IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 154 OF 2014

Shri Hubert Saldanha,
Major of age,
R/o House No.167,
Nagali Hills Colony,
Dona Paula-Goa. … Petitioner

V e r s u s

1. M/s. Hotel High Ridge,
Through its Director,
Shri Mahesh Shanbagh,
Major in age,
Nagali Hills, Dona Paula.

2. The Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.

3. The Commissioner of Excise,
Government of Goa,
Department of Excise,
Panaji, Goa.

4. Shri Mahesh Vaman Shanbagh,
C/o Hotel Goa Highridge,
Nagali, Dona Paula, Goa. …. Respondents

(Amendment carried out vide order dtd.23.4.14)

(All registered addresses)

Shri Nigel Costa Frias with Ms. M. Coreira, Advocates for the Petitioner.

Shri S. N. Joshi, Advocate for the Respondent no. 1.

Mr. R. Shivolkar, Additional Government Advocate for Respondent nos.2 and

3.

CORAM: C. V. BHADANG, J.
DATE: 22nd February, 2018.

<u>ORAL JUDGMENT</u> :

The challenge in this petition is to the order dated 29/4/2013 by which the third respondent/Commissioner of Excise has permitted the first respondent to sell/serve liquor at two additional points, namely, the swimming pool area and the eleven rooms of the hotel. That order has been confirmed in appeal by the appellate authority.

2. The brief facts are that; the first respondent is holder of a licence for retail sale of liquor in the restaurant premises of M/s. Goa High Ridge Residency situated at plot no.171, Nagali Hills, Dona Paula, Panaji-Goa. By application dated 17/7/2012 the first respondent sought permission to serve liquor at three additional points within the licensed premises, namely, (i) Swimming pool area (ii) Open area in front of the bar and (iii) in the eleven rooms of the hotel. It appears that the Commissioner of Excise called for a report of the Sub Divisional Police Officer. The Sub Divisional Officer gave his report on 23/11/2012 refusing to grant recommendation for sale of liquor at the additional points as proposed on the ground that in the past there were violation on the part of the first respondent of the conditions/rules pertaining to noise pollution and an offence was registered against music operators from

the said hotel in the year 2011. The report, however, mentioned that except this, there was nothing adverse reported against the first respondent. The Commissioner of Excise in his discretion granted the licence for sale of liquor at two additional points, namely the swimming area and the eleven rooms of the hotel. The said order has been challenged in appeal. Feeling aggrieved, the petitioner who is a resident of the neighboring premises has approached this Court.

3. Shri Costa Frias, the learned counsel for the petitioner in all fairness submitted that the petitioner is not aggrieved by the permission to serve liquor in the eleven rooms of the hotel. The only contention raised is that the Commissioner of Excise could not have permitted sale of liquor in the swimming pool area and that too after overruling the adverse report by the Sub Divisional Officer. The learned counsel has pointed out that Rule 90 and Rule 100 of the Goa, Daman and Diu (Excise Duty) Rules, 1964 (Rules, for short) in order to submit that the licence could not have been extended to the open area abutting the swimming pool which is the nature of a nuisance.

4. Shri Joshi, the learned counsel for the first respondent has submitted that since after 2011, there is no complaint against the first respondent for having played music or having committed breach of the noise pollution laws.

It is submitted that the playing of music and the serving of liquor are distinct activities and not interconnected to each other and thus the registration of a solitary offence way back in the year 2011 would not come in the way of the Superintendent of Excise, granting the licence. The learned counsel, however, on instructions, submits that the first respondent shall not play any music in breach of any licence and that too beyond the permissible limits.

5. On hearing of the learned counsel for the parties, I do not find that any case for interference is made out. There is nothing in Rule 90 of the rules which would prohibit the grant of such licence in respect of the additional area. Rule 100 of the Rules provides that no licensed premises for sale of liquor shall have any connecting link with residential premises. In this regard it was not disputed during the course of the arguments at bar that the area of the swimming pool is not having any connecting with the area of the residential premises inasmuch as there is a compound wall, enclosing the precincts of the hotel. Thus reliance placed on Rule 100 of Rules to my mind is misplaced. The learned counsel for the respondent no.1 is right in submitting that the activity of sale of liquor and the one of playing music are distinct activities and cannot be said to be connected to each other. In that view of the matter, the fact that there was one complaint lodged against the respondent no1. in the year 2011 for breach of noise pollution laws and the

fact that the licence was suspended cannot come in the way of the Excise Authorities for granting licence for the additional area. It was not disputed that at least from the year 2014 there has been no incident of violation of noise pollution laws. In any event if there is any breach on that count, it is always open for the authority to take action in respect of the same. However, it is not possible to accept that on account of said alleged violation, the licence for serving of liquor in the additional area could have been refused. In my considered view the impugned order as confirmed by the appellate authority does no suffer from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed with no order as to costs.

6. Needless to mention that the respondent no.1 shall abide by the conditions of the licence granted.

C. V. BHADANG, J.

Ap/