

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 675 OF 2019**

PUSHKAL FERNANDES.

... Petitioner

VersusSTATE OF GOA, THR. CHIEF SECRETARY
AND 9 ORS.

... Respondents

Mr. Melwin Assis Viegas, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Shivadatta P. Munj, Addl.
Government Advocate for Respondent Nos.1,2,3,4,5,6, 7 & 8.

Mr. H. Vaze, Advocate for Respondent Nos.9 and 10.

WITH**STAMP NUMBER (APPLN.) NO.2982 OF 2019****IN****WRIT PETITION NO.675 OF 2019**UNITED TAXIMEN'S UNION
THROUGH ITS PRESIDENT
MR. EKNATH PALKAR

...Applicant

Versus

STATE OF GOA & ORS.

...Respondents

Mr. Prasheen Lotlikar, Advocate for the Applicant.

Coram:- M. S. SONAK &**NUTAN D. SARDESSAI, JJ.****Date:- 4th October, 2019****P.C.**

Heard Mr. M. Viegas, learned counsel for the Petitioner.

2. Mr. D. Pangam, learned Advocate General alongwith Mr. S.

P. Munj appear for Respondent Nos.1 to 8, Mr. H. Vaze, learned counsel appears for Respondent Nos.9 and 10 and Mr. P. S. Lotlikar, learned counsel appears for the Applicant in STA No.2982 of 2019 who seeks intervention in this application.

3. The Petitioner, seeks several reliefs in this petition in the context of commencement of Rent a Cab counter at the Dabolim International Airport. There are averments in the petition that there is no clarity as to whether the Petitioner requires any permission or licence from the Authorities under the Motor Vehicles Act, 1988 for the purpose of commencement of a counter. The Petitioner has pleaded that he had made a complaint to the Authorities by way of abandoned caution and such application not being disposed of. The Petitioner also seeks waiver or adjustment of monthly charges in respect of counter from the Respondent Nos.9 and 10.

4. In the return filed by Shri Rajan Satardekar, Director of Transport, Government of Goa, it is stated that the permission is necessary for Rent a Cab Scheme of 1989 for having a branch office. To the return is annexed the order dated 05.08.2019, by which the Director of Transport and Member Secretary of the State Transport Authority has rejected the Petitioner's application for opening Rent a Cab counter at Dabolim airport *inter alia* on the ground that the Petitioner has failed to comply with the requirements of Standard

Operating Procedure (SOP) finalized by the State Transport Authority in respect of certain specific issues which have been listed out in the order dated 05.08.2019.

5. The Petitioner, there upon handed in a draft amendment seeking leave to amend the petition and challenged the aforesaid order dated 05.08.2019 on various grounds including *inter alia* on the ground that no permission is at all required under Rent a Cab Scheme of 1989 to only open a counter at Dabolim airport.

6. The learned Advocate General submits that the Licensing Authority in the present case has clearly exercised the powers under clause 6 of the said Scheme which deals with the issue of grant of licence. The learned Advocate General submits that the Petitioner has already been licensed under Rent a Cab Scheme looking to infrastructure provided by him at his main office which is located in Margao. He submits that opening of a counter is nothing but opening a branch office and therefore, a licence is necessary in terms of Rent a Cab Scheme of 1989. He submits that in any case since the Licensing Authority has exercised powers under clause 6 of the said Scheme and since the order of Licensing Authority is clearly appealable under clause 12 of the said Scheme, there is no question of granting any leave to amend or even if leave to amend is granted, there is no question of entertaining the present petition as the Petitioner has an alternate and

efficacious remedy available under Rent a Cab Scheme of 1989 itself.

7. Clause 6 of the Rent a Cab Scheme of 1989, in its proviso provides that no application for licence shall be refused by Licensing Authority unless the applicant is given an opportunity of being heard and reasons for such refusal are given in writing by the Licensing Authority.

8. In the present case, even if we accept the contention of the learned Advocate General that the order dated 05.08.2019 is relatable to the exercise of powers under clause 6 of the Rent a Cab Scheme of 1989, then, in the absence of compliance with the principles of natural justice has specifically predicated by the proviso to clause 6, it will be difficult to sustain the order dated 05.08.2019.

9. There is no dispute in the present case that the Petitioner was not heard before the order dated 05.08.2019 was made and communicated by the Licensing Authority to the Petitioner. The proviso to clause 6 clearly mandates an opportunity of being heard.

10. In the aforesaid peculiar circumstances, we grant the Petitioner leave to amend the petition in order to incorporate the challenge to the order dated 05.08.2019. Such amendment is to be carried out forthwith.

11. Though, the learned Advocate General is right in his submission that the order made under clause 6 of Rent a Cab Scheme of 1989 is appealable in terms of clause 12 thereof, in the peculiar facts and circumstances of the present case, where we find that the impugned order dated 05.08.2019 was made without complying with the principles of natural justice, we set aside the impugned order without relegating the Petitioner to avail remedy under clause 12 of the said Scheme.

12. By setting aside the impugned order dated 05.08.2019, we restore the Petitioner's application dated 07.06.2019 before the Licensing Authority and direct the Licensing Authority to dispose of the same in accordance with law and on its own merits as expeditiously as possible and in any case within a period of six weeks from today. On this occasion the Licensing Authority should afford the Petitioner an opportunity of being heard in the matter.

13. We clarify that we have not gone into the merits of the matter and therefore, all contentions of parties including the contention of the Petitioner that no licence is required under the Rent a Cab Scheme of 1989 for only opening a counter at Dabolim airport are kept open.

14. Since the main petition is being disposed of there is no

question of entertainment of the intervention application. However, Mr. Lotlikar, learned counsel for the proposed intervenor seeks a direction that the intervenor be permitted to intervene in the application made by the Petitioner before the Licensing Authority. At this stage, it will not be proper for us to make any observations. However, we only add that if such an application is made by the proposed intervenor before the Licensing Authority, the same will be considered and disposed of in accordance with law by the Licensing Authority.

15. In so far as the relief of waiver of charges by the Airport Authority is concerned, at this stage, we merely leave open this issue. In fact, the Petitioner is granted liberty to make representation to the Airport Authority in regard to such waiver and we are sure that the Airport Authority will deal with such representation on its own merits and in accordance with law.

16. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

17. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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