

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 431 OF 2017

MR. HARI DHANBAHADUR CHETRI ... Petitioner
Versus
CHIEF OFFICER OF PONDA MUNICIPAL
COUNCIL. ... Respondent

Mr. V. P. Thali and Mr. Shirin V. Naik, Advocates for the petitioner.

Mr. G. Agni, Advocate for the respondent.

Coram:- M. S. SONAK, J.

Date:- 3rd May, 2017

P.C.

Heard Mr. Thali for the petitioner and Mr. G. Agni for the respondent.

2. The main challenge in this petition is to the order dated 31/03/2017, by which the respondent-Chief Officer of Ponda Municipal Council has rejected / cancelled the trade licence earlier granted to the petitioner.

3. Mr. Agni, the learned Counsel for the respondent, by reference to bye law No.27 of the Trade and Occupation Licensing Bye-Laws, 1989, has submitted that the petitioner has an alternate efficacious remedy available to him of instituting an appeal before the Council. On this ground, Mr. Agni submits

that this petition may not be entertained.

4. Bye-law No.27, as referred to by Mr. Agni, reads thus :

"Bye-Law 27: Any licensee aggrieved by the decision of the Chief Officer may within 30 days from the date of such grievance, submit an appeal to the Council through the Chief Officer and the Council shall decide upon his appeal within the provisions of these bye-laws. If any difficulty arises as to the construction or meaning of these Bye-Laws, the decision of the Council in this regard shall be final."

5. From the aforesaid, it is clear that any licensee, who is aggrieved by the decision of the Chief Officer, may within 30 days from the date of such grievance, submit an appeal to the Council through the Chief Officer and the Council shall decide upon his appeal within the provisions of the bye-laws.

6. In view of the aforesaid provisions, the preliminary objection raised by Mr. Agni, is required to be upheld and the petitioner is required to be relegated to avail the alternate remedy of instituting an appeal to the Council.

7. Mr. Thali, the learned Counsel for the petitioner expresses an apprehension that since the appeal is required to be submitted

through the Chief Officer and since the Chief Officer has already disclosed his mind in the impugned order, this will be more like an appeal from ceaser to ceaser.

8. If the provisions of bye-law No.27 are perused, then, it is clear that the Chief Officer is merely required to forward the appeal or place the appeal before the Council. The Chief Officer will obviously, have no other role to play in the matter of adjudication of an appeal against his own order. Therefore, the apprehension expressed by Mr. Thali stands addressed accordingly.

9. Mr. Thali further submits that the petitioner on the basis of trade licence, has been undertaking this trade since the year 2011. Mr. Thali submits that the petitioner is a small tradesman and his livelihood is dependent upon such trade. Mr. Thali submits that this is not a case of breach of any of the terms and conditions, subject to which the trade licence was issued, but the impugned order was made simply because the petitioner's landlord seeks the petitioner's eviction from the suit premises.

10. Mr. Thali submits that the Chief Officer or the Council ought not to be concerned with the disputes between the petitioner and his landlord. Mr. Thali submits that the landlord should not be permitted to secure the eviction of the petitioner by

getting his trade licence cancelled.

11. Since all these issues will have to be gone into an appeal, if the petitioner chooses to institute one, there is no necessity for this Court to make any observations in this regard. However, considering the circumstance that the petitioner has been undertaking the trade since the year 2011 and the cancellation of the trade licence, at least prima facie, is not on the ground of breach of the terms of the trade licence concerning hygiene, etc., this is a fit case where some limited interim relief could be granted to the petitioner pending the disposal of his appeal before the Council. Mr. Thali states that the petitioner will institute an appeal before the Council within a period of one week from today positively.

12. Accordingly, this petition is not entertained. However, liberty is granted to the petitioner to institute an appeal to the Council through the Chief Officer, within a period of one week from today. If such an appeal is indeed instituted within a period of one week from today, the Council shall dispose of the same in accordance with law and on its own merits. The impugned order of cancellation of trade licence shall remain stayed pending the disposal of the said appeal. Needless to add that the petitioner shall strictly observe all the terms and conditions subject to which, such trade licence had been granted to the petitioner.

13. Mr. Agni, the learned Counsel for the respondent states that personal hearing is contemplated in the course of such an appeal.

Therefore, the petitioner shall have the benefit of such personal hearing. Under no circumstances, however, the petitioner shall delay or protract the proceedings in appeal. The petitioner has to be conscious that the Appellate Authority is the Council and, therefore, it is for the petitioner to adjust the timing and make himself or his Advocate available on the date when the appeal is posted for hearing. The Council to endeavour to dispose of such appeal within a reasonable period. It is made clear that this Court has not examined the merits of the matter and therefore, all contentions of all parties are left open, to be determined by the Appellate Authority i.e. the Council.

14. This petition is disposed of with liberty as aforesaid. There shall, however, be no order as to costs.

M. S. SONAK, J.

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