**IN THE HIGH COURT OF BOMBAY AT GOA.**

**PUBLIC INTERST LITIGATION WRIT PETITION NO. 14 OF 2019.**

TRAJANO D'MELLO ... Petitioner.
Versus
STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 2 ORS., . ...Respondents.

Mr. R. Bras De Sa, Advocate for the petitioner.
Mr. P. Dangui, Government Advocate for respondent nos.1 and 2.
Mr. P. Vernekar, Advocate for respondent no.3.
Mr. A. Kakodkar, Advocate for Shailesh Shetty.

**Coram:- M. S. SONAK &**
**PRITHVIRAJ K. CHAVAN, JJ.**
**Date:- 26th February 2019.**

**ORAL ORDER**

In the order dated 22.2.2019, following corrections are required to be made.

*"(a) In para 5, line 2, amount of Rs.2,28,01,614/- is substituted with amount of 2,02,93,620/-*
*(b) similarly in para 6 amount of Rs.2,28,01,614/- is substituted with amount of Rs.2,02,93,620/-*
*(c) Mr. A. Kakodkar is indicates as having appeared for Percept D'Mark(India) Pvt. Ltd instead Mr. Kakokdar, appearance be indicated as for Mr. Shailesh Shetty, who was seeking intervention in the present petition."*

2. All aforesaid corrections are directed to be entered into original order as well as order uploaded on the website.

3. Heard learned Counsel for the parties. This petition instituted in Public Interest seeks following substantive relief:-

> *"(A) This Hon'ble Court may be pleased to issue Writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus directing the Respondent no.1 and 2 to immediately recover the arrears dues from the Promoters of the musical festival towards providing facilities and infrastructure for holding the musical event."*

4. On 22.2.2019, we made following order:-

> *"1. Heard learned Counsel for the parties.*
>
> *2. The learned Advocate General has handed in a statement as to the precise amount of dues/money owed by Respondent No.3 to the State. Learned Counsel for the Respondent No.3, however, disputes the correctness of the amounts stated in the statement.*
>
> *3. At least, prima facie, we are satisfied that an amount of Rs.92,55,210/- is due and payable towards police bandobast and traffic arrangement charges; Rs.9,43,895/- is due and payable towards entertainment tax for the year 2011-12 and Rs.1,03,11,603/- is due towards entertainment tax for the year 2012-13.*
>
> *4. In so far as the rest of the amounts are concerned, it appears that there are pending proceedings.*
>
> *5. The State Government has already retained an amount of Rs.2,28,01,614/- from out of the alleged dues payable to M/s. Percept D'Mark (India) Pvt. Ltd., which, the learned Counsel for the Respondent No.3, admits is a sister concern. The learned Counsel for Respondent No.3 states that if some time is granted, he will be in a position to make a statement on behalf of the sister concern as regards the retention of the said amount.*

> *6. In the aforesaid circumstances, we direct, by way of interim relief, the Respondent Nos. 1 and 2 to retain the amount of Rs.2,28,01,614/-, until further orders.*
> *7. Place this matter for further consideration on 26 February 2019.”*

5. Today, by speaking to the minutes, we ordered substitution of amount of Rs.2,28,01,164/- with amount of Rs.2,02,93,620/-. The aforesaid order was made because festival in question was to be held on 23rd and 24th of February 2019 and we wanted to ensure that atleast substantial portion of the dues, which were allegedly owed by organizers to the State Government, were secured.

6. The festival has already been held on 23rd and 24th of February 2019. Mr. Dangui, learned Government Advocate upon instructions from the Director of Tourism has made a statement that on this occasion most of the charges payable by organizers were recovered in advance. He states that if any further dues are pending, the State Government, will take expeditious steps for recovery of the same.

7. In so far as earlier dues are concerned, it is pointed out that such alleged dues are payable by basically two companies namely M/s Perfect live Pvt. Ltd and M/s Percept Limited/ respondent no.3.

8. Mr. Vernekar learned Counsel who appears for respondent no.3 points out that M/s Perfect live Pvt. Ltd is a subsidiary of respondent no.3.

9. According to chart handed over by the learned Advocate General on the previous occasion, statement as of precise amount of dues/money owned by respondent no.3 to State is as follows:-

*"Statement as to the precise amount of dues/money owned by the Respondent no.3 to the State is as per below table.*

| Sr. No. | Department | Description | Total Amount due(Rs.) | Amount already recovered through forfeiting Security Deposit(Rs.) | Balance amount outstanding (Rs.) | Remarks |
|---|---|---|---|---|---|---|
| 1 | Tourism Department | Service Tax | 24,72,000/- | 24,72,000/- | NIL | Recovered through the Security Deposit. |
| 2 | Police Department | Police Bandobast and traffic arrangement charges. | 1,92,83,210/- | 1,00,28,000/- | 92,55,210/- | Recovered through the Security Deposit. |
| 3 | Commercial Taxes Commercial Taxes | Entertainment Tax 2011-2012. (Percept DMark Div of Percept Ltd.) | 9,43,895/- | NIL | 9,43,895/- | Revenue Recovery Certificate issued and Collector of Mumbai is requested to recover the dues by Collector of North Goa Panaji under Section 7 B of Goa Entertainment Tax Act, 1964 |
| | | Entertainment Tax 2012-2013 (Percept DMark | 1,03,11,603/- | NIL | 1,03,11,603/- | Revenue Recovery Certificate issued and |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | Div of Percept Ltd.) | | | | Collector of Mumbai is requested to recover the dues by Collector of North Goa Panaji under Section 7 B of Goa Entertainment Tax Act, 1964 |
| | | Entertainment Tax 2013-2014 (Sunset Getaways) | 2,40,57,511/- | NIL | 2,40,57,511/- | In the appeal preferred by the organizers before the Additional Commissioner of Commercial Taxes(ACCT), the ACCT has maintained the assessment for the year 2013-2014 without any modification in dues. Pending recovery for which Dues reminder has been issued. |
| | | Entertainment Tax 2014-2015.(Percept Live Pvt. Ltd.) | 86,85,378/- | NIL | NIL | First Appeal with ACCT allowed and remanded back for fresh assessment. |
| | | Entertainment Tax 2015-2016.(Percept Live Pvt. Ltd.) | 37,59,521/- | NIL | 37,59,521/- | In the Appeal preferred by the organizers before the Additional Commissioner of Commercial Taxes(ACCT), the ACCT has maintained the assessment for the year 2013-2014 without any modification in dues. Pending recovery for which Dues reminder has been issued. |
| | Total | | 6,95,13,118/- | 1,25,00,000/- | 4,83,27,740/- | |

10. Mr. Verenekar, learned counsel appearing for respondent no.3 disputes the particulars with the aforesaid chart. In in any case he submits, that whatever the figures, it is the case of the respondent no.3 as well its subsidiary that such amounts are not due and payable to the State. He points out that in respect of atleast portion of such amounts, the respondent no.3 or Percept Live Pvt. Ltd. has already initiated proceedings or are in the process of initiating proceedings. He points out that some of the appeals/revisions are even pending. We note that there is reference to pending proceedings in the chart/statement submitted by the learned Advocate General on the previous date.

11. Mr. Vernenkar, then points out that State, through its agency Sports Authority of Goa has illegally withheld an amount of Rs.2,02,93,620/- from M/s Percept D'Mark (India) Pvt. Ltd., which is again a sister concern of respondent no.3. He submits that without prejudice to the rights and contentions of respondent no.3, M/s Percept Live Pvt. Ltd as well as M/s Percept D'Mark (India) Pvt. Ltd, a statement is being made that State Government/Sport Authority of Goa may retain the amount of Rs.2,02,93,620/- without prejudice to the rights and contentions of the respondent no.3 and other two companies to take up appropriate proceedings disputing

such retention or even disputing payment of any alleged amounts to the State Government.

12. In the aforesaid regard, Mr. Vernenkar has placed on record an affidavit filed by Shri Ankur Desai, General Manager Finance of the M/s Percept Live Pvt. Ltd a subsidiary of respondent no.3. Affidavit, in first paragraph states that Mr. Anukur Desai is authorised to represent M/s Percept Live Pvt. Ltd, M/s Percept Ltd and M/s Percept D'Mark (India) Pvt. Ltd. Necessary board resolutions have also appended to the affidavit.

13. Mr. Ankur Desai, has made following statement in his affidavit dated 25.2.2019 at paragraphs 2 to 4:-

> *"2. I say that in the course of hearing of the present matter on 22/02/2019, a chart was tendered on behalf of the Respondent Authorities indicating that a sum of Rs.2,05,10,708 (i.e. Rs.92,55,210 + Rs.9,43,895/- +Rs.1,03,11,603/-) is presently due and payable from Respondent no.3 to the various departments of the Government . The Respondent no.3 does not admit the liability indicated in the chart, as being due from the Respondent No.3. The Respondent no.3 has a legal right to challenge the said unreasonable levies/demands in accordance with law.*
>
> *3. In any case, I say that the Sports Authority of Goa of the Government of Goa is presently withholding an amount of Rs.2,02,93,620/- (Principal amunt without computing interst) due and payable by the Sports Authority of Goa (SAG) to M/s Percept D'Mark (India) Pvt. Ltd in respect of another event,*

*apparently on the ground that the same are required to be adjusted against the demand/levies due to the Government from M/s Percept Live Pvt. Ltd /Respondent no.3.*

4. *Therefore, without prejudice to the rights and contentions of M/s Percept D'Mark (India) Pvt. Ltd to challegne the illegal retention of Rs.2,02,93,620/- by SAG including making a claim for interest etc; and further without prejudice to the rights and contentions of M/s Percept Live Pvt. Ltd and the Respondent no.3 to challenge the demand/levies raised by the Government towards police bandobast charges, traffic arrangement charges and commercial tax dues in accordance with law. M/s Percept D'Mark (India) Pvt. Ltd hereby agrees(under protest) to the State Government adjusting the amount of Rs.2,02,93,620/- (Referred to in para 3 hereof) against the alleged dues of M/s Percept Live Pvt. Ltd /Respondent no.3 purportedly amounting to Rs.2,05,10,708/-"*

14. We accept the aforesaid statements made by Mr. Ankur Desai, as statements made to this Court.

15. Mr. Dangui, learned Government Advocate and Mr. R. Desa, learned Counsel for the petitioner point out that dues are not to the extent of only Rs.2,05,10,708/- as urged by Mr. Ankur Desai, in the aforesaid affidavit but the dues are much in excess as indicated in the chart placed on record by the learned Advocate General.

16. Possibly, amount of Rs.2,05,10,078/- has been stated because,

there are no proceedings pending in relation to said amount. In relation to rest of the amounts, there are proceedings pending and therefore, it is the case of Mr. Vernekar, that the said amount cannot be held to be presently due and payable.

17. In this petition, we are not called upon to go into the dispute between the parties. However, at least prima facie, since we found that the amount were dues and payable by the parties as aforesaid and despite not clearing such dues whether under protest or otherwise, there was an apprehension that permission would be granted to these very parties for holding music festival, we were constrained to make certain orders in order to protect the interest of the respondent/State.

18. No doubt, in the present matter, Mr. Kakodkar contended that it is parties to whom he represents were the organisers, organizing the festival under Franchise agreement with the respondent no.3 or sister concern of respondent no.3. In this petition, now that the festival has already been held there is no necessity to go into such an issue.

19. We accept the statement made by Mr. Ankur Desai, and in

pursuance of the same, we hold that State Government is at liberty to adjust the amount of Rs. 2,02,93,620/- towards dues payable by M/s Percept Live Pvt. Ltd as well as M/s Percept Pvt. Ltd, which is undoubtedly, without prejudice to the rights and contentions of these companies that such amounts were not all due. This is accordingly without prejudice to the rights of these companies to institute appropriate proceedings as permissible in law in respect of said amount.

20. Further, we direct the appellate as well as revisional authorities before whom the proceedings are pending in connection with alleged dues payable by respondent no.3 and its sister concern to the State Government, to dispose of those matters as expeditiously as possible and in any case within a period of six months from today, so that, there is some certainty as regards position of dues.

21. According to us, aforesaid directions are sufficient for the present. Besides taking into consideration the circumstances that the amounts have been retained by the State Government and further music festival has already concluded, there is no necessity to keep the present petition pending.

22. With the aforesaid directions, we dispose of present petition.

**PRITHVIRAJ K. CHAVAN, J.** **M. S. SONAK, J.**

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