

*IN THE HIGH COURT OF BOMBAY AT GOA*

*WRIT PETITION NO.890/2019*

ALEIXO ARNOLFO PEREIRA., .... Petitioner

V/s.

THE DEPARTMENT OF TOURISM,  
THR. ITS DIRECTOR AND 2 ORS. .... Respondents

Mr. Aleixo Pereira, in person.

Mr. D. Pangam, Advocate General with Ms. M. Correia, Additional  
Government Advocate for Respondent Nos.1, 2 and 3.

Coram:- M.S. SONAK &  
NUTAN D. SARDESSAI, JJ.

Date:- 15th October, 2019

P. C.:

Heard Mr. Aleixo Pereira in person. Mr. D. Pangam, learned  
Advocate General along with Ms. M. Correia appears for respondent  
nos.1 to 3.

2. The petitioner, is not quite clear whether this is a personal  
interest litigation or a public interest litigation. He however refers to

Article 48A of the Constitution of India and points out that if there is any environmental degradation, then, as a citizen of this country even he is affected and therefore, he should be permitted to maintain present petition.

3. The petitioner, in this petition, has basically prayed for two reliefs:-

(a) for quashing and setting aside conditions/reservations in clause 2 and restrictions imposed in clause 35 of the Tourism Shack Policy 2019-22 formulated by the Director of Tourism.

(b) for an appropriate writ to set aside the Tourism Shack Policy 2019-2022 on the ground that it violates not only the provisions of CRZ Notification 2011 but also the Public Trust Doctrine.

4. In so far as the restrictions imposed in Clause 2 of the Tourism Shack Policy 2019-2022 are concerned, there is already a Writ Petition No.880/2019, in which substantive challenges have been raised to the said clause. In the said petition as well, there is a challenge on the ground that the allotment of shacks must be by auction, in deference to the Public Trust Doctrine.

5. Besides, we find that the petitioner, had also raised some issues relating to the Shack Policy of 2013-2016 before the NGT, in the past.

The decision of the NGT has been placed on record by the petitioner as Annexure 'A' to this petition.

6. At the behest of the petitioner, who is, not quite clear about his status and taking into account the inadequate and sketchy pleadings in their petition, we do not deem it appropriate to entertain these challenges. However, we clarify that the issue regards validity of Clause 2 of the Shack Policy 2019-2022 is specifically kept open for decision in Writ Petition No.880 of 2019 or in other matter where such a challenge arises, with appropriate pleadings.

7. Clause 35 of the Tourism Shack Policy 2019-2022 reads as follows:

*"The applicant should not have a criminal background or should not have been charged for an offence involving violence, drugs, eve teasing, violence pertaining to women or any other criminal offence and there should not be a charge sheet pending against him in any criminal Court located in India. Applicant shall give an undertaking/declaration for that effect. All such applications to set up temporary shacks received from persons with criminal charge sheet pending against them in any court in India will be rejected forthwith."*

8. Mr. Pereira argues that there is presumption of innocence and the

fundamental right of a citizen to carry on any trade, occupation or business cannot be taken away by imposing a condition as is to be found in Clause 35 above.

9. According to us, there is absolutely nothing unreasonable or arbitrary in Clause 35. Such a clause, does not impose any unreasonable restriction on the right of any citizen to pursue any trade, occupation or business. In fact, Clause 35 is clearly in public interest, inasmuch as it provides that an applicant who is desirous of setting up or operating a shack on Government property or public beach should not have criminal background or should not have been charged for an offence involving violence, drugs, eve teasing, violence pertaining to women or any other criminal offence and there should not be a charge sheet pending against him in any criminal Court located in India.

10. Accordingly, we reject the prayer for quashing and setting aside Clause 35 in the Tourism Shack Policy 2019-2022.

11. We accordingly, dispose of the petition in the aforesaid terms by clarifying that the issue of validity of Clause 2 of the Tourism Shack Policy 2019-22 or the challenge based on violation of the Public Trust Doctrine or the challenge based upon the policy being in conflict with the CRZ Notification, 2011 is expressly kept open to be adjudicated in an appropriate case, with appropriate pleadings and research material.

However, the challenge to Clause 35 of the Shack Policy 2019-2022 is rejected.

12. In the facts of the present case, there shall be no orders as to costs.

***NUTAN D. SARDESSAI, J.***

***M. S. SONAK, J.***