IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.186 OF 2018

Gregory Daniel B. Shah
aged 52 years, Overseas Citizen of India,
r/o. V E5, Riviera Palm S1,
Arpora, Bardez, Goa
through his Power of Attorney,
Keshavanand Devidas Morajkar,
son of Devidas Morajkar, 48 years old,
Indian National and resident of
House No.555, Mauswaddo, Pernem, Goa. …... Petitioner.

Versus.

1. State of Goa,
through Chief Secretary,
Office of Chief Secretary Panaji, Goa.

2. Commissioner of Excise,
Office of Commissioner of Excise,
Panaji, Goa. …... Respondents.

Mr. Shivan Desai and Ms. K. Pednekar, Advocates for the petitioner.

Mr. Pradosh Dangu, Government Advocate for the respondents.

Coram : Shantanu S. Kemkar &
Nutan D. Sardessai, JJ.

Date : 6 February 2018.

ORAL JUDGMENT: (Per Shantanu S. Kemkar, J.)

Rule. By consent heard finally at the stage of admission and disposed of.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 2nd February 2018 (Annexure P-1) whereby the second respondent Commissioner of Excise has suspended the petitioner's Excise Bar licence and issued him a notice as to why the licence granted to him should not be recommended for cancellation to the Government.

3. Briefly stated, the case of the petitioner is that he was issued a show cause notice dated 15/01/2018 by the second respondent on the basis of a complaint dated 22/12/2017 received by him from Shri Rohidas Naik and others. By the said show cause notice, the petitioner was directed to file reply within 7 days and he was also asked to appear on 29.01.2018 for personal hearing. The petitioner had filed the reply and appeared before the second respondent the Excise Commissioner and requested for giving some more time to argue the case. It is the case of the petitioner that his request was acceded to and the matter was adjourned and kept on 6th March 2018 for hearing the petitioner. In the meantime, to the utter surprise of the petitioner for the very same allegations which were subject matter of the show cause notice dated 15.01.2018, the petitioner was served with the order dated 2nd February, 2018,

passed by the second respondent, suspending the petitioner's Excise Bar licence and asking him to show cause as to why his licence should not be recommended for cancellation to the Government. Feeling aggrieved by the said order dated 2nd February 2018 (Annexure P-1), the petitioner has filed this petition.

4. Heard the learned Counsel for the parties and perused the impugned order.

5. Having gone through the impugned order, it is clear that in regard to the very same allegations on the basis of which the impugned order was passed, the petitioner was issued a show cause notice on 15.01.2018 and was asked to submit reply, which the petitioner had filed on 22/01/2018 i.e. within the time stipulated for it. The petitioner also appeared before the second respondent for personal hearing on 29.01.2018 as directed in the show cause notice. On that date, the petitioner's request to give some more time to argue the matter was accepted and the next date was fixed by the second respondent for hearing of the petitioner on 6.3.2018. Thereafter, it appears and is clear from the impugned order that without awaiting for the said date, on which the petitioner was supposed to be heard by the second respondent and without there being any other reason, the second respondent hurriedly passed the impugned order on

2.2.2018, suspending the petitioner's Excise Bar licence and asking him to show cause as to why his licnece should no be recommended for cancellation to the Government.

6. Having regard to the aforesaid facts, as clearly spelt out from the impugned order, we are of the considered view that the impugned order is *ex facie* illegal, amounting to arbitrary exercise of powers and is also violative of the principles of natural justice. Before passing the impugned order, no opportunity of hearing has been afforded to the petitioner. In fact, the date of hearing to the petitioner on the show cause notice was fixed on 6th March, 2018, but, much before the said date, on 2.2.2018 the impugned order has been passed.

7. In view of the aforesaid, we are of the considered view that the impugned order deserves to be and is hereby quashed. However, we grant liberty to the second respondent Commissioner of Excise to pass a fresh reasoned order, after giving due opportunity of hearing to the petitioner in respect to the earlier show cause notice, of which the reply has already been filed by the petitioner. We also grant liberty to the petitioner to file a further detailed reply within 10 days from today, if so advised.

8. We also accept the prayer made by the learned Additional Government Advocate to prepone the date of hearing from 6.3.018 to 26.2.2018 as the same has not been opposed by the learned Counsel for the petitioner. The petitioner to now appear before the second respondent Excise Commissioner on 26th February 2018, at 3.30 p.m.. The said Authority shall give an opportunity of hearing to the petitioner on that date or on any other date as may be fixed for the said purpose by him. The Commissioner shall, thereafter, pass a fresh reasoned order.

9. With the aforesaid observations and directions, the petition is allowed to the extent indicated above.

10. Parties to act on duly authenticated copy of this Judgment.

Nutan D. Sardessai, J. ***Shantanu S. Kemkar, J.***