

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.862 OF 2017

Swastik Cruises		...Petitioner
<i>Versus</i>		
State of Goa through its Chief Secretary & Ors		...Respondents

Mr VR Tamba, with Vibhav Amonkar for the Petitioner
Mr Dattaprasad Lawande, Advocate General, with P Dangui,
Government Advocate for the Respondents

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ
DATED: 25th September 2017

PC:-

1. Our intervention is sought under Article 226 of the Constitution of India by a partnership firm that runs cruise vessels in the Panaji area along the Mandovi river. The challenge is to a communication dated 13th September 2017 at Exhibit I. By this communication, the Captain of Ports wrote *inter alia* to the Petitioner saying that the Captain of Ports' jetty, Panaji is congested with cruise vessels and hinders the survey of barges and berthing of department vessels, including other inland vessels. The Petitioners and the other addresses were directed to shift their cruise vessels from Panaji jetty to the Captain of Ports jetty at Betim on a touch-and-go basis within 72 hours.

2. The thrust of the Petitioner's case is that the Betim jetty where the Petitioners already have a ticket counter and other facilities was 'exclusively' allocated to them by an NOC reference No:I-11017/NOC/B.Jetty/2036, one that has been renewed periodically.

3. That NOC is dated 5th August 2002 and a copy is at Exhibit A to the petition from pages 26-27. A bare perusal of this NOC indicates that no exclusivity was conferred on the Petitioners. Indeed, clauses 12 and 13 make it abundantly clear that the Captain of Ports had reserved the right to allot the land at the jetty to any other user in future and to withdraw the NOC as and when the jetty was required by his department.

4. Another communication followed on 2nd June 2004 in response to an application by the Petitioners to allow pavers and to put up a fencing. Once again, while granting this permission, the Captain of Ports specifically reserved the right to allot the land to other users and to withdraw the NOC.

5. The entire petition proceeds on the basis of this claim for exclusivity. As we have seen, there is no substance to this claim and the foundational documents do not substantiate this claim in the least.

6. The argument is that since the Petitioners are already at the Betim jetty, requiring other cruise operators to also use that jetty is impractical and will lead to overcrowding. What is actually being

suggested is that we should intervene to ensure the continuance of the Petitioner's claim to a monopoly over the Betim jetty. This is not something that can ever be the subject matter of a claim for relief under Article 226 of the Constitution of India. We have every confidence that the Captain of Ports will issue appropriate directions in regard to the smooth functioning of all cruise operators at the Betim jetty. We cannot possibly sit in appeal over his considered and expert opinion. In the impugned communication at page 47 the Captain of Ports has clearly expressed a public and government need and, we do not see how the Petitioner's claim to exclusivity at the Betim jetty can override the view of the Captain of Ports.

7. The petition is rejected. There will be no order as to costs.

NUTAN D. SARDESSAI, J

G. S. PATEL, J