

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 188 OF 2017**

Luis Diago D'Souza,
son of Joao D'Souza, major of age,
married, business, Indian National,
resident of H.No.231, Ashvem,
Morjim, Pernem, Goa.

..... Petitioner.

V/s

1. The State of Goa,
through Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez, Goa.

2. Director of Tourism,
Department of Tourism, Patto, Panaji, Goa.

3. Gabriel Fernandes,
major of age, Indian National,
resident of H. No.1389,
Tembvaddo, Morjim, Pernem, Goa.

..... **Respondents.**

Mr. Shivan Desai & Mr. J. Ramaiya, Advocates for the petitioner.

Ms. P. Kholkar, Additional Govt. Advocate for the respondents No.1
and 2.

Mr. C. Padgaonkar, Advocate for respondent No.3.

**CORAM :- ANOOP V. MOHTA &
NUTAN D. SARDESSAI, JJ.**

Date : - 28 February 2017.

ORAL JUDGMENT :- (PER ANOOP V. MOHTA, J.)

Heard Mr. Shivan Desai, learned Counsel appearing for the petitioner, Ms. P. Kholkar, learned Additional Govt. Advocate appearing for the respondents No.1 and 2 and Mr. C. Padgaonkar, learned Counsel appearing for respondent No.3, finally at the admission itself.

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

3. By keeping all defence open, we are inclined to interfere with the impugned Order dated 31st January, 2017, cancelling the shack allotment in favour of the petitioner (original respondent No.1), by observing that he has violated Clause 2 of Tourism Shack Policy for erection of temporary seasonal structures, beach shacks, huts and others 2016-19, with immediate effect. In a rejoinder filed by respondent No.3, to the reply filed by the petitioner herein, respondent No.3 has averred at para (2) as under :

"2. At the outset, it is stated that the Respondent No.1 has been elected as Panch at Village Panchayat of

Mandrem-Ward No.VIII, and continues to hold such Office till date, and as such, is clearly disentitled in terms of the shack policy, and which in fact, is contrary to the statement made at Para 8 of the reply, which bears out that the Respondent No.1 is not directly or indirectly engaged in any business, vocation or profession.

Annexed hereto and marked as Annexure-C1 is a copy of the records of the Block Development Officer, Pernem being Notification No.19/16/DP/Results/2012/1899".

4. This aspect of holding such office, making him disentitle for allotment of shack, needs to be considered by the concerned authorities. This includes giving specific show cause notice, charge and/or granting of opportunity to deal with the same and passing orders, after hearing the parties concerned. This, in our view, also goes to the root of the matter. Based on the complaint so filed, the shack allotment in favour of the petitioner and another was cancelled by giving reasons. Those reasons unless challenged by any third aggrieved person, at present, have attained finality. The petitioner has challenged the impugned order only to the limited extent, as the authority has observed at para 23 of the impugned order, thus :

“23. After going through the entire matter and having

considered all the material brought on record in the present matter, I have come to the conclusion that on the date of making application for allotment of shack for the year 2016-19 the Respondent No.1 was holding office of profit as a elected member of village Panchayat Mandrem, and being receiving the salary from Government is not entitled for allotment of shack and therefore he has violated clause No.2 of the tourism policy for erection of temporary seasonal structures, beach shack, huts and others 2016-19, therefore the allotment done in favour of respondent No.1 is required to be cancelled.”

5. Therefore, in the interest of justice, as case is made out by the petitioner, even on the grounds so agitated, as reflected in para 2 of the rejoinder and so reproduced herein above, the concerned Authority is required to deal with the same in accordance with law, by giving the opportunity starting from issuing a show cause notice, referring to the specific charges. Admittedly, it was not done in the matter. The complaint was filed on the ground that the respondents are having liquor licence for retail sale of IMFL/CL, including the petitioner. But the impugned order was passed mainly on the ground and the reasons so referred above, referring to disentitlement for allotment of shack, as the petitioner (respondent No.1) is holding the office of profit as an

elected Member of Panchayat, receiving salary from the Government admittedly. It was not the subject matter of the impugned Show Cause Notice dated 15/12/2016. This is in breach of basic principle of natural justice and fair opportunity. The defence or reply filed during the course of such proceedings should not be the reason not to follow the basic ingredient of settled position of law of natural justice. Therefore, by keeping all defence open, so far as this issue is concerned, impugned order dated 31st January, 2017 qua the petitioner to the extent the petitioner is held to be disqualified as being the Panchayat Member, is set aside. Respondent No.2 shall, as agreed, issue a fresh show cause notice referring to the only issue so raised and so recorded above, within one week from today. Respondent No.2 shall give opportunity to the concerned parties and pass an appropriate order within four weeks thereafter. It is made clear that the respondent to follow the procedure of law in implementing its orders.

6. The petition is disposed of accordingly. No costs.

NUTAN D. SARDESSAI, J.

ANOOP V. MOHTA, J.

ssm.