first meeting of the State Transport Authority which is likely to be held within a month from today. This statement is also accepted. The applications will be decided on their own merits, within the ambit of the Rent-a-Cab Scheme, which is no longer in abeyance.

9. In view of the above, nothing further remains to be decided in this Writ Petition. The Writ Petition is accordingly disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.