

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.99 OF 2019

Fountainhead Entertainment Pvt. Ltd. Petitioner.

Versus

State of Goa and others. Respondents.

Mr. Nitin Sardessai, Senior Advocate with Ms. Gautami Kamat,
Advocate for the Petitioner.

Mr. S. R. Rivonkar, Public Prosecutor for Respondents No.1,2 and 4.

Mr. S. R. Rivonkar, with Mr. Sagar Rivankar, Advocates for
Respondent No.5.

***Coram : R.D. Dhanuka &
Prithviraj K. Chavan, JJ.***

Date : 10 April 2019.

P.C.:

1. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner seeks a writ of mandamus and a declaration that the order dated 28 March 2019, passed by the learned District Magistrate, North Goa under Section 144 of the Code of Criminal Procedure, 1973, restricting sale or serving liquor after 11.00 p.m. from the liquor shops/bars & restaurants, pubs, food joints, shacks, etc. for the period upto midnight of 23 April 2019 and also restricting sale and service of liquor for the period commencing from 6.00 p.m. onwards on 21st April, 2019 upto 12.00 hours on 23 April 2019 in so far as North Goa is concerned, shall not

apply to the Petitioner's event "Goafest" proposed to be held on 11th, 12, and 13th April, 2019. The Petitioner has also prayed for several other reliefs in furtherance of the writ of mandamus.

2. We have heard the learned counsel for both the parties at great length.

3. It is the case of the Petitioner that the Petitioner is extending help in organizing the said event and has been carrying on business for last several years. The Petitioner had conceived and planned of hosting a three day event by name "Goafest" on 11th, 12th and 13th April, 2019. It is the case of the Petitioner that since April 2018 onwards itself the Petitioner started making arrangements for hosting the said event and inviting various prominent persons, booking of the hotels, flights, venue, etc. for the said event and also also has paid substantial amounts, in advance to large number of invitees and the live performers.

4. On 23rd April, 2019, the General Elections to two Lok Sabha Seats and few Assembly Constituencies in the the State of Goa are scheduled to be held. The Election Code of Conduct is in force since 10th March 2019.

5. On 28th March, 2019, the learned District Magistrate, North Goa issued an order under Section 144 of the Code of

Criminal Procedure, 1973, imposing various restrictions on sale and service of liquor in North Goa District. The Petitioner has impugned a part of the conditions imposed by the learned District Magistrate and more particularly, about the time restriction for service of liquor after 11.00 p.m. during the period from 11th April, 2019 to 13th April, 2019, when the said event organized by the Petitioner is proposed to be held in the premises of the Respondent No.3-hotel.

6. Mr. Sardesai, the learned Senior Counsel appearing for the Petitioner invited our attention to the various exhibits annexed to the Petition and also to the impugned order dated 28 March 2019. He submits that the Petitioner has already started preparations of the event by name "Goafest 2019" which is proposed to be held on 11th, 12th and 13 April, 2019 since April, 2018. He invited our attention to the documents at Exhibits C and D-collectively annexed to the Petition and would submit that more than 3.46 crores of payment has already been made by the Petitioners to various invitees, live performers and towards various other expenses incurred on organizing the said event. It is submitted by the learned Senior Counsel that the liquor proposed to be served during those three days, has already been purchased by the Petitioner. All the invitees have even been informed of the service of liquor during such event after 11.00 p.m. on the dates of the said event. Teh said function has

a total budget of ₹ 5 crores 83 lakhs.

7. The learned Senior Counsel invited our attention to the fourth paragraph of the impugned order dated 28th April, 2019 and would submit at the outset that the said order invoking Section 144 of the Cr.P.C. could not have been passed at all in the facts and circumstances of this case. He submits that the learned District Magistrate has not indicated any prevailing law and order situation in the District which necessitated the proposed preventive action by the said order dated 28 March 2019. He submits that none of the conditions prescribed under Section 144 of Cr.P.C. are satisfied in the facts of this case.

8. The learned Senior Counsel submits that in the impugned order, the learned District Magistrate has also invoked Section 29(A) of the Goa Excise Duty Act, 1964 and would submit that the Petitioner has not proposed to sell any liquor to any of the guests during the said event, but only to serve liquor during those three days. The said provision thus cannot attract to the facts of this case. He submits that there is no question of any riot or unlawful assembly likely to happen during the period of those days' event being organized by the Petitioner. He invited our attention to the list of such prominent invitees, which includes Mary Kom, Virendra Sehwaag, Kalki Koechlin, Siddant Chaturvedi, and several other

dignitaries.

9. The learned Senior Counsel also invited our attention to the provisions of Section 135-C of the Representation of the People Act, 1951 and would submit that even under the said provision restriction can be imposed for sale or distribution of liquor within a polling area during the period of forty eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area. He submits that the event of the Petitioner is scheduled on 11th, 12th and 13th April, 2019; whereas the elections are scheduled to be held on 23rd April, 2019

10. In so far as the Goa Excise Duty Rules are concerned, he laid emphasis on Rule 99(3) and would submit that the Respondent No.3 being a Five Star Hotel, sale of liquor for 24 hours is permitted, subject to permission granted by the authority. He submits that Rule 99(4) would not apply to the facts of this case. Respondent No.3 has been already granted such permission by the authority.

11. The learned Senior Counsel submitted that under Section 144(5) of the Cr.P.C., the Magistrate has powers to rescind or alter any order passed under Section 144(1). It is submitted that, in this case the Petitioner has made out a case for relaxation of

condition for service of liquor on the dates of event organized by the Petitioner. He submits that even under Section 144(6), the State Government has similar powers to grant relaxation so far as sale and service of liquor is concerned.

12. It is submitted by the learned Senior Counsel that the Petitioner has proposed to collect ₹ 23,900/-, including GST, from each of the participants towards fees. He submitted that no political persons are invited for the said event, nor political speeches would be permitted during the said event of three days. He submitted that without prejudice to the rights and contentions of the Petitioner, he has no objection if the Respondent Authority is permitted to videograph the event after 11.00 p.m. till 1.30 a.m. or even thereafter. He submits that the Respondents may also be permitted to depute any two of their representatives to witness the said event, at the cost of the Petitioner. The learned Senior Counsel submitted that the Petitioner has no objection to even install CCTVs to record the event beyond 11 p.m. till the event gets over.

13. It is submitted that similar functions were being organized by the Petitioner in last several years. When the Petitioner had proposed to hold this event last year, the date of elections was not even announced. If the Petitioner is not permitted to serve liquor, the Petitioner will have to suffer loss of goodwill and reputation.

14. Mr. Rivankar, learned counsel for the Respondents, on the other hand, raised various issues to oppose this Petition. The learned counsel submitted that unless the Petitioner demonstrates any violation of its statutory right, the question of maintainability of writ of mandamus does not arise. He submits that the Petitioner is admittedly not restrained from selling liquor. The restriction is on the Respondent No.3. Respondent No.3 has not filed any Petition, impugning the order passed by the learned District Magistrate. He submitted that the Petitioner has, thus, no locus standi to challenge the impugned order passed by the learned District Magistrate as the Petitioner is not affected in any manner whatsoever by the impugned order passed by the learned District Magistrate. The Petitioner is not a licence holder.

15. The learned counsel submitted that there is no violation of Article 14 or Article 19(1)(g) of the Constitution of India. The order passed by the learned District Magistrate, in any event, is pursuant to the rights conferred under Article 19(6) by imposing reasonable restrictions. The learned counsel submitted that the restriction proposed by the learned District Magistrate, restricting the timing of sale or service of liquor is within the parameters of reasonable restrictions as proposed under Article 19(6) of the

Constitution of India. It is submitted by the learned counsel that the whole purpose of restricting the timing for sale or supply of liquor is with a view to see that no voter is lured to vote in favour of a particular candidate.

16. The learned counsel invited our attention to the Model Code of Conduct and more particularly paragraph 17.4. He submitted that under the said Model Code of Conduct, the Government realised that the liquor is believed to be in great demand during the elections and it is a common belief that liquor and other intoxicants are offered as inducement to electors, and particularly poor electors to colour their judgments and to garner their votes. He submitted that the Election Commission is empowered to give directions to the State Authorities to launch special drives to unearth illicit liquor-making factories and other bootlegging activities. He submitted that special care has to be taken in so far as sale of liquor even by the authorised outlets during the period from the date of notification of the elections, till the date of poll.

17. It is submitted that under the Model Code of Conduct, the Election Commission has prescribed the timing of opening and closing of liquor vending shops which has to be meticulously followed. The learned counsel submitted that right to serve liquor is not a fundamental right and thus, on that ground itself, the writ

petition is not maintainable.

18. The learned counsel placed reliance on Article 324 of the Constitution of India and would submit that under the said Article a duty is cast on the Election Commission to conduct elections in free and fair manner. He submitted that for conducting free and fair elections, the Election Commission is thus empowered to impose such reasonable restrictions in selling or supplying liquor during the period of elections partly or fully.

19. The learned counsel for the Respondents strongly placed reliance on Rule 99(3) of the Goa Excise Rules and would submit that time restrictions can be imposed for sale of liquor under the said provision. He submitted that the Government, if satisfied, in public interest, may direct that in any local area licensed premises shall be closed on such days or such hours as may be satisfied in that regard. The learned counsel does not dispute that Five Star Hotels in Goa are permitted to sell liquor during 24 hours in a day on granting permissions in terms of Rule 99(3) of the Goa Excise Rules.

20. The learned counsel strongly placed reliance on the Judgment of the Supreme Court in the case of ***State of Karnataka and anr. Vs. Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684*** and in particular paragraphs 3, 7, 8 and 11, in support of his submission

that Section 144 of Cr.P.C. has been rightly invoked by the learned District Magistrate in this case, in view of the elections having been already announced and taking into consideration the provisions of the Model Code of Conduct, the Goa Excise Duty Act, 1964 and the Rules, as well as the provisions of the Constitution of India and Section 144 of the Cr.P.C.

21. It is submitted by the learned counsel that the Respondents are not concerned even if the Petitioner has spent a huge amount for organizing this event proposed to be held on 11th, 12th and 13th April 2019. He submits that the order passed by the learned District Magistrate is not passed specifically against the Petitioner, but is a general order by exercising various powers conferred under various provisions already referred aforesaid

22. A perusal of the records indicates that the Petitioner has been organizing such type of events for last several years. The Petitioner had already started all arrangements on planning of the said event, proposed to be held on 11th, 12th and 13th April, 2019 as far back as in the month of April 2018. A perusal of the document, at page 33 (Exhibit C-colly) indicates that the Petitioner has invited a large number of prominent persons, including Mary Kom, Virendra Sehwaag, Kalki Koechlin, Siddant Chaturvedi, Lt. Gen. D.S.Hooda,

etc. and other dignitaries. The said documents further indicate that a substantial amount has been already paid by the Petitioner to various prominent persons and towards other expenses, much prior to the date of the impugned order being passed by the learned District Magistrate. The Petitioner expects about 1700 persons as invitees.

23. A perusal of the impugned order dated 28 March 2019 indicates that in the fourth recital thereto, it is mentioned that in view of prevailing law and order situation in the district in furtherance of the guidelines of the election Commission, to prevent undue influence of voters through distribution of liquor and also to preserve peace and tranquillity, it was felt appropriate that the timings of closure of all the liquor shops/bars, pubs need to be curtailed. The said order does not indicate any material to show that there is any prevailing law and order situation in the North Goa District which necessitated the Respondents to issue such orders under Section 144 of the Cr.P.C.

24. The Hon'ble Supreme Court in the case of State of Karnataka and anr. Vs. Dr. Praveen Bhai Thogadia (supra) has held that reference to Section 144 of the Cr.P.C. which deals with "Maintenance of Public Order and Tranquillity" is a part of Sub-Chapter C, The said sub-chapter is titled "Urgent Cases of Nuisance

or Apprehended Danger”. The said provision deals with the power to issue orders in urgent cases of nuisance or apprehended dangers. An order can be passed in terms of sub-Section (1) by a District Magistrate, or by a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in that behalf. An order can be passed when immediate prevention or speedy remedy is desirable. In our view, the Respondents have failed to point out any such case of nuisance or apprehended danger in the impugned order or even during the course of his lengthy arguments advanced by the learned counsel for the Respondents.

25. In so far as the reliance placed on Section 29A of the Goa Excise Duty Act, 1964 is concerned, there is no dispute that the said provision empowers the District Magistrate or the Sub-Divisional Magistrate by notice in writing to the holder of a licence or his agent to require that any shop in which liquor is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace

26. Considering the facts of this case and more particularly where a large number of prominent persons are invited for the event of distribution of awards, and for other related activities, we do not find any apprehension of any public law and order or breach of any public peace. The statement made by the learned Senior Counsel that

there would be no political speech in the said event, nor any politician would be invited for this event, is accepted.

27. It is one of the apprehensions of the Respondents that the liquor may be served to poor electors which may give rise to ugly scenes and sometimes even to violence, disturbing public order and creating law and order problems, would be out of question in so far as these events are concerned. Considering the registration fees proposed to be charged by the Petitioner in the sum of approximately Rs.24,000/-, inclusive of GST, per head, would also indicate that no poor person would attend this function and would consume liquor therein.

28. In so far as Rule 99(4) of the Goa Excise Rules, which is pressed into service by the learned counsel for the Respondents is concerned, there is no dispute that the Government is empowered to direct that in any local area licensed premises shall be closed on such days or such hours as may be specified in that regard, if it is necessary in public interest.

29. In our view, there would be no violation of public interest if this event is allowed to be held and if the liquor is allowed to be served beyond 11 p.m. till 1.30 a.m. as proposed by the Petitioner. The event is proposed to be held at the Respondent No.3's

hotel and admittedly, the hotel has already been granted permissions under Rule 99(3) of the Goa Excise Rules, 1964 for sale and service of liquor for 24 hours.

30. In so far as the submission of the learned counsel for the Respondents that the Petitioner has no locus to file this Petition on the ground that the Petitioner has not proposed to sell any liquor during the event proposed to be held and the order passed by the learned District Magistrate would prohibit only the sale of liquor by Respondent No.3 is concerned, in our view, there is no substance in the submission of the learned counsel. The Petitioner has proposed to organize such event in the premises of Respondent No.3. If the Respondent No.3 is restrained from selling or supplying liquor, the Petitioner would be adversely affected. In our view, the Petitioner has thus locus to file this Petition, impugning the order passed by the learned District Magistrate to the extent the Petitioner is adversely affected.

31. In so far as submission of the learned counsel for the Respondents that there is no violation of Article 14 or 19(1)(g) of the Constitution of India is concerned, the Petitioner has been carrying on business of organizing such events. The Petitioner has already paid substantial amounts to various invitees, live performers and to several parties in organizing this event. In our view, the rights

of the Petitioner are thus seriously violated in view of the restrictions imposed by the learned District Magistrate in so far as supply of liquor beyond 11 p.m. is concerned.

32. Mr. Rivankar, learned counsel for the Respondents does not dispute that under Section 135-C of the Representation of People Act, 1950, there is restriction on sale or supply of liquor within a polling area during the period of forty eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area. Be that as it may, since the Petitioner has already taken steps much prior to announcement of the elections, as well as declaration of the Model Code of Conduct and the impugned order passed by the learned District Magistrate, we are of the view that the condition imposed in the impugned order not to serve any liquor beyond 11.00 p.m. and its distribution, would not apply to the Petitioner.

33. In so far as the Judgment of the Hon'ble Supreme Court in the case of *State of Karnataka and anr. Vs. Dr. Praveen Bhai Thogadia* (supra) relied upon by the learned counsel for the Respondents is concerned, a perusal of the said Judgment indicates that the Supreme Court was considering an order passed by the Additional District Magistrate restraining Dr. Praveen Bhai Thogadia from giving speeches on the ground that such speeches would likely

to trigger communal antagonism and hatred, resulting in fissiparous tendencies gaining foothold undermining and affecting communal harmony. The Hon'ble Supreme Court had also considered the past conduct and antecedents of the person before accepting the order passed by the learned Additional District Magistrate under Section 144 of the Code of Criminal Procedure. The facts before the Hon'ble Supreme Court were totally different. It is not the case of the Respondents herein that in the past, the conduct of the Petitioner was such that due to service of liquor, any law and order situation had arisen. In the said Judgment, the Supreme Court also held that provisions of Section 144 of the Code of Criminal Procedure can be invoked only in urgent cases of nuisance or apprehended danger.

34. In our view, no such case is made out by the Respondents for issuance of such orders under Section 144 of the Code of Criminal Procedure, 1973. We, however, make it clear that the observations made in this order are restricted to the facts of this case.

35. The learned Senior Advocate for the Petitioner, on instructions, has made a statement that the event beyond 11.00 p.m. on all those three days would be recorded by videography at the cost of the Petitioner; no breaches would be permitted during the said event proposed to be held and that no politician would be invited for

the event. The statement is accepted. We also permit the Respondents to depute two of their authorised representatives to attend the said event, from the beginning till end. If the Respondents propose to depute such representatives, the Petitioner shall be informed in advance.

36. We, therefore, pass the following order :

The conditions imposed in the impugned order dated 28 March 2019 and more particularly, the condition regarding timing for selling and/or supplying liquor after 11.00 p.m. for the period between 11th April, 2019 till 14th April, 2019 during 11.00 p.m. to 1.30 a.m., would not apply to the Petitioner for the event “Goafest” , to be held in the premises of Respondent No.3. It is made clear that this order shall not be used as a precedent in any other matter and has been passed considering the peculiar facts and circumstances of this case.

37. The Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

38. Parties to act on the basis of copy duly authenticated by the Senior Pvt. Secretary of this Court.

Prithviraj K. Chavan, J.

R.D. Dhanuka, J.