IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2205 OF 2007

M/s. Vrishali Hotels Pvt. Ltd. ... Petitioner

Vs

1. The State of Maharashtra & Anr. ... Respondent

Mr. Amit Borkar for the Petitioner.

Ms. Aparna Vhatkar, AGP, for the Respondent No.1.

Mr. S.P. Bharti for the Respondent No.2.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

TUESDAY, 17TH JANUARY, 2017

P.C. :

1 The petitioner claims a declaration from this Court that it is eligible for the extension of exemption in terms of the Government Resolution dated 24th May, 2004.

2 An alternate relief is claimed seeking an exemption in luxury and sales tax as granted by the Government Resolution dated 8th July, 1999, and issue a certificate in respect of the extension for further six years. Thereafter, another alternate

prayer is to issue direction to respondent Nos.1 and 2 to consider the petitioner's application for exemption in luxury and sales tax.

3 The above reliefs are founded on the petitioner being a private limited company and set up with an object of establishing and managing hotels, restaurants, cafes, bars etc. The State of Maharashtra introduced a Scheme in the year 1999 styled as New Package Scheme of Incentives for Tourism Projects, 1999. The Government, therefore, issued a Resolution dated 8th July, 1999. According to the petitioner, the object of this Resolution was to make available all fiscal and non fiscal incentives to tourism industry. The further object was to grant benefits, reliefs and concessions so as to give a boost to the tourism sector. That scheme was operating from 1st April, 1999 to 31st March, 2004 or until substituted by New Package Scheme of Incentives.

4 The petitioner made an application for granting registration for incentives under the 1993 scheme and, accordingly, the registration to that effect was granted on 29th January, 2000 / 1st June, 2004. The petitioner admittedly holds, controls and manages a tourism unit in 'B' class category. The

registration, therefore, enabled the petitioner to claim exemption from paying sales tax on the manufactured goods and liquor as per the Bombay Sales Tax Act, 1959 and luxury tax as per the provisions of The Maharashtra Tax on Luxuries Act, 1987. The exemption is valid from 1st January, 2000 to 31st December, 2006 for seven years. The exemption, therefore, from sales tax and luxury tax is as per the details set out in paragraph 5 of the petition. There is, of course, an outer limit or ceiling. The petitioner relies upon Annexure-A which is a copy of the Registration and Eligibility Certificate.

5 Thereafter, the Government has issued a Resolution dated 25th May, 2004. That granted exemption from payment of tax for nine years or ceiling limit to the extent of 125% of the investment, but was limited in its application to 'A' class tourism unit. The petitioner relies upon this Resolution, copy of which is Annexure-B to the petition to submit that the petitioner's case is also covered by the Tourism Incentive Scheme, 1999, under which the petitioner had obtained the registration dated 24th September, 2004. Once that fact and the new Resolution would coincide, all that the petitioner desired was that being a 'B' class

tourism unit, it cannot be denied the benefit and in terms of the 2004 Resolution.

6 After setting out how the petitioner being a 'B' class unit requires and very badly the same benefit and exemption, it is prayed that in the legitimate expectation of the petitioner, it was hoped that similar benefits would accrue to 'B' class tourism unit.

7 It is in these circumstances that it is urged by Mr. Borkar appearing for the petitioner that limiting the 2004 GR and the exemption thereunder only to eligible hotels situate within within 'A' class tourism unit is violative of the mandate of Article 14 of the Constitution of India. Our attention is invited to paragraphs 9 to 11 of the petition in that regard.

8 Then, the petitioner's representation dated 10th March, 2006, copy of which is Annexure-C to the petition is relied upon. The clarification was also sought by the petitioner vide Annexure-D. However, finding no response, it is urged that this Court may be pleased to grant a declaration and in terms of the prayers of this petition.

9 There is an affidavit-in-reply filed by the second respondent to this petition and which states that it is true that Tourism Incentive Scheme was framed in the year 1993 and its salient features are those which are set out in this affidavit-in-reply. Thereafter, a New Package Scheme of Incentives for Tourism Project, 1999, is referred with all the details.

10 With regard to the 2004 Resolution it is stated that it is the petitioner who applied for registration as 'B' class unit. The petitioner, therefore, was granted the registration in terms of the application. Hence, there cannot be a question of any legitimate expectation. The petitioner is entitled to take the benefit of the ceiling limit in respect of exemption from sales tax and luxury tax, but as per the 1993 Scheme, it was required to avail of the same within the stipulated period. There is no question of any injustice for the simple reason that class 'A' tourism units stand on a completely different footing. The classification was made considering various factors and there is now a policy decision taken. The petitioner is not similarly situate and, therefore, there is no merit in the writ petition and it be dismissed.

11 With the assistance of Mr. Borkar we have perused all the Package Scheme of Incentives for Tourism. On 30th November, 1993, the Package Scheme of Incentives for Tourism 1993, was declared. The Resolution in that behalf states that in order to achieve proper and planned growth of tourism activities in the State and to attract fast growth on priority in the areas with high tourism potential, that Scheme was introduced and brought in. The Resolution sets out that tourism projects in the private sector, State public sector / joint sector, cooperative sector but not in Central public sector will be considered for incentives. The eligibility criteria is set out in extenso together with the details of the implementing agencies. There are some vital definitions so as to explain the criteria of eligibility and elaborate it further. Equally the incentives are set out in paragraph 5 of the Government Resolution. The identification by the State in terms of Annexure-A is based on those special tourism areas which have been identified as such by the Government of India. Then, Annexure-B sets out the areas identified as special tourism areas by the State Government, one of which is Panhala Taluka, Kolhapur District. Then Annexure-C classifies the Talukas. The

group B Talukas which are set out in Pune Division refer to the Kolhapur District, Karveer, Shirol. Thereafter, there are details in Annexure-D of the incentives and the period etc.

12 The New Tourism Policy, 1999, which was promulgated resulted in another Package Scheme of Incentives for Tourism Project being introduced and the Government Resolution of 1999 dated 8th July, 1999, is to that effect. Though the objectives are more or less similar, but this Government Resolution came to be introduced so as to give effect to the new Tourism Policy. The boost to tourism by attracting higher investment in areas with tourism potential and which would generate employment opportunities was thus the focal point. This Resolution also contains more or less similar provisions and Annexure A sets out the tourism units. Annexure B sets out the classification of Talukas. What Annexure-B now denotes is that the entire Kolhapur Municipal area is styled as Group 'B' and the benefits are to be admissible for five years.

13 Thereafter, there was a Resolution dated 24th May, 2004, whereunder the benefits and concessions under the new

Tourism Policy were extended and from three years to nine years maximum.

14 As far as the impugned Resolution is concerned, what we have found therefrom is that, that is styled as Tourism Encouragement Policy, 1999 and for increasing the benefits which were admissible under the Package Scheme of Incentives. The Package Scheme of Incentives has been extended as noted above. However, what the petitioner's grievance is and as projected in the representation that the petitioner has set up the unit and which is enjoying the benefits / incentives. However, as far as the new Resolution is concerned and which is challenged now in this petition, the petitioner complains that this Resolution and copy of which is to be found at page 76-A of the paper-book does not apply to it. The petitioner would read Annexure-A of the Package Scheme of Incentives, 1999, to submit that the extension in the period would accrue to the benefit of the tourism units in class 'A' and in that regard, our attention is invited to Annexure-A of the Government Resolution dated 8th July, 1999. These Annexures state that the hotel projects should have facilities expected of the Establishments in one to five star category or non

star category according to the guidelines of the Department of Tourism. The hotels of the Department of Tourism, Government of India are taken as the basis for the purposes of facilities that have to be installed. There have to be minimum twenty rooms, a public toilet shall also be provided for the visitors. It also refers to a Resort, Health Farm, Motel, Apartment Hotel, Water Sports, Arts and Crafts Village, Golf Course, Camping and Tent facilities, Amusement Park, Water Park, Ropeway, Heritage Hotel and Convention Centres. It is submitted that any other project not falling in the above categories would be considered subject to being approved by the High Level Committee under the chairmanship of Chief Secretary, Government of Maharashtra. Thus, the classification therein as far as Konkan Division is concerned, namely, Mumbai Suburban District, the entire area is styled as Group 'A'. Thane, it is Group 'B' and Group 'C' and encompassing Navi Mumbai, Thane, Ulhasnagar and Kalyan. In District Raigad, Alibag and Panvel would cover the entire District, except the area in Column No.4. Thus, as far as Pune Division is concerned, Kolhapur Municipal area falls in Group 'B'. Thus, the entire District except the area within Kolhapur Municipal limits has been listed in Group 'D'. The petitioner draws a comparison and says that Groups 'A', Group 'B', Group 'C' and Group 'D' are areas carved out from eligible Districts. As far as Kolhapur is concerned, there is nothing like Group 'A' area. However, Mumbai Suburban District is treated as Group 'A' area and that is how the plea of discrimination is raised.

15 We have not found any comparable material and which would enable us to hold that there is complete parity or equality insofar as this classification is concerned. The classification is thus not based on any intelligible differentia, but is entirely arbitrary and illusory has to be elaborated. That has not been elaborated by bringing factual materials. That would refer to the location, the peculiar factors and the tourist areas. It is explained in the affidavit-in-reply that the classification is not discriminatory, but made considering various factors. There is a policy decision taken. The units were categorized on the basis of their investment and that is how the ceiling limit in regard to exemption was fixed. There has to be, therefore, a correlation as between the location, the investment and other factors peculiar as far as the petitioner is concerned. The petitioner was under TIS, 1999, but its investment was under TIS 1993. The new

Tourism Policy was thus the triggering point and that is how the State decided to notify its Package Scheme of Incentives. The petitioner's request for conversion also cannot be considered as these two schemes are separate and their features are not identical. Similar is the position with regard to their application. In such circumstances, when there is a valid explanation placed on record for the classification or distinction that is made and it entirely being a policy decision, we see no reason to grant any relief to the petitioner. The petitioner's plea of discrimination has no basis in law.

16 As a result of the above discussion, the writ petition fails and it is dismissed.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***